

# THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING

## **Technology and Social Media** **Submitted Oral & Written Testimony Received by January 31, 2015** **Presented Alphabetically by Last Name**

### **Primary Source Documents**

This document contains all Primary Sources for oral and invited written testimony submitted to the Task Force for the listening session on Technology and Social Media. Twenty documents are compiled alphabetically by last name when available or by the name of the organization when not provided. A complete list of submissions for A-Z is provided as an easy reference when looking for specific names or organizations.

#### **Oral Presenters Who Submitted Written Testimony:**

1. Aden, Hassan: Director of Research-International Association of Chiefs of Police
2. Bueerman, Jim: President-Police Foundation
3. Cohen, Elliott: Lt.-Maryland State Police
4. Grewal, Madhu: Policy Counsel-the Constitution Project
5. McKesson, DeRay: Protester-This is the Movement
6. Miller, Ken: Chief-Greenville PD
7. Rainey, Kenton: Chief-Bay Area Transit Authority PD
8. Schrier, Bill: Chair-Washington State Interoperability Executive Committee
9. Spiker, Steve: Research and Technology Director-Urban Strategies Council
10. Stevens, Lauri: Founder-LAWS Communications
11. Talucci, Vincent: International Association of Chiefs of Police
12. Van Houten, Richard: Sgt.-Fort Worth Police Officer Association
13. White, Michael: Assoc. Professor-Arizona State University

#### **Invited Written Testimony Submitted by Jan. 31, 2015**

1. Holman, Sandy: Director-Culture CO-OP
2. Holman, Sandy: Director-Culture CO-OP
3. Parker, Julie: Media Relations Director-Prince Georges County PD
4. Sloan, Ronald: President-Association of State Criminal Investigative Agencies
5. Somers, Samuel: Chief-Sacramento PD
6. Vansell, Kimberly: Director-National Center for Campus Public Safety
7. Winkler, Jim: President-National Council of Churches of Christ in the USA

**Testimony of Hassan Aden  
Director of Research and Programs  
International Association of Chiefs of Police**

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Before the Task Force on 21st Century Policing  
Listening Session: Social Media  
January 31, 2015



Commissioner Ramsey, Professor Robinson, Director Davis and members of the Task Force on 21<sup>st</sup> Century Policing, thank you for inviting me to testify today. My name is Hassan Aden and I am the former Chief of Police for the Greenville, North Carolina, Police Department and the Director of Research and Programs at the International Association of Chiefs of Police (IACP). I have over 27 years of law enforcement experience, and I am here today to testify on behalf of the IACP.

The IACP is the world's largest association of law enforcement executives, with more than 22,000 members in 98 different countries. For over 120 years, the IACP has been launching internationally acclaimed programs, speaking out on behalf of law enforcement, conducting ground-breaking research, and providing exemplary programs and services to the law enforcement profession across the globe. One of those programs is the IACP Center for Social Media which builds the capacity of law enforcement to use social media to prevent and solve crimes, strengthen police-community relations, and enhance services.

Law enforcement agencies of all sizes across the United States are using many forms of social media in innovative and effective ways. According to the fifth annual Center for Social Media Survey completed in late 2014, 95 percent of law enforcement agencies surveyed stated they were using some form of social media. Of those using social media, 78.8 percent indicated social media had helped to solve a crime in their jurisdiction and 77.5 percent stated that social media had improved police-community relations in their jurisdiction.<sup>i</sup>

Social media allows law enforcement agencies to reach a broad, diverse audience, quickly, and in an unfiltered manner. These platforms also allow police to reach out in conversational ways to open lines of communication and show examples that break down stereotypes. By using these tools thoughtfully, agencies develop new levels of transparency and provide exceptional customer service, thereby enhancing relationships with individuals, businesses, and organizations throughout their community, not just online, but offline as well.

I attended a Center for Social Media training just six months before I became chief in Greenville and that training gave me the tools I needed to be successful. By sharing best practices and a national perspective, the IACP has provided vital information to myself and other leaders.

### **Building Relationships**

It is vital that agencies craft a social media strategy and develop their social media presence sooner than later. During or immediately following a crisis situation is not the time to begin using social media. One starting point can be with the traditional news media in their area.

When I went to Greenville Police Department (GPD), I found a place where morale was low, the crime rate was unacceptable, and relationships with some elected officials, the news media, and community members were in need of repair. On day one, I met with the local news outlets and established an expectation of inclusion and transparency. I later created a deliberate media plan

that included a new media relations position, filled by a local news anchor that came to the department and provided a new, positive perspective.

In my first year at GPD we enhanced our Facebook presence, adding 4,000 new followers, and also established new Instagram and Twitter accounts to connect with the public. We used informative messaging, listening to what the community wanted from us and building transparency. We established Twitter Town Halls, where officers from various units shared pictures and answered questions about their role in the department and community. We also did Tweet-alongs where we shared updates, photos, and videos throughout an officer's shift, providing a virtual ride-along experience. Using social media, we were able to create opportunities for people to interact with us in a way the public almost never gets.

One example of how GPD utilized their social presence was during an unseasonably cold winter. We sent messages across social media platforms telling people that if they see a homeless person out in the bad weather to please call GPD as we had a block of rooms at a local hotel (paid for by Angel Cops, a local nonprofit). If individuals chose not to go, officers carry wool blankets that they can provide. This message of community caretaking spoke volumes to the residents of Greenville.

We consistently received great responses to our social media efforts. When I left two years later, there was a 13 percent reduction in violent crime and a 5 percent reduction in property crime. Department morale was at an all-time high. And, we had repaired, improved, and built new relationships with all local stakeholders. Much of this can be attributed to the open lines of communication we created and the transparency we facilitated, often using social media tools.

The goals of a law enforcement agency (particularly the public information office) and the media are not mutually exclusive. In fact, they are the same: to provide the public with accurate reporting of events that impact their lives. By working together, police and media outlets are able to benefit the community with comprehensive, timely reporting. This type of relationship shows that the agencies have nothing to hide and are a true partner, tightly integrated with those they serve.

Establishing this relationship early and nurturing it continuously sets an agency up for success. Social media messages can then be shared and amplified using the followers of both the agency and the media outlet. This will allow the proper message to get to a broader audience. Media can pick up and expand on stories released through social channels by the agency, while also giving the agency a chance to provide an unfiltered, timely account.

Social media allows agencies to reach beyond geographic, cultural, demographic, and other boundaries that exist throughout the country. Social channels can be a vital tool in starting the conversation on many topics and can help foster and build new relationships with community members and groups. Boise, Idaho, Police Department (BPD) is an example of how an agency has used social media to cross a divide in their community.

In 2011, BPD received information that at least one possible hate-bias crime had occurred in the downtown area and was not reported. The department's liaison to the LGBT (lesbian, gay, bisexual, transgender) community worked with other officers to develop a flyer explaining what a hate-bias crime is and urging citizens to report them. The flyer was distributed and an electronic link to the flyer was posted on the BPD Facebook page along with a short statement on department concerns about unreported crimes. BPD then shared the link on other Facebook pages including the Idaho Humanities Council, the Ada County Human Rights Task Force, and The Community Center, a local facility devoted to the LGBT and allied population.

This was one of the agency's first efforts to create an improved dialogue and open new lines of communication to a specific segment of their community. BPD received positive, thankful responses. Even those who gave the Facebook posts a passing glance still saw it, and it registered that their police department took the time and effort to reach out to them specifically and that the department cares about their safety.

### **Brand Identity**

Social media has brought a new perspective to many agencies, and that is that both the law enforcement profession as well as their department are a brand. Just like the large profitable companies that we can identify through a brief commercial or a glimpse of their logo, police departments have their own unique brand.

When an individual comes across an agency patch, badge, or logo, they will get certain feelings and have certain expectations. If those images are paired with consistent messaging that portrays honesty, integrity, and trustworthiness, then those values will become part of that law enforcement agency brand. This should also be partnered with exceptional customer service. Social media has changed expectations, and many people now turn to these channels to voice a complaint or ask a question. Agencies can, and many are, there to respond in those instances. This shows the community that we are listening and we care.

Austin, Texas, Police Department (APD) is one agency that has worked hard to build their brand. They listened to their community across various social media platforms and were able to understand what was important to their residents and what needs APD could meet using social media.

Like many agencies, APD uses consistent imaging across their web and social media accounts, so they are easily identifiable to the public. Through these platforms, APD engages in conversations and shares information about the things they have identified as important or concerning to citizens. For example, through thoughtful listening, they found out that when the APD helicopter was seen, many residents grew apprehensive and wanted to know what was going on in their city. So, APD now takes a proactive approach by tweeting information each time the helicopter goes up and their citizens thank them for it. They also send out information about the location of their public information officer during events so people know they have a point of contact and where they can find that person.

Of course, what was of interest to the citizens of Austin may be different in other communities. That is why it is vitally important for an agency's brand and messaging to be created with their community in mind. It is important to know your community, how they communicate, and what they want.

Having a strong, identifiable brand allows community members to know exactly where to go for information and also sets up expectations for what they will receive from police departments. Communities across the country are diverse in what social media tools they use and how they use them. It is important for the department to know their community's social media tendencies so they can capitalize on them and ensure they are using these tools for the best interest of the department and the community.

Another great example of the value of social media is the Utica, New York, Police Department (UPD). Initially, the Chief was very apprehensive about the use of social media for his agency. He was then invited to a social media focus group at IACP. By connecting with other law enforcement leaders and learning how to strategically approach social media he decided to give it a try. The chief had a sergeant who was very interested in social media and was in touch with the community and how residents and other local organizations were using these tools. So the sergeant was put in charge of crafting a strategy and maintaining the sites.

Today, UPD has 38,453 Facebook followers in a city of just over 60,000 residents. And, they are closing in on 100 arrests from information received from residents after seeing requests posted on Facebook. In multiple instances, people turned themselves in. In other instances, people see the pictures and videos and contact the police department with information. The biggest surprise has been the speed in which they receive the tips. Many times it is within minutes and the fastest has been around 30 seconds. Sergeant Steve Hauck says he believes social media empowers the community to get involved in the crime fighting process. Instead of the police department putting out sporadic requests for information, there is a sustained level of engagement with social media. The community knows that they can work through UPD's social channels to provide information and ensure their community is a safer place.

### **Voice and Tone**

Social media provides a forum for professional but also conversational and personal messaging for law enforcement agencies. This type of messaging can help break down stereotypes by showing the humanity of police officers and providing insight into the challenges law enforcement officers face and how they operate. These opportunities make law enforcement officers more approachable which in turns allows for more two-way communication between the agency and other community members.

Many agencies have embraced a particular tone and voice for their social media channels. For example, many have all seen the officer singing along to Taylor Swift, and lighthearted stories and images can be found on many agency social media pages. Bringing tasteful humor and

relaxed conversations to the community is completely appropriate on these channels and can open new lines of communication and show a new side to police. Technical and legal jargon is tossed aside and police are able to speak directly to the public in a way they can all understand.

To produce the best and most useful resources, IACP works with local law enforcement agencies and brings in visiting fellows who provide valuable insight and help guide projects and programs. This past year, Lieutenant Zachary Perron, from the Palo Alto, California, Police Department (PAPD) joined the IACP team as a fellow. PAPD has been using social media for years, and has established their brand identity and built relationships throughout their community using social media tools.

In November 2014, a group of activists gathered in Palo Alto to protest the police actions that had occurred in New York City and Ferguson. The protestors took over the downtown area, and PAPD set up their Emergency Operations Center and began implementing their communications plan, which included a strong social media component. PAPD started the day with a tweet to all their followers that included the hashtag being used by the demonstrators. They indicated that the protest was happening and that they looked forward to working with the protestors for a peaceful demonstration. PAPD continued to send out information throughout the day, providing information to those that were impacted by the demonstration as well as to the protestors themselves. As the events stayed nonviolent, PAPD repeatedly used the word “peaceful” throughout the day to describe the event and the participants.

As the day went on, groups involved in the protests, including Stanford University’s Black Student Union engaged with the police department, retweeting some of the department’s messaging and including PAPD in their own tweets. Protestors thanked PAPD for their professional response and noted their appreciation for the terminology they used throughout the day. This strategy of using strong, positive messaging; communicating early and often; and engaging participants has been successfully replicated in subsequent events.

### **Crisis Communication**

Unfortunately, our agencies and the communities they serve are still going to have to deal with crisis situations. Whether it is a natural disaster, a missing person, or a school shooting, it is imperative that the lines of communication stay open. Agencies should not miss an opportunity to show their communities that they are present and working hard to protect and serve all individuals. Social media is just one more way that agencies can keep their presence known and constantly share information and the status of any situation of compelling public interest.

Again, thank you for convening this listening session and for the opportunity for the International Association of Chiefs of Police to express its views on the state of community-police relations in the United States and offer suggestions on how law enforcement can utilize social media tools. I welcome any questions from Task Force members.

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<sup>i</sup> 2014 IACP Center for Social Media Annual Survey.

<http://www.iacpsocialmedia.org/Resources/Publications/2014SurveyResults.aspx>

## **President's Task Force on 21<sup>st</sup> Century Policing**

Listening Session on Technology and Social Media

Written Testimony of Chief Jim Bueermann (ret.)

President, Police Foundation

Washington, DC

January 31, 2015

### **Introduction**

Co-chairs Robinson and Ramsey, members of the Task Force and Director Davis, thank you for this opportunity to testify before you about the critically important subject of police body worn cameras. This Task Force is crucial to our understanding of how to increase the trust and confidence all of our communities should have in the police and the road American policing must travel to achieve this. I thank each of you for your service.

I am the president of the Police Foundation, America's oldest non-membership, non-partisan police research organization. Among other things, we do rigorous policing research, organizational assessments and conduct critical incident analyses. The Ford Foundation founded the Police Foundation in 1970 as a way of helping increase democratic policing practices. Our mission is to "advance policing through innovation and science." As such, our only constituency is the truth as we are able to determine it. My testimony today reflects that commitment and my experience as a 37-year veteran of policing practices and research. I spent 33 years as a police officer in California. For the last 13 years of my career I served as the Chief of the Redlands Police Department where we began experimenting with body worn cameras in 2009.

The interest in police body worn cameras on the part of the public and law enforcement has grown exponentially in the last 18 months. Media reports, the Rialto (CA) Police study, convenings of police leaders, the President's proposal to equip 50,000 police officers with body cameras and the increase in citizen-produced videos of police activities popularized by social media have all added to our collective appreciation of their potential value to improve police-community relationships. In addition, the acquisition and use of these cameras by policing agencies is growing rapidly. By some estimates, more than 5,000 agencies have purchased and employed more than 30,000 cameras.

Body worn cameras have many limitations. They are not a perfected technology. They have a limited field of view, they can fall off, they aren't always turned on and there are significant cost and storage issues. Moreover, there are operational issues that are still evolving. Which officers should get them? When should the cameras be turned on? Should there be mandatory or voluntary uses? How accessible should the captured images be? And, how do we deal with the unintended consequences this technology is certain to produce? These are just some of the important questions police leaders are asking themselves, their workforces and their communities. I am confident they will all be resolved soon and policing's "best practices" for their use and appropriate laws and regulations will soon be established.

Perceived benefits of police body worn cameras include increased police transparency and legitimacy, improve police and citizen behavior, compelling evidence in criminal cases and contributions to the resolution of lawsuits and complaints. Concerns about this technology include potential compromises to the privacy of both officers and citizens, reluctance on the part of citizens to speak to officers if they think they are being recorded, the requirement of significant financial investments to acquire cameras and storage capacity that meet strict evidentiary requirements and the potential misuse of police video imagery.

As we advance our understanding of body worn cameras, it is important to understand what we know about them, what we don't know and what the future of this technology looks like.

### **What We Know about Police Body Worn Cameras**

There is a dearth of research about the effectiveness of police cameras. In spite of this, it is widely held that image capture technology is helpful in controlling crime and disorder. Our discussion about body worn cameras can be informed by what we know about other police cameras – to wit, dash cameras and fixed surveillance cameras.

Regarding dash cameras, a COPS-funded study of them by the International Association of Chiefs of Police found that they:

- enhanced officer safety
- improved agency accountability
- reduced agency liability
- simplified incident reviews
- strengthened police leadership; and,
- enhanced officer performance and professionalism.

A study by Temple University Professor Jerry Ratcliffe of fixed CCTV surveillance cameras in Philadelphia found that the police department's cameras were associated with a 13% reduction in crime. In addition, some of the studied cameras reduced serious crime and were associated with a diffusion of benefits out to surrounding streets beyond the cameras' vision.

With this limited research in mind it is reasonable to assume that cameras in cars and fixed cameras can be beneficial. Clearly, more research is needed. Based on this information, we can make some very limited inferences about police body worn cameras that are suggestive they may be effective in certain aspects of policing (I acknowledge there are significant differences in the dynamics of these technologies). Fortunately, there is at least one rigorous study of body worn cameras to help us in our quest to assess the effectiveness of this technology.

Tony Farrar, a Police Foundation Executive Fellow and the Chief of the Rialto (CA) Police Department and Barack Ariel, of Israel's Hebrew University and England's Cambridge University, conducted a seminal piece of research into the impact of body worn cameras in policing. They used a rigorous research model commonly referred to as a randomized

controlled trial (RCT). In this type of study, the people being studied are randomly assigned to either a “control” group that does not receive the “treatment” being studied or a “treatment” group that does. It is widely considered the “gold standard” for clinical studies.

The results of their 12-month study are highly suggestive that the use of body worn cameras by the police can significantly reduce both officer use-of-force and complaints against officers. They found that the “treatment” groups of officers (those wearing the cameras) had 87.5% fewer incidents of use-of-force and 59% less complaints than the officers not wearing the cameras. Clearly, these are significant results.

One of the important findings of the Rialto study was the impact body worn cameras might have on the “self-awareness” of both officers and citizens alike. When police officers are acutely aware that *their* behavior is being monitored (because they turn on the cameras they are wearing), and when officers tell citizens that the cameras are also recording *their behavior*, it is hypothesized that everyone behaves better. The results of the Rialto study are highly suggestive that this increase in self-awareness contributes to more positive outcomes in the police-citizen interaction. This is similar to the “Hawthorne Effect” in which individuals improve their behavior in response to an awareness they are being observed.

There are at least four other Department of Justice-funded research efforts nearing completion or underway in Mesa, AZ, Phoenix, Las Vegas and Los Angeles to study the impact of police body worn cameras. If these studies find results similar to the Rialto’s then with increased confidence we can consider the value of the technology in more definitive terms.

It is important to note that along with the scientific evaluation of this technology is the development of policing’s own set of “best practices.” The COPS Office and the National Institute of Justice have produced guides to assist policing’s adoption of body worn cameras. Model policies have been developed and anecdotal evidence of the technology’s value is spreading rapidly within policing.

### **What We Don’t Know about Police Body Worn Cameras**

Essentially, we really don’t *know* why body worn cameras appear to reduce police use-of-force and complaints against officers. Experience and common sense inform our *beliefs* about why they work, but the scarcity of rigorous scientific evaluations results in a gap in our knowledge about:

- the mechanisms at-play in police-citizen interactions that are susceptible to modification;
- the extent of privacy and confidentiality issues involving the use of this technology;
- the impact on individual officers when their work is highly supervised via this technology;

- the technology's impact on policing culture;
- the long-term impact on public perceptions about the police and the attendant sense of trust and confidence in the police; and,
- how cameras can be used to enhance training in terms of enhancing police legitimacy, procedural justice, officer safety.

### **The Future of Body Worn Cameras**

I believe the various technologies connected to body worn cameras, laws, policies and society's acceptance of them will rapidly change the cameras themselves and how we understand their use. Perhaps a forward assessment of this rapidly changing technology is the most important view of this issue the Task Force can take. Where we will be very soon with these cameras and their attendant technologies is perhaps more important than where we are now. Accordingly, I predict that within the next 5 years:

- our collective knowledge and understanding of the use of these cameras will increase dramatically;
- this increased knowledge will be used to advance training in terms of enhancing police legitimacy, procedural justice and officer safety;
- automated activation of the cameras in enforcement situations will be standard;
- extensive miniaturization of the cameras will be achieved so they are as small as buttons;
- systems that utilize multiple lenses to dramatically increase the system's ability to capture all angles and views of an incident will be developed;
- quality of captured images will dramatically increase;
- streaming, real time transmission of video will be commonplace;
- camera integration with smartphones will be standard;
- software will advance to automate redacting certain aspects of video to protect privacy;
- wide-spread acceptance by police officers will occur;
- innovation will occur in the ways police use this technology, and the video footage it produces, to further investigative and crime control strategies (e.g. facial recognition, network analysis, etc.);
- integration of this technology with other emerging technologies like small, unmanned aerial vehicles (especially wearable and car-based "drones") will;
- many more manufacturers will enter the police market as point-of-view wearable cameras increase in popularity;
- costs associated with the technology will come down and more agencies will employ this technology;
- some police agencies will lose control of their videos and many of them will be unofficially released to the public;
- progressive agencies will use the technology to increase their transparency and accountability and reduce biased based policing practices;
- progressive agencies will find ways to appropriately share the video with their communities;

- legislative evolution relative to cameras use and image retention;
- police policy on the use of body cameras and their footage will develop further;
- the public will gain a more sophisticated understanding of the cameras; and,
- multiple unintended consequences of the technology will occur that will affect public perception, legislation and police policy.

## **Recommendations**

After careful thought about this issue I make the following recommendations for the panel's consideration:

What the federal government should do:

- Increase funding for rigorous scientific research on the impact of police body worn cameras;
- Increase funding for the development of body worn camera technology;
- Congress should approve the President's request to fund police body worn cameras to assist those communities that cannot afford to equip all of their field officers with the technology; and,
- Consider linking federal justice funding to the mandatory use of cameras if rigorous evaluations prove they do in fact reduce police use-of-force, officer complaints and increase public trust and confidence in the police.

What state legislatures should do:

- Analyze public records acts and modify them to comport with the realities of this technology;
- Ensure state "POST" training standards are in-line with the notion of building community trust in the police and address the issues surrounding the use of body worn cameras.

What all policing agencies should do:

- Adequately plan for the introduction of body cameras into the agency by considering costs, policy and practice issues;
- Equip all officers working in communities with body worn cameras and appropriate training;
- Equip every police vehicle used for vehicle stops with dash cameras and appropriate training;
- Equip all officers working in communities with "less lethal" equipment and appropriate training;
- Provide all officers with training in police legitimacy, procedural justice and fair and impartial policing practices;
- Provide all officers with self-mastery training (e.g. *Blue Courage*);
- Assess their policies and practices to ensure organizational alignment with the principles for building community trust and confidence;
- Assess their social media capacity, enhance it if necessary and determine how to integrate the use of body camera footage into their social media strategy.

What communities should do:

- support equipping all of their police officers with body worn cameras;
- work collaboratively with the police to “co-produce” public safety and police responsiveness, transparency and accountability;

### **Conclusion**

As we advance our understanding of body worn cameras, it is important to remember that no single technology is going to serve as the panacea to the tension that exists today between the police and many of the communities they protect. Ultimately, this is a human issue – not a technological one. It is one of relationships. Relationships, that in all likelihood, can be greatly enhanced by employing technological advances like body worn cameras. But, no matter how much we are enamored with technology, we must never forget, that, ultimately, in policing and protecting our communities, only people count. And it is with this mindset that police officers will find the true purpose of their selfless service and the honor that is bestowed upon them upon entering one of our country’s most noble professions.

Thank you.

# Technology Policy - Future

## Objective:

The Task Force is interested in recommendations related to:

- Managing evolving technology and policy development

## Introduction:

The purpose of a “Policy” consist of two basic functions; 1. Protect the agency, individual & public and 2. Promote public trust. As technology advances, so does our desire to use these methods, but too often there is a disparity in the time and effort placed into acquisition and policy development. Co-evolution of policy and technology is critical to the promotion of public trust. Evolving technologies often force law enforcement to institute changes to their use and deployment, but too often there is a failing to adapt policy. Key factors toward accomplishing acceptance and understanding policy and implementation co-evolution are; communication, training and partnerships.

Significant technological advances occur rapidly, societal expectations of public safety provided by law enforcement demands that these tools are readily available. As a result, those responsible for crime prevention, reduction and resolution efforts are forced to implement, deploy and sustain ever changing technologies, often with limited funding, training or policy consideration.

It is essential for law enforcement executives to stay current with ongoing technological developments. Today’s executives need not only to be cognizant of developing technology but also to have a working knowledge of what this technology can do for their agencies. Executives must be skilled in acquiring technology through a variety of funding sources. (Paul D. Schultz, 2008)

The use of evolving technology adds a degree of excitement for the user, but also a level of concern by the recipient. The use of video recording devices (e.g. body worn cameras, in-car cameras, mobile phones) supports both public and law enforcement goals by providing an avenue toward transparency, thus creating an opportunity toward trust in policing services. The burden falls on law enforcement to establish clear and understandable policies for its use by their employees and the demand for community engagement has never been louder. When executives fail to clearly define policy based procedures the employee is left too much discretion for interpretation of intent and often offsets the technical benefit with unintended consequence.

E.g. Establishing policies that address the three key areas: communication, training and partnerships, for the use of social media helps ensure a department is viewed in the most favorable light, ensures the integrity of investigations, safeguards evidence, maintains the anonymity of victims and ensures the dissemination of accurate/complete information. Failure to address the key areas has caused damage to agency image and distracted from the law enforcement mission, as in this example when the New York Police Department attempted to build relations with the public using social media by soliciting “pic” of public interaction with NYPD’s Finest, “New York Police Department social media fail spreads to Los Angeles and Chicago (<http://www.news.com.au>, 2014).example.

# Technology Policy - Future

The promotion of public trust through well-developed partnerships and open communications must be codified in policy. It is a disappointing fact, born out by the current temperature of public opinion, that minimal time is devoted to this aspect when considering evolving technologies.

## **Managing Evolving Technology:**

The implementation of technology which is not mutually beneficial to the public or an agency may deteriorate public trust, employee acceptance and inevitably fails to accomplish the crime reduction goals. To ensure mutually beneficial successes the implementation of evolving technologies begins with assessments: a clearly defined need or demand, understanding of existing policies and practices, lessons learned from early adopters, cost estimates, impact on the agency, partners, and the public. Beginning stages of adoption requires incremental goal setting and measured assessment periods.

Law enforcement strives to decrease the technology gap by developing strategies that enhance traditional policing methods with tools and resources afforded by evolving technologies such as:

- Analytics and ComStat Practices
- Biotechnology & Biometrics
- Crowdsourcing Information
- Cyber Crime Investigation
- Garment Technology
- Nanotechnology
- Near-Real Training Simulators
- Non-Lethal Weapons
- Robotics, Ground and Aerial
- Second Hand Property Management
- Video Evidence and Analytics

Crowdsourcing of information has evolved in such a way and with such speed that it is permanently changed the way information is disseminated, received, and interpreted. It is requiring law enforcement professionals to evaluate their traditional methods of communicating with the public; one example is the use of social media. Social media is a type of crowdsourcing environment in which a large group of people contribute opinions or ideas to a topic and spread their interpretation of the information to many in a matter of seconds. The accuracy and credibility of the information is often overlooked by the reader, thus contributing to distrust. Law enforcement professionals then need to answer questions about the misinformation which gives the appearance of covering up. It is imperative law enforcement professionals recognize and utilize the technologies that the public has grown to rely on and trust.

Garment technology can enhance performance, protection and provide a real-time assessment of a person's vital signs. This is particularly valuable toward ensuring physical and mental readiness of law enforcement professionals in the performance of their duties. The military is working with this to evaluate soldiers for needed nutrients and seeking to introduce 3d printers that create food that meet a specific soldier's deficiency. Incorporating a cognitive process within a garment reduces the number of manual steps for ensuring operational readiness.

Some agencies seek to use unmanned drones to supplement limited policing resources and perform tasks that are not possible without expensive aviation units. This evolving technology has demonstrated the conflict that arises from the delays caused by careful policy deliberation and the public expectation that law enforcement will seek every avenue to reduce the cost of policing. In this example the delays are justified as the Federal Aviation Commission (FAA) has

# Technology Policy - Future

maintained an open and considerate assessment of the impact of drones on public safety while the vocal public concern of privacy has been the leading issue when discussed by policing professionals. Where cameras routinely placed on city corners has become publicly accepted, the use of drones to supplement of patrol efforts is not accepted because policies have not openly addressed the concerns. So while enhanced patrol of targeted crime reduction areas with unmanned drones would greatly improve police resource deployment strategies this valuable policing strategy has already created a sense of distrust.

Often times, acceptance is shaped by an extreme event such as the terrorist attacks on 9-11 or the Boston Marathon bombing. But even in the face of such public pressure managing evolving technologies requires consideration of community expectations to encourage acceptance and reduce future regrets. For example; how willing would citizens be to having their mobile devices used surreptitiously by law enforcement as listening devices for a credible terrorist threat at a major sporting event? An excellent example of thoughtful policy consideration in the management of evolving technology would be the inclusion of codified review meant to consider the termination of a technology once the need has subsided. Repeated demonstration of this type of restraint helps to strengthen and support the public trust of law enforcement.

Addressing these issues, and more, will require paradigm shifts in law enforcement. A key requirement to effectively implementing evolving technologies will involve co-evolved recruitment, hiring and training strategies to enable this and future generations of law enforcement professionals. For example, the para-military linear promotional processes in most law enforcement agencies deters the continued development of non-traditional academic concentrations in our sworn law enforcement recruitment and training efforts; such as mathematicians, statistical analyst, computer science, cyber security professionals, computer programmers, data managers, etc. This type change is not easy or inexpensive, but neither is being on the wrong side of public opinion.

An example of why concepts such as this are critical to the management of evolving technologies is the volume of information collected by law enforcement. In some agencies this data goes unused, have no impact on crime reduction efforts. But today, due to the development of mature crime analysis and ComStat processes, this information is being used by law enforcement to effectively develop policy and deploy resources for crime prevention. Intelligence-led policing and predictive analytics are examples of these technologies. Unfortunately, the majority of law enforcement experiences a lack of uniformity in data collection and only patchwork methods of near real-time information sharing exist. Often, even though systems exist to share law enforcement information across agencies, information has already been posted to the most popular news and social media environments by the public.

E.g. We have seen social media support policing efforts in gathering intelligence during active assailant incidents; Columbia Mall Shooting, MD and the Boston Marathon Bombing, MA. Social media allowed for a greater volume of information to be collected in an electronic format, single location, captured both audibly and visually. Traditionally, emergency communications (911) is used by both the public and

# Technology Policy - Future

emergency services to collect critical incident information, but the amount of information which can be collected is dependent on the operator's ability to understand the caller's statements to direct the proper resources. The amount of information which can be collected is dependent on the speed, knowledge, skills and abilities of the communications operator.

Ultimately, when decision makers are confronted with evolving technologies they have to maintain the discipline to assess the technology methodically and patiently in the face of public opinion and agency resource pressures. When a decision is made they must to adopt an emerging technology the three keys to implementation have to be codified in policy: Communications, Training and Partnerships.

Emerging technologies are in abundance, but strategies for acceptance, implementation and sustainability lack structure across policing professional. An assessment of one owns priority obligations and current technology state is critical to ensure the best investment in technology. Policing professionals, like the Maryland State Police, providing policing services across a large geographic region, as such, would find more value in Global Positioning System (GPS) technologies. Prioritizing obligations, identifying greatest impact of investment and planning future needs for the identified technology should be codified within policy.

## **Policy:**

Sound policies promote open communications, effective training and partnerships. Any law enforcement technology that impacts the security, privacy or rights of the public should be addressed in policy. Incorporating methods of accountability for the use of technology in law enforcement builds confidence in our partnerships with associated agencies and the public. These policies increasingly promote this trust through performance measurements.

E.g. Managing for Results constitutes the overall framework within which planning, accountability, and continuous improvement in program performance and budgeting take place. (MANAGING FOR RESULTS IN MARYLAND STATE GOVERNMENT, 2004)

As we see law enforcement reaction to public expectations continue to shape public opinion, the demystification of policing practices and incorporating measures for open communications and partnerships within policy has never been more important, internally and externally. Communities and advocates are repeatedly demanding clear policies to guide the use of evolving technologies. Primarily this request is to gain the assurances of transparency and inclusion to help to create reasonable expectations.

A popular image has been circulated the internet which depicts a man standing on a pile of ladders lying flat on the ground so he may see over a wall, here is the quote: "It doesn't matter how many resources you have – If you don't know how to use them, it will never be enough." This image suggests one properly placed ladder would have accomplished the objective of seeing over the wall. It is important to focus efforts and

# Technology Policy - Future

“resources to achieve meaningful results.” (MANAGING FOR RESULTS IN MARYLAND STATE GOVERNMENT, 2004)

Methods for open communication must be incorporated into policies.

- Policies should clearly communicate the agency expectations for its operation.
- Ensure a clear process for meeting with leaders of the community and criminal justice partners.
- Establish methods by which both police and the community come together to communicate their expectations about the technology.

Transparency of intent and clearly defined methods of information sharing should be part of any policy; particularly with evolving technologies. When law enforcement fails to build a clear understanding how evolving technologies will be implemented it places the burden of interpretation on the public to discern intent. Misinterpretation makes it difficult to gain public support. Policy can help overcome these obstacles by establishing:

- Intervals for regular assessments
- Intervals for dissemination
- Methods of audit for public protection
- Methods of reporting to ensure transparency without violating privacy
- If applicable, methods by which a process may be decommissioned

Benchmarks are identified goals within defined and ordered time frames. Benchmarks provide assurances that the implementation of evolving technologies completed all of the steps required to 1) solve the problem identified 2) establish of the necessary policies 3) address the concerns of partner agencies 4) assure the public of a thorough and complete implementation. Some example benchmarks are the vetting of recommended policy with the public, the training of all relevant personnel and partners, and affirmation of adherence to established policy performance measurements. Successful projects that include the keys to implementation success help to foster public trust and confidence with the introduction of evolving technologies.

E.g. Implementing new communication systems to support interagency interoperability is a complicated effort. The expectation of the agency, individual and public is that every law enforcement member can and should be able to communicate with each other in real-time. Unless we clearly communicate the complexity of the effort, we know this will take much longer to accomplish than an uninformed citizen or stakeholders would imagine, causing a lack of trust in the project itself.

The use of policy is often focused on defining acceptable behavior and protection of agency liability. Policy for evolving technology should focus on strategies to build a foundation and culture toward self-accountability through regular assessments for improvement of their use.

# Technology Policy - Future

## Works Cited

- <http://www.news.com.au>. (2014, April 24). *News.com.au*. Retrieved from <http://www.news.com.au/finance/work/new-york-police-department-social-media-fail-spreads-to-los-angeles-and-chicago/story-fnkgb6w-1226894609019>
- MANAGING FOR RESULTS IN MARYLAND STATE GOVERNMENT*. (2004). Retrieved from Department of Budget and Management (DBM): <http://www.dbm.maryland.gov/agencies/Pages/ManagingResultsMaryland.aspx>
- Paul D. Schultz, C. o. (2008). *Police Chief Magazine*. Retrieved from [http://www.policchiefmagazine.org/magazine/index.cfm?fuseaction=display\\_arch&article\\_id=1527&issue\\_id=62008](http://www.policchiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=1527&issue_id=62008)

THE CONSTITUTION PROJECT



*Safeguarding Liberty, Justice & the Rule of Law*

**THE CONSTITUTIONAL IMPLICATIONS OF THE USE OF  
MILITARY EQUIPMENT BY LAW ENFORCEMENT**

**EXECUTIVE SUMMARY**

**&**

**POLICY BRIEF**

**SUBMITTED BY**

**THE CONSTITUTION PROJECT COMMITTEE ON POLICING REFORMS**

**JANUARY 28, 2015**

*For more information, please contact Madhu Grewal, Policy Counsel, The Constitution Project  
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## EXECUTIVE SUMMARY

### Background

The Constitution Project Committee on Policing Reforms (“Committee”) is grateful to the President’s Task Force on 21<sup>st</sup> Century Policing (“Task Force”) for soliciting comments regarding the use of military equipment by domestic law enforcement. The Committee comprises diverse individuals with expertise in law enforcement, legal analysis, and the issues implicated in the attached brief.<sup>1</sup> As military-grade weapons, equipment, and surveillance tactics are available to state and local law enforcement agencies, the Committee is concerned with the constitutional issues that may arise with the use of such equipment. Recent protests over the deaths of civilians by police officers in Ferguson, Missouri and in New York City have given rise to a robust national conversation on the use (and even simple display) of military weapons by law enforcement and its impact on community policing. Additionally, there is renewed focus on the use of Special Weapons and Tactics (“SWAT”) teams nationwide, particularly the use of SWAT teams to execute search warrants.

There are a number of sources that delve into the historical background of police militarization, its causes and effects, and the dangers it can pose to both law enforcement and civilians. The Committee’s attached policy brief explores the constitutional implications of the use of military equipment by state and local law enforcement.<sup>2</sup> Given the new creation of the Task Force and its 90-day mandate, the Committee had limited time to submit a timely statement to the Task Force. Please note that the views of the Committee on these issues and recommendations may evolve over time, after further research, internal discussion, and analysis. However, the Committee felt it must submit its current views and recommendations for consideration as important policy decisions are contemplated by the Administration and the U.S. Department of Justice. Over the next month, the Committee will further refine its views and publish a more nuanced, detailed, and thorough report and set of recommendations, which will be available on The Constitution Project’s website.

The attached report is not intended to be legal advice nor is it comprehensive. Instead, the Committee hopes that readers will better understand how military equipment and tactics, when used by law enforcement for domestic policing, raise a host of constitutional questions and that safeguards must be implemented to prevent miscarriages of justice. Below is an executive summary of the attached report, including the Committee’s recommendations.

### First Amendment

Local law enforcement’s use of military surveillance techniques and military equipment, from armored personnel carriers to Long Range Acoustic Devices (“LRADs”), can implicate an individual’s right to free speech under the First Amendment. This threat arises from two potential

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<sup>1</sup> The full list of Committee members who support this submission is available in Appendix A. The full policy brief is attached as Appendix B.

<sup>2</sup> The Constitution Project (TCP) sincerely thanks the law firm of Latham & Watkins LLP, which provided a team of pro bono attorneys to guide the Committee on Policing Reforms in crafting this submission. The Latham team included Cameron Krieger, Thomas Heiden, Kathleen Lally, Catherine Sullivan, Michael Fielkow, Stephen Schmulenson, and Chris Dyess, all of whom provided significant time and tremendous guidance to this effort. TCP also thanks the law firm of Steptoe and Johnson LLP for its provision of an initial memorandum on some of the issues addressed in this policy brief.

sources: one, the chilling effect that visible firepower can have on a protester or a potential protester; and two, the fact that the use of such equipment may not be narrowly tailored to meet a significant governmental interest.

Regarding the former, the *threat* of military equipment and surveillance techniques alone may give rise to constitutional concerns. This paper examines the recent trend towards “preemptive policing” as well as research that has been conducted into the “weapons effect.” Preemptive policing covers a number of police activities that occur prior to a law being broken, from shutting down meetings to arresting protesters. Protesters’ knowledge that police will apply sophisticated surveillance programs borrowed from military intelligence agencies against them, or that police may arrive in armored personnel carriers and potentially use tear gas, may deter protests before they even begin. Empirical research suggests that a police force using military equipment may deter protesters to a greater degree than a traditional police force.

Second, if the government possesses a legitimate interest in crowd control when citizens are exercising their right to free speech and assembly, law enforcement's use of military equipment and surveillance techniques must be sufficiently narrowly tailored to advance that interest. Indeed, the government may regulate speech in a public form if the restriction is content-neutral, narrowly tailored to serve a significant government interest, and leaves open ample alternative channels of communication. Considering the wide range of military equipment and tactics available to local law enforcement, it may be unclear whether the deployment of military weapons and tactics is narrowly tailored to achieve a significant government interest. Such constitutional questions are typically fact-specific. This report encourages the government to address potential First Amendment infringement.

#### Fourth Amendment

The use of military equipment by law enforcement may also implicate Fourth Amendment rights, which guarantee the right of people to be secure against unreasonable searches and seizures. The analysis, however, is also highly fact-driven and it is thus difficult to determine whether the use of military tactics and equipment rises to a *per se* violation. Conceptually, it is helpful to consider the impact of police militarization on Fourth Amendment rights in two different contexts: warrantless searches and searches conducted pursuant to a warrant.

Because warrantless searches are presumptively unreasonable, the question becomes whether a particular form of police surveillance qualifies as a search. With federal programs providing high-tech military equipment to local law enforcement, this question has become even more pressing. The Supreme Court has held, for example, that use of a thermal imaging device to scan levels of heat inside a house is a search, in part because the device provided information that could not be obtained through physical surveillance and used technology not available to the general public. In contrast, the use of night vision goggles does not constitute a search, since this technology can be purchased by the general public. The use of different and potentially more sophisticated equipment has less clear constitutional implications. Use of military-grade technology -- as well as collection of the masses of information available through other electronic data sources -- may be a boon to the efficiency of law enforcement, but the invasion into personal privacy gives rise to serious Fourth Amendment concerns.

In searches conducted pursuant to a warrant, the questions are somewhat different. The

Committee is concerned with the proliferation of SWAT teams, the increased use of no-knock warrants, and the deployment of SWAT teams with military gear to execute routine search warrants. Unannounced entries and the use of certain equipment during forced entries give rise to Fourth Amendment concerns. The lack of standards for both issuing a no-knock warrant and deploying SWAT to execute these warrants gives rise to a significant likelihood of Fourth Amendment violations.

Similarly, use of battering rams and flashbang grenades when executing no-knock warrants is also of concern. These tools are often procured by local law enforcement from military surplus programs. Questions are raised by the frequency with which these devices are used and the damage to community members and property that result. Although use of these devices is may be merited in “high risk” situations, courts have provided little guidance in defining those “high risk” scenarios warranting use of battering rams and flashbang grenades. And too many searches that are classified *ex ante* as “high risk” appear to have been conducted in homes with children present, where no weapons were present, where only very small amounts of drugs were found, or even when police executed the warrant at the wrong address. Evidence also suggests that the use of these devices can escalate what might otherwise have been a non-violent search.

#### Due Process

The use of military weapons and tactics by local law enforcement agencies will implicate due process rights in limited circumstances. The Supreme Court has circumscribed substantive due process claims to those cases in which another constitutional Amendment, *e.g.*, the Fourth or the Eighth, would not apply. Due process thus has a narrow window of applicability, relevant most often in the “pre-trial detainment” period between the time of arrest and conviction. During that period, the use of military equipment is unlikely to raise concerns in many scenarios.

The standard for a due process violation is that police conduct must “shock the conscience.” Under this standard, even if military tactics and equipment are used with severe negligence in a detainment situation, a court is unlikely to find a violation of the law. A possible exception is if a detainee injured in the course of an arrest. Due process protections prohibit law enforcement from displaying “deliberate indifference” to the “serious” medical needs of a pre-trial detainee, requiring that police officers at least respond to the injuries of arrestees. Because certain military-styled technologies common in SWAT raids, such as assault rifles, flashbang grenades and battering rams may be more likely to cause physical harm to an arrestee, a law enforcement officer’s due process obligation to provide such medical care may arise more often.

Procedural due process is generally satisfied so long as post-deprivation procedural remedies are available for property owners to recover any seized assets. Moreover, the destruction of property during an arrest, which seems most relevant to the discussion of SWAT and the execution of search warrants, is typically analyzed as a Fourth Amendment issue, so also does not raise many due process concerns.

#### Equal Protection

Concerns about violations of the Fifth and Fourteenth Amendments' guarantee of equal protection have been raised as Americans observe the incidents that recently unfolded during protests nationwide. Certainly, significant public opinion about police militarization focuses on the

use of military equipment and tactics against communities of color. At the same time, those seeking to challenge the use of military equipment and tactics under the rubric of Equal Protection would likely face a number of barriers, discussed in more detail in the attached policy brief.

### Conclusion & Recommendations

It is clear that the use of military weapons and tactics by local law enforcement agencies presents a variety of constitutional concerns. It is also clear, however, that an individual asserting a legal claim for potential constitutional violations will face a number of barriers and such claims have only a marginal likelihood of success. That said, it is likely that as the number of law enforcement agencies receiving and using military equipment increases, the number of suits alleging constitutional violations will also rise. As such, the recommendations below and in the attached policy brief focus not only on the potential for constitutional violations, but also include policy choices that could minimize the potential for such violations.

#### *Create Clear and Consistent Standards*

- States should work to create standards for law enforcement regarding the deployment and training of SWAT teams and other tactical teams. Any such standards should include, among other things:
  - Policies limiting the use of SWAT and other tactical teams in which there is a threat to the lives of civilians or police;
  - Standards and specific criteria<sup>3</sup> that must be met prior to approval of use of SWAT or other tactical teams;
  - Pre-approval by a supervisor or high-ranking official for the use of SWAT or other tactical teams;
  - Written plans setting forth the reasons for the use of SWAT or other tactical team, including a description of the operation prior to deployment; and
  - Policies requiring SWAT teams to include trained crisis negotiators.
- States and/or law enforcement agencies should create standards for application and issuance of no-knock warrants. It may be helpful to set forth various factors that may be considered -- such as violent crime history and corroborating evidence other than, or in addition to, an anonymous source -- and require documentation of these criteria and supervisory approval prior to requesting a no-knock warrant from a judicial officer.
- States should enact laws that would prevent the use in legal proceedings of evidence that was obtained in violation of the traditional rule that police should knock and announce their presence, unless such evidence was properly obtained with a no-knock warrant.
- The federal government should create clear standards to assess requests for new equipment under the 1033 Program (the federal program provisioning military equipment to local police), including requiring specific justification for the equipment requested and limiting the types of material that the law enforcement agencies may acquire based upon the equipment that they already have and/or the needs of their location.
- As part of the 1033 Program, the Department of Defense should require that law enforcement agencies report on the uses of 1033 equipment as well as conduct regular audits and report routinely on current inventory.

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<sup>3</sup> The Committee is still discussing proposed criteria, and more detailed criteria recommendations will be available in the final, forthcoming report.

### ***Improve Training and Emphasize the Peace-Keeping Role of Police***

- Jurisdictions must improve training for law enforcement agencies and emphasize that the use of military equipment and tactics must be limited and deployed in unique circumstances. Training must highlight the peace-keeping role of law enforcement as distinct from the combative role of the military.
- Local law enforcement agencies should engage in more community outreach and community-oriented policing and engage in less “preemptive” policing. For example, officers may want to engage in “know your rights” presentations at community centers or schools either with local activist groups or by themselves. Additionally, training should include a component to help officers identify, confront, and discard biases that affect the way they interact with community members.
- Jurisdictions should supplement equipment training with legal training so that local law enforcement officers are informed with respect to the relevant legal standards accompanying certain types of surveillance. To the extent that officers already receive training regarding warrant requirements, ensure that such training incorporates discussion of major case law and legislation -- including the Electronic Communications Privacy Act -- governing contexts in which requirements for obtaining search warrants might vary.

### ***Create Transparency and Oversight***

- States should enact laws that require law enforcement agencies to report data regarding the use of SWAT. A non-exhaustive list of important content to be captured in these data include when SWAT teams were deployed, where they were deployed, the circumstances of the deployment and the compliance with the applicable deployment standard, what equipment was used, whether any people or animals sustained injury or were killed, and whether any drugs, weapons or other contraband were recovered. These data should be reported on a regular and uniform basis and be publicly accessible.
- States should enact similar reporting requirements for the issuance of no-knock warrants.
- States should enact laws that require law enforcement agencies to report data regarding complaints of excessive force and other constitutional violations. States should collect information, including figures regarding the settlements and awards paid, as well as litigation costs for police misconduct lawsuits. These data should be publicly available.
- States should ensure that there is an independent agency or civilian review board that monitors SWAT deployments, no-knock warrants and use of other military equipment by law enforcement and that the agency or board has the ability to address complaints from civilians as well as recommend or implement reform. Such bodies should be empowered to evaluate trends and address patterns that emerge, rather than merely review individual cases as they arise.
- Law enforcement agencies receiving federal funds for the purchase of equipment should be required to report the equipment purchased with those funds. These reports should be publicly available.
- Congress should condition the receipt of federal funds for policing and military equipment on complying with uniform reporting and training requirements.

# **APPENDIX A**

The following members of The Constitution Project Committee on Policing Reforms endorse this submission to the President's Task Force on 21<sup>st</sup> Century Policing:

**Azizah al-Hibri**

Professor Emerita, The T.C. Williams School of Law, University of Richmond; Founder and Board of Directors, KARAMAH: Muslim Women Lawyers for Human Rights

**David E. Birenbaum**

Of Counsel, Fried, Frank, Harris, Shriver & Jacobson LLP; Senior Scholar, Woodrow Wilson International Center for Scholars; US Ambassador to the UN for UN Management and Reform, 1994-1996; Assistant General Counsel to the National Advisory Commission on Civil Disorders, 1968

**Chey M. Calvo**

Mayor, Berwyn Heights, MD

**Sharon L. Davies**

Gregory H. Williams Chair in Civil Rights and Civil Liberties and Director of the Kirwan Institute for the Study of Race and Ethnicity, The Ohio State University Moritz College of Law

**Richard A. Epstein**

The Laurence A. Tisch Professor of Law, New York University School of Law, The Peter and Kirsten Senior Fellow, The Hoover Institution, and the James Parker Hall Distinguished Service Professor of Law (Emeritus) and Senior Lecturer, The University of Chicago School of Law

**Michael German**

Fellow, Liberty and National Security Program, Brennan Center for Justice; Special Agent, Federal Bureau of Investigation, 1988-2004

**Philip M. Giraldi**

Contributing Editor for *The American Conservative Magazine*, antiwar.com, and *Campaign for Liberty*; Fellow, American Conservative Defense Alliance; former operations officer specializing in counter-terrorism, Central Intelligence Agency, 1975-1992; United States Army Intelligence

**Kendra R. Howard**

President, Mound City Bar Association, St. Louis, MO

**Peter B. Kraska**

Professor and Chair, School of Justice Studies, Eastern Kentucky University

**Major General William L. Nash (U.S. Army, Retired)**

Visiting Lecturer in Public Affairs, Woodrow Wilson School of Public and International Affairs, Princeton University

**L. Song Richardson**

Professor of Law, University of California, Irvine School of Law

**William S. Sessions**

Holland & Knight, LLP; Director, Federal Bureau of Investigation (1987-1993); Chief Judge, United States District Court, Western District of Texas (1980-1987), Judge, (1974-1987); United States Attorney, Western District of Texas (1971-1974)

**Kami Chavis Simmons**

Professor of Law and Director of the Criminal Justice Program, Wake Forest University School of Law

**Neal R. Sonnett**

Member, ABA Board of Governors, 2009-2012; Chair, ABA Section of Criminal Justice, 1993, and ABA Section of Individual Rights and Responsibilities, 2008-2009; President, American Judicature Society, 2006-2007; President, National Association of Criminal Defense Lawyers, 1989-1990; Assistant United States Attorney and Chief, Criminal Division, Southern District of Florida, 1967-1972

**Vincent Southerland**

Senior Counsel, NAACP Legal Defense and Educational Fund

**Norm Stamper**

Chief, Seattle Police Department, 1994-2000; Executive Assistant Chief of Police, San Diego Police Department, 1966-1994

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Criminal Case Review & Consulting; Detective, Metropolitan Police Department of DC, 1983-2010

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**John K. Van de Kamp**

Counsel, Mayer Brown LLP; Former California Attorney General, 1983-1991; Former Los Angeles County District Attorney, 1975-1983; Federal Public Defender, Los Angeles, 1971-1975

**John W. Whitehead**

President and Founder, The Rutherford Institute; constitutional attorney; author of the award-winning 2013 book, "A Government of Wolves: The Emerging American Police State."

**Lawrence B. Wilkerson, Col, USA (Ret)**

Distinguished Visiting Professor of Government and Public Policy at the College of William and Mary; former Chief of Staff to Secretary of State Colin Powell and special assistant to chairman of the Joint Chiefs of Staff, General Colin Powell

**Hubert Williams**

Immediate Past President, Police Foundation; former Newark Police Director; founding President of the National Organization of Black Law Enforcement Executives (NOBLE); former Special Advisor to the Los Angeles Police Commission

**Michael A. Wolff**

Dean and Professor of Law, Saint Louis University School of Law; former Judge and Chief Justice of Supreme Court of Missouri

## **APPENDIX B**

THE CONSTITUTION PROJECT



*Safeguarding Liberty, Justice & the Rule of Law*

### **POLICY BRIEF**

# **THE CONSTITUTIONAL IMPLICATIONS OF THE USE OF MILITARY EQUIPMENT BY LAW ENFORCEMENT**

BY

THE CONSTITUTION PROJECT COMMITTEE ON POLICING REFORMS

## I. Background

Recent events in Ferguson, Missouri, and across the country have caused many to question the use of military equipment and tactics by state and local law enforcement in the United States. In truth, this debate has been ongoing for some time. Although focus in the past has been on the use of Special Weapons and Tactics (SWAT) teams by law enforcement, additional questions have risen with the use of military-grade equipment during political protests. This paper will examine the constitutional issues that may be raised by these situations, both in the provision of military equipment and its deployment by local law enforcement.

Historically, law enforcement and the military have served different purposes.<sup>4</sup> The military's mission is often framed to "search and destroy" enemies located outside the U.S, while the mission of local police is to "serve and protect" its local communities.<sup>5</sup> There are undoubtedly situations in which it may be necessary for police to use military weapons and tactics. For example, in New Orleans during Hurricane Katrina, police used Humvees and other military equipment to help civilians trapped by flood water. Military equipment and tactics were intended to be used on a limited basis in high-risk situations, such as an active shooter or hostage and barricade scenarios. However, the increasing provision and use of military equipment by law enforcement has caused concern, even among law enforcement personnel. The essential function of law enforcement becomes muddled when officers are equipped with military-grade gear and vehicles in carrying out their duties in local communities and homes.<sup>6</sup>

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<sup>4</sup> The Posse Comitatus Act, passed in 1878, prohibits military personnel from providing direct assistance to civilian law enforcement. Since the 1980s, a series of laws, orders, and directives from Congress and the White House have softened the impact of the Act, allowing indirect assistance to local law enforcement through the sharing of information, equipment, and training. See Radley Balko, *Overkill: The Rise of Paramilitary Police Raids in America*, July 2006, at 15, available at <http://www.cato.org/publications/white-paper/overkill-rise-paramilitary-police-raids-america> (hereinafter "Balko White Paper").

<sup>5</sup> Balko White Paper at 15.

<sup>6</sup> For example, one police chief expressed a common fear that military gear and training "paints civilians as the enemy in the eyes of police officers." Balko White Paper at 16.

Federal programs, such as the Department of Defense's 1033 program, have made military-grade equipment available to local law enforcement.<sup>7</sup> In 2013 alone, according to the Defense Logistics Agency, the 1033 program gave \$450 million worth of equipment to local law enforcement. Other programs provide federal money to local law enforcement, and often this funding is tied to achieving certain goals related to drug policing. These programs have led to local law enforcement agencies acquiring significant military equipment; for example, a small town in New Hampshire received an armored personnel carrier based on alleged "threats of terrorism."

One of the most compelling examples of the potential misuse of the program comes from the small town of Morven, Georgia. With a population of less than 600 people, Morven had received over \$4 million worth of military equipment by 2013, despite having very little crime. The police chief formed a SWAT team with the surplus equipment, including a Humvee and an armored personnel carrier, and acquired boats and scuba gear to form a dive team, despite the fact that Morven is not near a body of water deep enough to use such gear. The Morven police chief stated that, with the equipment that town has received through the 1033 program, he could "shut this town down" and "completely control everything."<sup>8</sup>

Extensive transfers of equipment and vehicles have taken place through the program - in some cases, the amount of equipment rivals that of a small country. For example, the state of Arizona has received 29 armored personnel carriers, 9 military helicopters, nearly 800 M-16 automatic rifles, more than 400 bayonets, and more than 700 pairs of night-vision goggles.<sup>9</sup> In addition, the federal government and most state and local governments fail to exercise a significant degree of oversight of either the acquisition of these materials or their deployment. Indeed, the federal government, which is the grantor of such equipment, does not impose or enforce any meaningful oversight regarding those law enforcement agencies that receive equipment or of law enforcement's subsequent use of it. A few states have begun to enforce

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<sup>7</sup> For purposes of this paper, the focus will be on weapons, vehicles, and other tactical military equipment that is being allocated to local law enforcement. Surplus equipment provided under the 1033 program also includes things like electrical wire, office supplies, and clothing. See *Most Popular Items in the Defense Department's 1033 Program*, U.S. NEWS & WORLD REPORT, Aug. 21, 2014, available at <http://www.usnews.com/news/blogs/data-mine/2014/08/21/most-popular-items-in-the-defense-departments-1033-program>.

<sup>8</sup> *AP Impact: Little Restraint in Military Giveaways*, NATIONAL PUBLIC RADIO, July 31, 2013, available at <http://www.npr.org/templates/story/story.php?storyId=207340981>.

<sup>9</sup> *Arizona Has More Military Gear than Some Small Countries*, ARIZONA CAPITOL TIMES, Sept. 30, 2014, available at <http://azcapitoltimes.com/news/2014/09/30/arizona-military-equipment-more-than-some-small-countries/>.

oversight and standards, but those states are moving of their own accord and are atypical. Local recipients vary even more widely, but generally act like any grantee, subject to the conditions of a grant. Although some local departments have been temporarily suspended from the 1033 program because they have been unable to locate weapons obtained through the program, it does not appear that any level of government conducts routine audits. For example, Arizona's state coordinator is a police detective who has stated that he relies on the applying agencies to "self-report."<sup>10</sup>

Arizona is not alone: the state coordinators required by the 1033 program are often local police officers charged with reviewing the applications of their peers, and it seems many of those applications are accepted at face value. It also does not appear that the federal government exercises an in-depth review of applications it processes directly. In Keene, New Hampshire, for example, the local police department received funds through a program run by the Department of Homeland Security ("DHS") to purchase an armored personnel carrier by stating the vehicle was necessary to protect against potential acts of terror. A Keene city councilperson said the application mentioned terrorism because "that's just something you put in the grant application to get the money. What red-blooded American cop isn't going to be excited about getting a toy like this?"<sup>11</sup>

It is also necessary to consider the use of military tactics and training by law enforcement. Many local law enforcement agencies receive training from former military personnel. Though more research needs to be done on the psychological effects of the specific situation, existing research suggests that, by equipping police officers like soldiers and using catchphrases like "From Warfighter to Crimefighter," police are more likely to act aggressively, and situations are more likely to escalate simply from having heavier firepower visible to citizens.

Despite the stated purpose of programs like the 1033 program or the DHS grant program to protect against terrorism and similar threats, the equipment and money flowing through these programs is far more often used for routine community police work, such as serving search

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<sup>10</sup> *ACLU Knocks PSCO on Surplus Use*, COPA MONITOR, July 2014, available at [http://www.copamonitor.com/news/local/article\\_c95a12be-fe27-11e3-9714-0019bb2963f4.html?mode=jqm](http://www.copamonitor.com/news/local/article_c95a12be-fe27-11e3-9714-0019bb2963f4.html?mode=jqm).

<sup>11</sup> *War Comes Home: The Excessive Militarization of American Policing*, AMERICAN CIVIL LIBERTIES UNION, June 2014, at 26, available at <https://www.aclu.org/sites/default/files/assets/jus14-warcomeshome-report-web-rel1.pdf> (hereinafter "ACLU Report").

warrants or policing protests. In considering the constitutionality of these programs and how this equipment is used by local law enforcement, it is worth a brief overview of some history.

SWAT teams, which started in Los Angeles in the 1960s in response to the Watts riots, were originally conceived as a more militarized part of local law enforcement, with the specific mission to deploy on a limited basis in high-risk situations. As both money and equipment became more available to support these teams, however, their use spread widely. When the “War on Drugs” escalated in the 1980s, the number of SWAT teams ballooned and those teams were used more and more for routine police work like executing search warrants, particularly in search of drugs.

In the late 1990s, 90% of cities and towns and 65% of mid-sized cities had a SWAT team.<sup>12</sup> Today, towns with as little as a few thousand people boast SWAT teams.<sup>13</sup> Indeed, the use of SWAT teams from 1980 to 2000 has increased by approximately 1,500 percent.<sup>14</sup> And, in part because of a need to justify the expense of maintaining such a team and in part to generate revenue from drug arrests, SWAT is now deployed far more often to execute search warrants than any of its original purposes.<sup>15</sup> While certainly there are search warrant situations that merit the use of military equipment and tactics, the basis for classifying these warrants as high-risk in many cases appears unsupported. Often, a warrant is issued only on the uncorroborated word of an anonymous informant. Both the decision to request a no-knock warrant and the decision to send SWAT to execute a warrant are essentially at the discretion of local law enforcement, with no clear guidelines and with a lack of oversight by the courts.<sup>16</sup> This reliance on law enforcement’s discretion is an insufficient safeguard. As one study found, guns were located in only a third of the searches in which police officers claimed the presence of guns warranted SWAT.<sup>17</sup>

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<sup>12</sup> Peter B. Kraska and V. E. Kappeler, “Militarizing American Police: The Rise and Normalization of Paramilitary Units,” *Social Problems* 13 (1997): 1–18. 46; Peter B. Kraska and Louis J. Cubellis, “Militarizing Mayberry and Beyond: Making Sense of American Paramilitary Policing” *Justice Quarterly* 14, no. 4 (December 1997): 605–29.

<sup>13</sup> Balko White Paper at 9.

<sup>14</sup> Peter Kraska, *Militarizing the American Criminal Justice System*, Richmond, VA: Northern University Press (2001).

<sup>15</sup> ACLU Report at 4 (79% of SWAT deployments in 2011-2012 were to execute search warrants).

<sup>16</sup> Balko White Paper, note 17 at 35 (virtually all no-knock warrants issued in a seven-month period in Denver were issued based only a police assertion that the search could be dangerous; some judges issued no-knock warrants even though police asked for a regular warrant).

<sup>17</sup> ACLU Report at 33 (weapons found in only 35% of searches where police had predicted weapons would be found).

More troubling, there is evidence that the use of no-knock warrants and the use of SWAT teams to execute those warrants *increases* danger for law enforcement and community members, rather than decreasing it.<sup>18</sup> No-knock warrants are often executed at times when people are likely to be asleep, and police often use devices such as flashbang grenades and battering rams to increase the element of surprise. Unsurprisingly, these tactics tend to confuse and frighten the inhabitants of a house, who are often woken from sleep to find their houses being stormed by what appear to be heavily-armed soldiers. These tactics have led to a significant number of tragic deaths and injuries, of both law enforcement officers and civilians.<sup>19</sup> And, of course, even in those situations where no one is physically harmed, there are consequences to the use of these military tactics on individual freedom and liberties, as will be explored below.

This policy brief examines the effects of the use of military equipment and tactics in both protest and search warrant situations on constitutional rights. The following analysis and ensuing recommendations are not intended to be legal advice nor are they comprehensive. Instead, the Committee hopes that readers will better understand how military equipment and tactics, when used by law enforcement for domestic policing, raise a host of constitutional questions and that safeguards must be implemented to prevent miscarriages of justice.

## **II. Police Militarization and the First Amendment**

Any situation involving protesters and law enforcement may give rise to concerns regarding First Amendment violations, but the use of military weapons and tactics by law enforcement agencies in these interactions creates unique concerns.<sup>20</sup> To be sure, a militarized police force may be essential to protect civilians and law enforcement when protests turn to riots and protesters turn violent. In other instances, as discussed in more detail below, the use of military equipment and tactics may impinge on citizens' First Amendment rights.

### **a. Use of Military Equipment to Control Protesters Must be an Appropriately “Narrowly Tailored” Method of Controlling Speech**

The right to free speech by the public is, of course, not completely unrestricted. The government may regulate speech to “time, place, and manner of expression” in a public forum if

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<sup>18</sup> Balko White Paper at 19.

<sup>19</sup> Balko White Paper at 43, Appendix of Case Studies

<sup>20</sup> US Con. 1st Amnd. (“Congress shall make no law . . . abridging the freedom of speech, or of the press; or of the right of the people to peaceably assemble, and to petition the Government for a redress of grievances.”).

the restriction is content-neutral,<sup>21</sup> narrowly tailored to serve a significant government interest and leaves open ample alternative channels of communication.<sup>22</sup> For example, police may require anti-abortion activists to protest elsewhere in the interest of public safety when activists block a pedestrian walkway.<sup>23</sup> If law enforcement officers are able to control protesters who are exercising their First Amendment rights *without* the use of military equipment, there may be an argument that using such equipment is not “narrowly tailored” to serve a significant governmental interest.<sup>24</sup>

Law enforcement’s use of military equipment and tactics to control protesters would not be a violation of the First Amendment *per se* – as noted above, there are situations where such activity is justified – but the equipment used and the circumstances of the use must be considered. Law enforcement agencies have acquired a wide range of military-grade weapons ranging from protective gear to airplanes to armored Humvees to automatic assault rifles.<sup>25</sup> Mere use of military-grade protective gear during protests, no matter how peaceful, is not likely to be found to have violated the First Amendment. Police use of protective equipment to the extent it would even be considered a restriction of free speech, would likely be content-neutral, narrowly tailored to serve a significant government interest and leave open other avenues of communication.<sup>26</sup>

The police's proactive use of military weapons and tactics *against* protesters, however, is more likely to violate the First Amendment. For example, local law enforcement used Long Range Acoustic Devices (“LRADs”) in protests in New York City after the grand jury decided

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<sup>21</sup> In general, if government regulation of speech is not content-neutral, it must meet a higher burden, or strict scrutiny. Under this standard, content-based government restriction on speech must be necessary to “promote a compelling interest” and must be the “least restrictive means to further the articulated interest.” *See Sable Commc’ns of Cal., Inc. v. Fed. Commc’ns Comm’n*, 492 U.S. 115, 126 (1989). For example, a regulation restricting anti-abortion protests in general would fail to meet the “least restrictive means” test if the purpose of the regulation was to silence those protesters. This standard would apply if the use of military equipment and tactics by law enforcement were intended simply to silence protestors.

<sup>22</sup> *Frisby v. Schultz*, 487 U.S. 474, 481 (1988).

<sup>23</sup> *McTernan v. City of York*, 564 F.3d 636 (3d Cir. 2009).

<sup>24</sup> *See, e.g.,* Alan O. Sykes, *The Least Restrictive Means*, 70 U. Chi. L. Rev. 403, 403-04 (2003) (noting in the regulatory context “when an alternative [method] unquestionably achieves a clearly stipulated [] objective at equal or lower cost [] while imposing a lesser burden on [free speech], the alternative is ‘less restrictive’”).

<sup>25</sup> Matt Apuzzo, *War Gear Flows to Police Departments*, N.Y. TIMES, June 9, 2014, at A1.

<sup>26</sup> *See, e.g.,* Noelle Phillips, *Denver Police Union Objects to Ban on Protective Gear During Protests*, THE DENVER POST, Dec. 11, 2014 available at [http://www.denverpost.com/news/ci\\_27118194/denver-police-union-objects-ban-protective-gear-during](http://www.denverpost.com/news/ci_27118194/denver-police-union-objects-ban-protective-gear-during) (police union representative arguing that protesters in Denver had been growing more violent and police had a right to protect themselves using helmets and body armor).

not to indict the officer who killed Eric Garner.<sup>27</sup> LRADs were developed in response to the October 2000 bombing of the USS Cole by Islamic terrorists.<sup>28</sup> The purpose of an LRAD is to emit an extremely loud noise reaching as high as 149 decibels in an effort to deter unwanted aggressors.<sup>29</sup> An LRAD can cause headaches, earaches, and permanent hearing damage by exceeding the 130-decibel threshold for possible hearing loss by nearly 20 points.<sup>30</sup> It may be more difficult for law enforcement to argue that using military equipment like LRADs is necessary or even narrowly tailored for crowd control, and the use of such equipment might raise First Amendment concerns.<sup>31</sup>

### **b. The Threat of Military Equipment and Tactics Can Chill Free Speech**

Because of the psychological implications of using military weapons, equipment, and tactics, the *threat* of a militarized police force may chill constitutionally-protected speech and present a greater risk of violating the First Amendment more than the actual use of those weapons and tactics.

#### **i. Police Militarization as a Preemptive Policing Tactic**

Researchers studying police tactics have noted a shift from reactive policing to preemptive policing beginning in the late 1990s.<sup>32</sup> Traditionally, preemptive police tactics include arrests, shutting down organizational meeting places, and the confiscation of literature in an attempt to deter active protesters.<sup>33</sup>

A militarized police force may be another development in the use of preemptive policing as protesters react to the knowledge of police militarization. It is routine for media to show video of previous demonstrations depicting protesters as violent complete with images of a militarily

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<sup>27</sup> See, e.g., Colin Moynihan, *Concerns Raised Over Shrill Device New York Police Used During Garner Protests*, N.Y. TIMES, Dec. 12, 2014.

<sup>28</sup> Lily Hay Newman, *This is the Sound Cannon Used Against Protestors in Ferguson*, SLATE, Aug. 14, 2014 available at [http://www.slate.com/blogs/future\\_tense/2014/08/14/lrad\\_long\\_range\\_acoustic\\_device\\_sound\\_cannons\\_were\\_used\\_for\\_crowd\\_control.html](http://www.slate.com/blogs/future_tense/2014/08/14/lrad_long_range_acoustic_device_sound_cannons_were_used_for_crowd_control.html)

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Gideon Orion Oliver, *Letter to Commissioner Bratton and Deputy Commissioner Byrne: The NYPD's Use of Long-Range Acoustical Devices for Crowd Control*, Dec. 12, 2014, available at <http://www.commondreams.org/news/2014/12/15/national-lawyers-guild-challenges-nypd-use-sound-cannons-against-peaceful-protesters>

<sup>32</sup> Heidi Boghosian, *THE ASSAULT ON FREE SPEECH, PUBLIC ASSEMBLY, AND DISSENT 19*, National Lawyers Guild (2004).

<sup>33</sup> *Id.*

equipped police force.<sup>34</sup> The media therefore creates a fear of anticipated confrontation between protesters and a militarized police force.<sup>35</sup> In addition, police frequently engage in public training drills and media showcases of weapons and tactics.<sup>36</sup> These forms of pre-protest intimidation may deter people from protesting long before the protest even begins. Moreover, whether consciously or not, law enforcement may be more inclined to use military weapons and tactics as the number of protesters declines, since they may perceive that the use of such weapons has succeeded in keeping the “peace.”

In addition to deterring protesters from turning out to protest, the threat of a militarized police force may pre-emptively chill First Amendment speech during the event. For example, during the protests in Ferguson, Missouri, the police instituted a “five-second rule.”<sup>37</sup> Any protesters caught standing still for longer than five seconds were subject to arrest.<sup>38</sup> The five-second rule, and similar restrictions on the right to protest, may pose First Amendment concerns as they seek attempts to restrict protesters from exercising their right to protest where they choose. While the police may not actually use military equipment and tactics on protesters, First Amendment concerns may arise if protesters are less likely to object to police requests because they fear police retaliation with military grade weapons.

#### **ii. The Psychology of a Militarized Police Force: The “Weapons Effect”**

Research into the effect of the presence of weapons on individuals' willingness to exercise First Amendment freedoms supports the concern that citizens are less likely to protest when police are equipped with military-grade weapons. For citizens who do attend protests and public gatherings, the “weapons effect” holds that the mere presence of weapons primes individuals for more aggressive behaviors -- both law enforcement and protesters.<sup>39</sup> Moreover, when faced with stressful situations, individuals adopt roles that help define how they react to the presence of

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<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Gan Golan, *Closing the Gateways of Democracy* (Sept. 2005) (unpublished Master's thesis, Massachusetts Institute of Technology) (on file with Massachusetts Institute of Technology library).

<sup>37</sup> Lee Rowland, *There is No 5-Second Rule for the First Amendment, Ferguson*, AMERICAN CIVIL LIBERTIES UNION, Aug. 21, 2014, available at <https://www.aclu.org/blog/free-speech-racial-justice/there-no-5-second-rule-first-amendment-ferguson>

<sup>38</sup> *Id.*

<sup>39</sup> See Singal, *supra*.

those who may mean harm.<sup>40</sup> In other words, because individuals, whether law enforcement or civilians, associate military equipment with combat, using this equipment in the civilian context may cause law enforcement and community members to behave more aggressively, and even as adversaries.<sup>41</sup>

As a result of both protesters and law enforcement officers being primed for more aggressive behavior, First Amendment rights may be chilled, as individuals are less likely to participate in protests they view as dangerous. With the presence of military weapons escalating the possibility of aggression by both community members and law enforcement, a violent protest is more likely. Once a protest turns violent, police are more likely to use military tactics to control the crowd and a court is more likely to find use of that military equipment reasonable. Moreover, empirical research suggests that the use of military equipment and tactics by police officers may deter citizen participation in future protests.<sup>42</sup>

### **III. Implications of Police Militarization on Fourth Amendment Rights**

The Fourth Amendment guarantees the “right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”<sup>43</sup> The use of military equipment, surveillance, and tactics by law enforcement has the potential to impinge on citizen’s Fourth Amendment rights, though the analyses of such implications are necessarily fact-driven. This section explores the military equipment and technology most used by police officers and discusses circumstances in which police behavior is and is not likely to be considered a search and, in the event of a search, circumstances in which the search is and is not likely to be considered reasonable.<sup>44</sup>

In analyzing how the use of military equipment by local police forces might give rise to Fourth Amendment violations, it is useful to conceptualize two distinct search and seizure

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Jennifer Earl & Sarah A. Soule, *The Impacts of Repression: The Effect of Police Presence and Action on Subsequent Protest Rates*, 30 RESEARCH IN SOCIAL MOVEMENTS, CONFLICTS AND CHANGE 75, 83 (2010).

<sup>43</sup> U.S. CONST. amend. IV.

<sup>44</sup> To qualify as a search under the Fourth Amendment, a government official must violate an individual’s subjective expectation of privacy, and that expectation of privacy must be an objectively reasonable one. Information that individuals reveal to other people or hold out to the public is not subject to an expectation of privacy. *See Katz v. United States*, 389 U.S. 347, 361, 88 S. Ct. 507, 516, 19 L. Ed. 2d 576 (1967) (Harlan, J., concurring).

scenarios: (1) searches conducted before any warrant is applied for or obtained (warrantless searches), and (2) searches conducted pursuant to some type of warrant.

### **a. Warrantless Searches and Seizures**

The government continuously develops sophisticated methods of information gathering and surveillance. Because warrantless searches are, with certain, limited exceptions, presumptively unreasonable, the primary issue presented in these cases is whether the form of the police surveillance qualifies as a search.<sup>45</sup> The two types of surveillance discussed below, sensory-enhancing technology used to visually survey an individual's property and electronic location surveillance, frequently raise Fourth Amendment concerns when law enforcement officers use them prior to obtaining a warrant.

#### **i. Sensory-Enhancing Technology**

Sensory-enhancing technology has been a major focus of Fourth Amendment jurisprudence as courts continue to address what people can “reasonably” consider private -- an inquiry that grows even more relevant as police officers use the advanced technology provided to them by military equipment programs. In *Kyllo v. United States*, the Supreme Court drew the line at what constitutes a search in cases involving visual surveillance where technology provides information to the government that could not have been obtained through physical surveillance, and where the technology used is not commercially available to the general public.<sup>46</sup> In *Kyllo*, a police officer using a thermal imaging device to scan levels of heat emanating from an individual's home was found to have conducted a search, since the sense-enhancing technology provided information about the interior of the home that could not have been obtained without a physical intrusion into the constitutionally-protected area.<sup>47</sup> Moreover, because the thermal imaging technology in question is not in general public use, the government's use of that technology violated an expectation of privacy that “society is prepared to recognize... [as] reasonable.”<sup>48</sup> In contrast, at least one court has found that the use of night vision goggles to

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<sup>45</sup> See *Groh v. Ramirez*, 540 U.S. 551, 559, 124 S. Ct. 1284, 1290, 157 L. Ed. 2d 1068 (2004).

<sup>46</sup> *Kyllo v. United States*, 533 U.S. 27, 34, 121 S. Ct. 2038, 2043, 150 L. Ed. 2d 94 (2001).

<sup>47</sup> *Id.* (noting also the Court's concern over such equipment being used by law enforcement for the invasion of the home).

<sup>48</sup> *Katz*, 389 U.S. at 361 (Harlan, J., concurring); see also *Florida v. Jardines*, 133 S. Ct. 1409, 1417, 185 L. Ed. 2d 495 (2013) (holding that the warrantless use of a drug-sniffing dog on an individual's porch constituted a search of the home, since the police officers used a device “not in general public use” (a trained drug-detection dog) to learn details about the inside of the home that they would not otherwise have discovered without entering the premises).

observe an individual's property or vehicle does not constitute a search, since night vision goggles are "available to the public via internet."<sup>49</sup> And unlike a thermal imaging device that reveals information that would be unknowable without a physical intrusion, night vision goggles "merely amplify ambient light" to allow the wearer to see things at night, they do not allow the wearer to "see through walls."<sup>50</sup>

Local police forces currently receive ballistic and night vision goggles through supply programs with the federal government.<sup>51</sup> Both types of goggles are readily available for purchase by the general public and neither is sufficiently sense-enhancing such that it would allow gathering of information that would be unavailable but for a physical intrusion. As such, use of these types of equipment will likely not raise many constitutional issues.<sup>52</sup> To the extent that local police forces receive other types of surveillance technology from military programs, however, there may be greater Fourth Amendment concerns. For example, police using "Millivision" technology -- a type of camera that measures electromagnetic radiation -- to pick up on weapons and other substances concealed under an individual's clothing is likely to raise serious Fourth Amendment concerns.<sup>53</sup>

## **ii. Information-Gathering Electronic Surveillance**

The burgeoning use of sophisticated electronic communication has led to recent developments in Fourth Amendment jurisprudence regarding when surveillance of that communication qualifies as a search. For instance, the availability of advanced GPS technology allows local law enforcement to track the location of a possible suspect for lengths of time that would be impractical or impossible through actual visual surveillance. As such, courts struggle with what is colloquially known as the "mosaic doctrine;" in other words, if a person's present location is revealed to the public and not subject to a reasonable expectation of privacy, at what

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<sup>49</sup> *United States v. Vela*, 486 F. Supp. 2d 587, 590 (W.D. Tex. 2005).

<sup>50</sup> *United States v. Dellas*, 355 F. Supp. 2d 1095, 1107 (N.D. Cal. 2005).

<sup>51</sup> ACLU Report at 13.

<sup>52</sup> *See, e.g., United States v. Vela* 486 F. Supp. 2d at 590 (holding that the warrantless use of night vision goggles to observe the inside of an individual's vehicle did not constitute a search in violation of the Fourth Amendment); *see also People v. Deutsch*, 44 Cal. App. 4th 1224, 1228 n.1, 52 Cal. Rptr. 2d 366, 367 n.1 (1996) (holding that use of thermal imaging device on individual's residence was an unreasonable search prohibited by the Fourth Amendment, and distinguishing the thermal imaging device used from infrared devices like night vision goggles because night vision goggles amplify the infrared spectrum of light).

<sup>53</sup> *See generally* George Dery II, *Remote Frisking Down to the Skin: Government Searching Technology Powerful Enough to Locate Holes in Fourth Amendment Fundamentals*, 30 CREIGHTON L. REV. 353 (1997).

point does an individual have a reasonable expectation of privacy in the prolonged surveillance of his or her location?<sup>54</sup>

In considering this issue, the U.S. Court of Appeals for the District of Columbia noted that the likelihood a stranger would observe all of a person's movements over a prolonged period is essentially nonexistent, and that continuous monitoring reveals a more intimate picture of a person's life than surveillance of that person's "disconnected" movements.<sup>55</sup> The Court held that the district court erred in admitting evidence that was acquired by a GPS device that tracked defendant for nearly a month, because the defendant had a reasonable expectation of privacy in his movements as the totality of his movements over that month were not actually exposed to the public.<sup>56</sup> Justice Sotomayor echoed these conclusions in a recent concurrence, noting that the theory that people have no expectation of privacy in information they make known to others is "ill suited for the digital age, in which people reveal a great deal of information about themselves to third parties in the course of carrying out mundane tasks."<sup>57</sup> These issues may become more significant if military-grade surveillance equipment and technology is widely available to state and local law enforcement.

#### **b. Searches and Seizures After Obtaining a Warrant**

Because the Fourth Amendment protects people from "unreasonable" searches, the crux of a Fourth Amendment claim where an officer possesses a valid warrant is often whether the search was reasonable. The use of SWAT teams and military equipment by local law enforcement officials raises Fourth Amendment issues in the context of unannounced entries, as well as with respect to certain equipment used during forced entries.

#### **i. No-Knock Searches and the Proliferation of SWAT Deployment**

When serving a search warrant, law enforcement officials must "knock and announce" their presence, unless exigent circumstances exist, *i.e.*, if it would threaten someone's safety or if

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<sup>54</sup> Compare *United States v. Knotts*, 460 U.S. 276, 103 S. Ct. 1081, 75 L. Ed. 2d 55 (1983) (holding that the monitoring of a beeper attached to an individual's vehicle was not a search within the contemplation of the Fourth Amendment because a person travelling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another), with *United States v. Maynard*, 615 F.3d 544, 558 (D.C. Cir. 2010) *aff'd in part sub nom. United States v. Jones*, 132 S. Ct. 945, 181 L. Ed. 2d 911 (2012) (recognizing that "what may seem trivial to the uninformed, may appear of great moment to one who has a broad view of the scene").

<sup>55</sup> See *United States v. Maynard*, 615 F.3d at 562.

<sup>56</sup> *Id.* at 558.

<sup>57</sup> *United States v. Jones*, 132 S. Ct. 945, 957, 181 L. Ed. 2d 911 (2012) (Sotomayor, J., concurrence).

the warning would defeat the point of the search by giving the suspect enough time to discard any evidence.<sup>58</sup> These exceptions, however, are largely in the hands of individual police officers, judges and courts, with little guidance from the Supreme Court.<sup>59</sup>

There also appears to be little oversight of no-knock warrants.<sup>60</sup> An investigation that followed the shooting of a man during a no-knock raid in Denver led to the discovery that “nearly all no-knock warrant requests over the past seven months -- most of which involved narcotics cases -- were approved merely on police assertions that a regular search could be dangerous for them or that the drugs they were seeking could be destroyed.”<sup>61</sup> That same investigation revealed that “no-knock search warrants appear to be approved so routinely that some Denver judges have issued them even though police asked only for a regular warrant.”<sup>62</sup> Of 163 affidavits for no knock warrants, only seven had specific allegations that the suspect had been seen with a gun, and nearly all of the warrants were granted solely on the basis of an anonymous tip and an officer’s claim, with no supporting evidence, that weapons would be present at the scene or that the suspect would likely dispose of evidence.<sup>63</sup> Moreover, the exclusionary rule does not apply to no-knock violations, meaning evidence obtained through illegal means is not required to be suppressed.<sup>64</sup>

The lack of clear guidance for determining when no-knock warrants are appropriate and the lack of regular oversight of such warrants makes no-knock warrants ripe for potential for constitutional violations.<sup>65</sup> Moreover, the proliferation of SWAT team deployment by local law enforcement for routine drug searches only serves to heighten the concern. A study found that 79 percent of SWAT deployments were “for the purpose of executing a search warrant, most

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<sup>58</sup> *Wilson v. Arkansas*, 514 U.S. 927 (1995); *Richards v. Wisconsin*, 520 U.S. 385 (1997).

<sup>59</sup> Balko White Paper at 30.

<sup>60</sup> *But see Johnson v. United States*, 333 U.S. 10, 14, 68 S. Ct. 367, 369, 92 L. Ed. 436 (1948) (emphasizing the importance of judicial oversight of no-knock warrants: “[t]he point of the Fourth Amendment... is not that it denies law enforcement the support of the usual inferences which reasonable men draw from evidence. Its protection consists in requiring that those inferences be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.”).

<sup>61</sup> Balko White Paper at 35.

<sup>62</sup> *Id.* at 24.

<sup>63</sup> *Id.*

<sup>64</sup> *Hudson v. Michigan*, 547 U.S. 586 (2006).

<sup>65</sup> *See, e.g., Bishop v. Arcuri*, 674 F.3d 456, 467 (5th Cir. 2012) (holding that an officer’s no-knock entry of individuals’ home based on “generalized concerns about evidence preservation and officer safety” was unreasonable and violated those individuals’ Fourth Amendment rights).

commonly in drug investigations.”<sup>66</sup> SWAT teams are intended for emergency or “high-risk” scenarios, but according to the study, a “lack of clear and legitimate standards” for what constitutes a “high-risk” scenario “may result in the excessive and unnecessary use of SWAT deployments in drug cases.”<sup>67</sup> Indeed, only seven percent of SWAT deployments were for hostage, barricade, or active shooter situations.<sup>68</sup> Given that SWAT teams are frequently used to execute no-knock warrants, the lack of clear standards for both SWAT team deployment and no-knock searches makes it more likely that citizen’s Fourth Amendment rights will be violated in the execution of such searches.<sup>69</sup>

## **ii. Excessive Force Relating to Battering Rams and Flashbang Grenades**

Local law enforcement officers and SWAT teams regularly use battering rams and flashbang grenades to carry out drug and other non-violent crime investigations, sometimes resulting in excessive force claims against those officers.<sup>70</sup> Officers are given very little instruction regarding their appropriate use, and innocent bystanders are forced to face the sometimes fatal consequences.<sup>71</sup>

### **1. Battering Rams**

Battering rams are just one type of “forced entry tool” that police departments receive through federal equipment programs.<sup>72</sup> As the name implies, the battering ram is the primary tool “used [by law enforcement] to hit and break through walls and doors.”<sup>73</sup> Battering rams can also take many forms, ranging from hand-held devices to armored tanks specially equipped with a 14-foot horizontal steel battering ram capped with a steel plate. The method of police entry into a home is a factor in assessing the reasonableness of a search, thus, the use of a battering ram is not *per se* unconstitutional. In barricade and hostage situations, the use of a battering ram may very

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<sup>66</sup> ACLU White Paper at 31.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *See, e.g., Bishop v. Arcuri*, 674 F.3d 456.

<sup>70</sup> *See Boyd v. Benton Cnty.*, 374 F.3d 773, 779 (9th Cir. 2004) (holding that the use of a flashbang device was an unconstitutional use of excessive force where police deployed it with reason to know there were several occupants inside and without considering alternatives).

<sup>71</sup> William K. Rashbaum, *Woman Dies After Police Mistakenly Raid Her Apartment*, N.Y. TIMES, May 17, 2003, available at <http://www.nytimes.com/2003/05/17/nyregion/woman-dies-after-police-mistakenly-raid-her-apartment.html>.

<sup>72</sup> ACLU White Paper at 13.

<sup>73</sup> *Id.* at 21.

well reflect the level of necessary force. However, problems arise when this equipment is used in the execution of warrants for non-violent drug investigations. Indeed, SWAT teams forced entry into a person's home using a battering ram or breaching device in 65% of drug searches.<sup>74</sup> As with no-knock raids, the reasonableness of the search employing a battering ram is determined in light of the officer's perspective during the execution of the warrant, providing officers with a lot of latitude in deciding when to use these devices and underscoring the factual nature of these excessive force claims.<sup>75</sup>

## 2. Flashbang Grenades

Like battering rams, flashbang grenades can cause serious harm to people and property. A flashbang grenade is an "explosive device" that produces "an extremely bright flash of light that... causes temporary blindness" and is intended to distract the occupants of a building while a SWAT team attempts to secure the scene.<sup>76</sup> In order for the use of a flashbang grenade to be considered reasonable, the search must be considered "high-risk"<sup>77</sup> and where "high-risk" is not explicitly defined, and the standard of reasonableness is, again, based on the law enforcement officer's perception during the execution of the warrant.<sup>78</sup> Flashbang grenades are often used by officers to stun or distract the occupants of a home to prevent them from creating a safety threat. One concern is whether the frequency with which officers use flashbang grenades is justified in light of the number of suspects that present a real threat to officer safety. Additionally, the use of disorienting equipment may in fact increase threats to officer and bystander safety.<sup>79</sup> As discussed above, the use of military-grade weapons and equipment, as well as the military tactics favored by SWAT teams, make what would otherwise be routine searches more likely to escalate in violence, which has led to death, injury, and psychological harm to citizens, including innocent citizens, citizens suspected of only misdemeanors or non-violent crimes, and law enforcement

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<sup>74</sup> *Id.* at 3.

<sup>75</sup> See *Walker v. City of Wilmington*, 360 F. App'x 305, 313 (3d Cir. 2010) (holding that officers' use of armed SWAT team during no-knock raid, including use of a battering ram, during execution of a search warrant was objectively reasonable when viewed "from the perspective of a reasonable officer on the scene").

<sup>76</sup> ACLU White Paper at 21.

<sup>77</sup> *Molina ex rel. Molina v. Cooper*, 325 F.3d 963, 966 (7th Cir. 2003).

<sup>78</sup> *Graham*, 490 U.S. at 396.

<sup>79</sup> Balko White paper at 32.

officers.<sup>80</sup> As with the battering ram, the use of a flashbang grenade to temporarily blind, deafen, and disorient suspects during a non-violent drug investigation may seem excessive in light of the threat posed to officers, but courts addressing each excessive force claim must examine the specific facts of each case and the alleged uncertainty at the time of a search.<sup>81</sup>

#### **IV. Due Process: Filling the Gaps of the Fourth Amendment**

Although many fear that the increased use of military tactics and weaponry by local law enforcement agencies will increase violations of the due process rights set forth in the constitution, a close examination of the law reveals that such tactics by police are only likely to implicate the Due Process Clause in the rarest of circumstances. Instead, the Supreme Court has held that most challenges to police action are more properly brought under the Amendment that addresses the specific behavior challenged; for example, under the Fourth Amendment, which governs all claims arising in the course of an arrest, investigatory stop and or other “search or seizure” (including the planning stages)<sup>82</sup> or the Eighth Amendment, which governs post-conviction claims.<sup>83</sup> Because “due process” is frequently misunderstood, this section provides a basic overview of the law and then discusses the certain, limited circumstances in which police use of military technology could give rise to a due process violation.

The Due Process Clause of the Fourteenth Amendment warrants that no state actor may deprive any person of “life, liberty or property without due process of law.”<sup>84</sup> Courts have derived two notions of due process: procedural and substantive. While police militarization would not generally seem to implicate procedural due process concerns,<sup>85</sup> it may raise some substantive due process issues worthy of enhanced focus.

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<sup>80</sup> *Id.* at 43, Appendix of Case Studies.

<sup>81</sup> See *Bing ex rel. Bing v. City of Whitehall, Ohio*, 456 F.3d 555, 569 (6th Cir. 2006) (noting that the determination of reasonableness of police use of flashbang devices 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” from the “perspective of a reasonable policeman on the scene”).

<sup>82</sup> At least one circuit court has held that the *planning* of a SWAT raid should be challenged and analyzed under the Fourth Amendment. See *Terebesi v. Torres*, 764 F.3d 217, 233 (2d Cir. 2014).

<sup>83</sup> *Graham v. Connor*, 490 U.S. 386, 395 (1989) (where “an explicit textual source of constitutional protection” addresses a particular sort of government behavior, courts must rely on that Amendment, rather than the amorphous and open-ended concept of substantive due process, to resolve the issue).

<sup>84</sup> U.S. Const. amend. XIV, § 1.

<sup>85</sup> Procedural due process bars the government from denying recognized constitutional or state law-based rights to life, liberty, or property without fair procedure. Examples of typical police-related procedural due process claims include claims that delays between the taking of property and the disposition of forfeiture proceedings were

### **a. Substantive Due Process Concerns in the Context of Police Militarization**

Substantive due process bars certain wrongful government actions and “arbitrary” deprivations of life, liberty and property “regardless of the fairness of the procedures used to implement them.”<sup>86</sup> Substantive due process protects certain fundamental liberty interests, either implied elsewhere in the constitution or in the necessary framework for American society.<sup>87</sup> In the context of police-related substantive due process claims, courts have held a variety of different types of claims to be viable, including challenges to the conditions of pretrial detention, use of excessive force, denial of medical care, failure to prevent suicide and failure to protect from harm.<sup>88</sup>

Police-related causes of actions based upon substantive due process, however, are generally only appropriate if the challenged conduct does not implicate the Fourth or Eighth Amendments; for example, if the cause of action arose (a) prior to or during the course of an arrest, but the police conduct does not constitute a Fourth Amendment “search or seizure”<sup>89</sup> or (b) during the “pre-trial detainment” period, which can generally be thought of as beginning immediately after either arrest or a judicial finding of probable cause and ending at the time of conviction.<sup>90</sup> The sections below discuss specific situations in which police militarization may implicate substantive due process claims.

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excessive or that property was wrongfully destroyed or improperly returned following seizure. *See, e.g., Alexander v. Leyoub*, 52 F.3d 554 (5th Cir. 1992); *Coleman v. Watt*, 40 F.3d 255 (8th Cir. 1994); *Winters v. Board of County Comm’rs*, 4 F.3d 848 (10th Cir. 1993). Notably, however, the destruction of property incident to an arrest is not generally evaluated under the Due Process Clause, but instead falls under Fourth Amendment reasonableness reviews (under which the destruction of property is generally not deemed a Fourth Amendment violation). *United States v. Banks*, 540 U.S. 31, 41-42 (2003); *United States v. Ramirez*, 523 U.S. 65, 68 (1998). Given the types of procedural due process claims that are typically brought, it does not appear likely that the increased use of military equipment and tactics by local law enforcement would raise many substantial or new procedural due process concerns.

<sup>86</sup> *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 840 (1998) (quoting *Daniels v. Williams*, 474 U.S. 327, 331 (1986)).

<sup>87</sup> Ivan E. Bodensteiner & Rosalie B. Levinson, 1 STATE AND LOCAL GOVERNMENT CIVIL RIGHTS LIABILITY § 1:16.1 (updated Nov. 2014).

<sup>88</sup> *See generally*, Catherine T. Struve, *The Conditions of Pretrial Detainment*, 161 U. PA. L. REV. 1009, 1023-1033.

<sup>89</sup> Such claims arise in only unique circumstances, typically, where a police-related harm has occurred but a “seizure” has not yet occurred; for example, where police were on scene and a suspect committed suicide prior to arrest or certain high-speed car chases where, by flashing their lights, the police sought to stop a suspect’s car but the suspect fled, eventually crashing or being accidentally run into by the pursuing police. *See, e.g., Wilson v. Northcutt*, 987 F.2d 719 (11th Cir. 1993); *Lewis*, 523 U.S. at 844 (referring to *Brower v. County of Inyo*, 489 U.S. 593, 597 (1989)); *California v. Hodari D.*, 499 U.S. 621 (1991). These claims, even if they tangentially implicate military technology, are uncommon enough to warrant extensive discussion. Further, the police are rarely deemed to be liable. *See, e.g., Cutlip v. City of Toledo*, 488 Fed.Appx. 107 (6th Cir. 2012).

<sup>90</sup> Unfortunately, a precise definition of when an arrestee is considered in pre-trial detainment is difficult to provide. Pre-trial detainment refers to the period of time after the arrest or seizure of a defendant, when the Fourth

### **i. Excessive Force Claims: “Shocks the Conscience”**

As under the Fourth Amendment, the Supreme Court permits “excessive force” claims to be lodged against law enforcement officers under the Due Process Clause.<sup>91</sup> Although the increased use of military weapons and tactics may lead to more overall accusations of excessive violence or force by police, such claims are not likely to arise during the pre-trial detainment period and thus are not likely to arise under the Due Process Clause. A substantial increase in due process-based excessive force claims is therefore unlikely as a result of police militarization.

Furthermore, for those claims that do properly arise under the Due Process Clause -- for example, it would not be difficult to imagine a case involving the unnecessary use of pepper spray or a Taser, items which sometimes can be obtained from military surpluses, against an arrestee already in police custody -- the burden of proof for establishing a due process violation is substantially higher than under the Fourth Amendment.<sup>92</sup> This is because “[substantive] due process guarantees [do] not entail a body of constitutional law imposing liability whenever someone cloaked with state authority causes harm,” but rather, substantive due process is considered reserved for the most egregious governmental abuses, those that do “not comport with the traditional ideas of fair play and decency”<sup>93</sup> or “interfer[e] with the rights ‘implicit in the concept of ordered liberty.’”<sup>94</sup>

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Amendment presumably no longer applies, but prior to trial or conviction, before the Eighth Amendment is applicable. *See Lewis*, 523 U.S. at 843-44; Struve, 161 U. PA. L. REV. 1009. The question of when Fourth Amendment protections end and due process protections begin, however, has not been addressed by the Supreme Court, and the lower courts have developed diverging standards. *Compare, e.g., Chambers v. Pennycook*, 641 F.3d 898, 905 (8th Cir. 2011) (concluding that the Fourth Amendment, not due process, still applies in the period immediately after an arrest (citing *Moore v. Novak*, 146 F.3d 531, 535 (8th Cir. 1998))) and *Fontana v. Haskin*, 262 F.3d 871, 878-82 (9th Cir. 2001) (holding that the Fourth Amendment “seizure” continues so long as arrestee is still in arresting officers’ custody and prior to a probable cause hearing) and *Aldini v. Johnson*, 609 F.3d 858, 866-67 (6th Cir. 2010) (holding that for warrantless arrests, the dividing line between the Fourth and Fourteenth Amendments is at the probable cause hearing), with *Riley v. Dorton*, 115 F.3d 1159, 1164 (4th Cir. 1997) (en banc), abrogated on other grounds by *Wilkins v. Gaddy*, 559 U.S. 34 (2010) (per curiam) (identifying that due process applies immediately after arrest) and *Brothers v. Klevenhagen*, 28 F.3d 452, 456 (5th Cir. 1994) (similar). *See also Cottrell v. Caldwell*, 85 F.3d 1480, 1490 (11th Cir. 1996) (applying due process to a post-arrest claim for “custodial mistreatment” but the Fourth Amendment to plaintiff’s excessive force claim); *Frohman v. Wayne*, 958 F.2d 1024, 1026-28 (10th Cir. 1997) (concluding that the Fourth Amendment should be applied to excessive force claims that arise prior to a probable cause hearing, but due process to denial of medical care claims). For a more complete analysis of the different circuits, see Struve, 161 U. PA. L. REV. 1009.

<sup>91</sup> *Lewis*, 523 U.S. at 843-45; Beyer, 30 URB. LAW. at 67-71; cf. *Albright v. Oliver*, 510 U.S. 266 (1994).

<sup>92</sup> *Lewis*, 523 U.S. at 843-45.

<sup>93</sup> *Breithaupt v. Abram*, 352 U.S. 432, 435 (1957).

<sup>94</sup> *United States v. Salerno*, 481 U.S. 739, 746 (1987) (quoting *Palko v. Connecticut*, 302 U.S. 319, 325 (1937)).

To that end, the Supreme Court has identified that a substantive due process violation by an actor of the state will only occur when an officer' or department's conduct "shocks the conscience."<sup>95</sup> While this standard is difficult to explicitly define, the Court has described it as a "yard stick... poin[ting] the way" towards impermissible conduct. On one end of the spectrum, "conduct *intended* [emphasis added] to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level;" on the other end, negligence or gross negligence, is substantially less likely to violate the constitution.<sup>96</sup>

## ii. Denial of Medical Care Claims: "Deliberate Indifference"

The one situation that is most likely to raise due process concerns in the context of police militarization is when police are dealing with detainees injured in the course of an arrest. A number of courts have held that police officers have a due process obligation to provide medical treatment to arrestees injured in the course of detainment.<sup>97</sup> Because certain military-styled technologies common in SWAT raids, such as assault rifles, flashbang grenades and chemical irritants may be more likely to cause physical harm to an arrestee, a law enforcement officer's obligation to provide such medical care may arise more frequently in those situations.

Due process protections prohibit law enforcement from displaying, at the very least,<sup>98</sup> "deliberate indifference" to the "serious" medical needs of a pre-trial detainee.<sup>99</sup> Deliberate indifference in this context is defined as a reckless or intentional disregard for the substantial risk posed by a detainee's medical condition, which may have arisen in the course of arrest; again, mere negligence is not enough.<sup>100</sup> While this standard of care is largely deferential to law

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<sup>95</sup> *Lewis*, 523 U.S. at 846-855.

<sup>96</sup> *Id.* at 847 (citing *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973)) (emphasis supplied).

<sup>97</sup> See, e.g., *City of Revere*, 463 U.S. 239; *Barrie v. Grand County, Utah*, 119 F.3d 862 (10th Cir. 1997); *Weyant v. Okst*, 101 F.3d 845 (2d Cir. 1996); *Rowland v. Perry*, 41 F.3d 167 (4th Cir. 1994).

<sup>98</sup> The Supreme Court has yet to formally declare a level of care owed to persons injured in the course of arrest; however, it has indicated that "the due process rights of [such] a person... are at least as great as the Eighth Amendment protections available to a convicted prisoner." *City of Revere*, 463 U.S. at 244 (citing to *Bell v. Wolfish*, 441 U.S. 520 (1979)). The Eighth Amendment standard, "deliberate indifference," has thus been broadly applied by the lower courts when reviewing medical care cases under due process. See *Weyant*, 101 F.3d at 856; *Jones v. Johnson*, 781 F.2d 769, 771 (9th Cir. 1986); *Garcia v. Salt Lake County*, 768 F.2d 303, 307 (10th Cir. 1985); *Boring v. Kozakiewicz*, 833 F.2d 468, 471 (3d Cir. 1987) (applying a quasi-test).

<sup>99</sup> *City of Revere*, 463 U.S. at 244-245; *Weyant*, 101 F.3d at 856.

<sup>100</sup> *Id.* (referencing the Eighth Amendment standard laid out in *Farmer v. Brennan*, 511 U.S. 825 (1994)).

enforcement, it requires that police officers affirmatively respond to injuries. Often, liability will turn on whether the officer knew of the detainee's medical condition.<sup>101</sup>

Note that due process review will apply in some, but not all denial of medical care claims. As in other situations, whether Due Process Clause obligations are legally associable will depend on when the cause of action arises.<sup>102</sup> Because medical care cases are likely to arise in or continue into the period following the actual moments of arrest, they are more likely than most cases to fall under the umbrella of due process.

## V. Police Militarization and the Equal Protection Clause

Under the Equal Protection Clause of the Fourteenth Amendment and the Due Process Clause of the Fifth Amendment, the state and federal governments, respectively, are prohibited from enacting laws or policies that would deprive anyone of their fundamental rights and from using existing laws in a manner that would violate those rights.<sup>103</sup> The recent rise in the use of military-grade weapons and tactics by local law enforcement has caused many to question whether such weapons and tactics may violate the Equal Protection Clause. In fact, public opinion is often that police intentionally use military weapons against minority communities simply because of their race.<sup>104</sup> Despite public opinion, however, those seeking to challenge the militarization of local police under the rubric of Equal Protection would likely face a number of barriers. This section explores some of the challenges that may arise in the context of police militarization.<sup>105</sup>

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<sup>101</sup> *Id.* (referencing *Farmer*, 511 U.S. 825).

<sup>102</sup> Although courts will only apply due process if the cause of action arose during the period of pre-trial detainment, some circuits are willing to apply due process in more situations involving denial of medical care allegations, as opposed to those alleging excessive force.

<sup>103</sup> *Bolling v. Sharpe*, 347 U.S. 497 (1954); *Brown v. Board of Education*, 347 U.S. 483 (1954); see also *Whren v. United States*, 517 U.S. 806, 813 (1996) (“[T]he Constitution prohibits selective enforcement of the law based on considerations such as race . . . the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause”).

<sup>104</sup> Lindsey Cook, *Poll: Blacks Less Confident in Police*, U.S. NEWS AND WORLD REPORT, Aug. 20, 2014, <http://www.usnews.com/news/blogs/data-mine/2014/08/20/poll-blacks-report-less-confidence-in-police-and-more-discrimination>.

<sup>105</sup> A plaintiff bringing an Equal Protection claim must prove that a law or government policy has both a discriminatory impact and a discriminatory purpose behind its enforcement. See *Washington v. Davis*, 426 U.S. 229, 239 (1976); Jody Feder, *Racial Profiling: Legal and Constitutional Issues* at 4, CONG. RESEARCH SERV. RL 31130 (2012), available at [http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1919&context=key\\_workplace](http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1919&context=key_workplace), at 6; Alyssa A. Grine & Emily Coward, *Raising Issues of Race in North Carolina Criminal Cases* (John Rubin ed., UNC School of Government, 2014), available at

**a. The Use of Military Weapons by Local Police in the “War on Drugs”**

Equal protection concerns may arise through the use of military-grade weapons and tactics as a part of the federal government’s “War on Drugs,” the use of SWAT teams armed with military grade weapons significantly increased.<sup>106</sup> Drug-related SWAT raids more frequently occur in communities of color.<sup>107</sup> Indeed, many racial minority groups feel that police unfairly target their communities.<sup>108</sup>

Yet statistics alone are insufficient to sustain an Equal Protection challenge. In *McCleskey v. Kemp*, the Supreme Court rejected an Equal Protection claim based upon statistics that showed that African-Americans were sentenced to death by Georgia’s courts at a higher rate than whites, holding that such statistics were not sufficient evidence of a discriminatory purpose behind the application of the state’s death penalty.<sup>109</sup> The Court stated that while a “stark” pattern of a discriminatory impact *may* be enough to prove discriminatory purpose, the statistics relating to the death penalty contained too many variables to prove a discriminatory purpose.<sup>110</sup> In the wake of *McCleskey*, many courts have held that statistical evidence alone is insufficient to prove a discriminatory purpose to sustain an Equal Protection claim.<sup>111</sup>

In the context of an Equal Protection challenge, statistics related to use of SWAT teams in drug-related raids are likely to be viewed similarly to the statistics at issue in *McCleskey*, barring a petitioner from seeking redress due to repeated government conduct that appears to violate the Equal Protection clause. Instead, each drug raid would have to be viewed in the context of its unique circumstances to determine the appropriate level of force. Moreover, unlike death penalty cases and criminal trials in general, where it is impermissible for jurors to use race as a factor in

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<http://defendermanuals.sog.unc.edu/defender-manual/16>. This can be difficult to prove if a law or policy does not explicitly discriminate against certain groups but arguably has a discriminatory impact. *See Feder, supra*.

<sup>106</sup> ACLU Report at 31-33.

<sup>107</sup> *Id.* at 8, 35-36 (61% of the people affected by drug-related SWAT raids were African-American and Latino).

<sup>108</sup> Cook, *supra*; see also Kevin Zeese & Margaret Flowers, *Ferguson Exposes the Reality of Militarized, Racist Policing*, POPULAR RESISTANCE: DAILY MOVEMENT NEWS AND RESOURCES, Aug. 17, 2014, <https://www.popularresistance.org/ferguson-exposes-the-reality-of-militarized-racist-policing/>.

<sup>109</sup> *McCleskey v. Kemp*, 481 U.S. 279, 293-95 (1987).

<sup>110</sup> *Id.* (holding that juries in death penalty cases were unique compositions that could decide cases differently depending on the circumstances of each case, making comparisons between death penalty cases difficult).

<sup>111</sup> Grine & Coward, *supra*.

their decisions, police can sometimes use race as a factor in enforcement operations. In particular, if the police are acting upon a tip that describes a certain suspect by his race, they may use that information as one among many factors in deciding to take action.<sup>112</sup> Thus, a court could examine other evidence of discriminatory purpose behind the use of SWAT teams before relying on statistical evidence alone.

If a plaintiff could successfully prove both a racially discriminatory impact and purpose in the use of SWAT teams in drug raids, however, a court would likely subject the policy to “strict scrutiny.”<sup>113</sup> As such, the police would have to show that its use of a SWAT team was necessary to achieve a compelling government interest, here preventing drug use and sale. While the government certainly has compelling reasons to limit drug use and sale, it is questionable whether a SWAT team is necessary to achieve this purpose. Strict scrutiny is a high standard, and there is a possibility that a court could find based on the evidence that a less violent means of investigating for drugs may be sufficient to achieve the same government interest.

#### **b. Equal Protection Concerns Related to Use of Military Weapons in Protests**

Police use of military-grade weapons and tactics as a crowd control mechanism in protests may also raise Equal Protection issues. In some instances, these confrontations became violent, with the police firing rubber bullets or otherwise threatening the use of force to break up protests.<sup>114</sup> There is a public perception that law enforcement officers respond to civil unrest by communities of color with a disproportionate show of force, regardless of the political basis for

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<sup>112</sup> *United States v. Weaver*, 966 F.2d 391, 392-93 (8th Cir. 1992) (upholding the conviction of an African-American drug courier whom police had stopped on a tip that “a number of young roughly dressed black males from street gangs in Los Angeles frequently brought cocaine into the Kansas City area”).

<sup>113</sup> There are three levels of review for an Equal Protection claim: “strict scrutiny,” “intermediate scrutiny” and “rational basis review.” Courts typically reserve “strict scrutiny” for cases of discrimination based on race and national origin. Under strict scrutiny the government must show that its means are “narrowly tailored” to achieve a “compelling government interest[.]” *Adarand Constructors v. Peña*, 515 U.S. 200, 227 (1995). Under “intermediate scrutiny,” which courts typically reserve for cases of discrimination based on gender, the government must show its means are “substantially related to an important governmental objective.” *Clark v. Jeter*, 486 U.S. 456, 472 (1988); see also *Craig v. Boren*, 429 U.S. 190, 197 (1976). Finally, under “rational basis review,” which courts typically reserve for all other cases, the plaintiff has the burden of proof to show that the government’s means are not rationally related to “some legitimate governmental purpose.” *Heller v. Doe*, 509 U.S. 312, 320 (1993). The claims discussed in this section would most likely be subject to strict scrutiny. See *Adarand*, 515 U.S. at 227 (holding “that all racial classifications, imposed by whatever federal, state or local governmental actor, must be analyzed by a reviewing court under strict scrutiny”).

<sup>114</sup> Zeese & Flowers, *supra*.

the protest or other civil disobedience.<sup>115</sup> The key Equal Protection issue becomes whether police deploy military style force to contain protests by racial minorities more frequently than for non-minority groups, regardless of the actual threat of violence.

As such, it may be possible to argue that police use of military-grade weapons and tactics in response to race-related protests, no matter how peaceful, has a discriminatory purpose. Rather than offer statistical evidence by itself, a plaintiff could point to a historical pattern of treatment of protests. The Supreme Court has endorsed this type of evidence, holding that all “circumstantial and direct evidence of [discriminatory] intent as may be available”<sup>116</sup> should be examined, and that a plaintiff may introduce “[t]he historical background of [a] decision [as an] evidentiary source, particularly if it reveals a series of official actions taken for invidious purposes.”<sup>117</sup> Although the Court has cautioned that establishing a pattern may be difficult, a plaintiff may nonetheless introduce evidence of a police department’s or state’s historical treatment of other protesters,<sup>118</sup> as well as direct evidence in the form of statements made by the police or contained in their reports regarding enforcement operations.<sup>119</sup>

If a plaintiff can prove a racially discriminatory purpose, a court may subject police use of military grade weapons and equipment in a protest scenario to strict scrutiny.<sup>120</sup> As discussed above, the government would have to show that its means were necessary to achieve a compelling government purpose, which here may be the safety of the public. However, studies note that use of military equipment and tactics by law enforcement incites more violence.<sup>121</sup>

### **c. Equal Protection and Border Patrol**

Latino groups in Arizona won an injunction against the sheriff of Maricopa County, Joe Arpaio, from using a person’s Latino heritage as cause for police stops when no other factors give

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<sup>115</sup> Indeed, the events in Ferguson can be contrasted with the events in Keene, New Hampshire, where police also used military-grade equipment in responding to an actual riot that ensued at a pumpkin festival. See Emanuella Grinberg, *Why Pumpkin Fest Riots are not like Ferguson*, CNN NEWS, Oct. 21, 2014, available at <http://edition.cnn.com/2014/10/21/living/keene-pumpkinfest-riot-ferguson/>

<sup>116</sup> *Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 266 (1977).

<sup>117</sup> *Id.* at 267.

<sup>118</sup> See *id.* at 266; *McCleskey*, 481 U.S. at 293-95.

<sup>119</sup> See Grine & Coward, *supra*.

<sup>120</sup> See *Adarand*, 515 U.S. at 227 (holding that a court must review all Equal Protection and Fifth Amendment Due Process claims based on racial classifications under strict scrutiny).

<sup>121</sup> ACLU Report at 39.

rise to reasonable suspicion of unauthorized immigration status.<sup>122</sup> The district court concluded that the plaintiffs had presented, among other claims, a valid Equal Protection claim because the sheriff had a discriminatory purpose in enforcing the law.<sup>123</sup> While the primary focus of the lawsuit was not the use of military-grade weapons and tactics, similar policies could become the focus of another Equal Protection lawsuit involving Latino communities affected by border patrol operations. Indeed, Arizona has already applied for and received military grade weapons and equipment from federal programs for border patrol purposes.<sup>124</sup>

#### **d. Equal Protection Challenges to Individual Police Action**

Individual police officers who use military-grade weapons to enforce the law and do so with a discriminatory purpose may also be subject to an Equal Protection suit.<sup>125</sup> An officer's purpose, however, is difficult to prove and is subjective.<sup>126</sup> A plaintiff could present evidence such as what the officer said to him or her before and during an arrest, records of the officer's treatment of similar suspects or other records from internal investigations of the officer's conduct, to name a few.<sup>127</sup> Such a suit would only challenge an officer's individual purpose for using military-grade weapons or tactics.

### **VI. Conclusions and Recommendations**

It is clear that the use of military weapons and tactics by local law enforcement agencies presents a variety of constitutional concerns. It is also clear, however, that an individual asserting a legal claim for potential constitutional violations will face a number of barriers and such claims have only a marginal likelihood of success. That said, it is likely that as the number of law enforcement agencies receiving and using military equipment increases, the number of suits alleging constitutional violations will also rise. As such, the recommendations below and in the attached policy brief focus not only on the potential for constitutional violations, but also include policy choices that could minimize the potential for such violations.

#### ***Create Clear and Consistent Standards***

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<sup>122</sup> *Melendres v. Arpaio*, 989 F.Supp.2d 822 (D.Ariz. 2013).

<sup>123</sup> *Id.*

<sup>124</sup> ACLU Report at 13.

<sup>125</sup> *Whren*, 517 U.S. at 813; *Feder*, *supra*.

<sup>126</sup> *Feder*, *supra* at 4-5.

<sup>127</sup> *Grine & Coward*, *supra*.

- States should work to create standards for law enforcement regarding the deployment and training of SWAT teams and other tactical teams. Any such standards should include, among other things:
  - Policies limiting the use of SWAT and other tactical teams in which there is a threat to the lives of civilians or police;
  - Standards and specific criteria<sup>128</sup> that must be met prior to approval of use of SWAT or other tactical teams;
  - Pre-approval by a supervisor or high-ranking official for the use of SWAT or other tactical teams;
  - Written plans setting forth the reasons for the use of SWAT or other tactical team, including a description of the operation prior to deployment; and
  - Policies requiring SWAT teams to include trained crisis negotiators.
- States and/or law enforcement agencies should create standards for application and issuance of no-knock warrants. It may be helpful to set forth various factors that may be considered -- such as violent crime history and corroborating evidence other than, or in addition to, an anonymous source -- and require documentation of these criteria and supervisory approval prior to requesting a no-knock warrant from a judicial officer.
- States should enact laws that would prevent the use in legal proceedings of evidence that was obtained in violation of the traditional rule that police should knock and announce their presence, unless such evidence was properly obtained with a no-knock warrant.
- The federal government should create clear standards to assess requests for new equipment under the 1033 Program (the federal program provisioning military equipment to local police), including requiring specific justification for the equipment requested and limiting the types of material that the law enforcement agencies may acquire based upon the equipment that they already have and/or the needs of their location.
- As part of the 1033 Program, the Department of Defense should require that law enforcement agencies report on the uses of 1033 equipment as well as conduct regular audits and report routinely on current inventory.

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<sup>128</sup> The Committee is still discussing proposed criteria, and more detailed criteria recommendations will be available in the final, forthcoming report.

### ***Improve Training and Emphasize the Peace-Keeping Role of Police***

- Jurisdictions must improve training for law enforcement agencies and emphasize that the use of military equipment and tactics must be limited and deployed in unique circumstances. Training must highlight the peace-keeping role of law enforcement as distinct from the combative role of the military.
- Local law enforcement agencies should engage in more community outreach and community-oriented policing and engage in less “preemptive” policing. For example, officers may want to engage in “know your rights” presentations at community centers or schools either with local activist groups or by themselves. Additionally, training should include a component to help officers identify, confront, and discard biases that affect the way they interact with community members.
- Jurisdictions should supplement equipment training with legal training so that local law enforcement officers are informed with respect to the relevant legal standards accompanying certain types of surveillance. To the extent that officers already receive training regarding warrant requirements, ensure that such training incorporates discussion of major case law and legislation -- including the Electronic Communications Privacy Act -- governing contexts in which requirements for obtaining search warrants might vary.

### ***Create Transparency and Oversight***

- States should enact laws that require law enforcement agencies to report data regarding the use of SWAT. A non-exhaustive list of important content to be captured in these data include when SWAT teams were deployed, where they were deployed, the circumstances of the deployment and the compliance with the applicable deployment standard, what equipment was used, whether any people or animals sustained injury or were killed, and whether any drugs, weapons or other contraband were recovered. These data should be reported on a regular and uniform basis and be publicly accessible.
- States should enact similar reporting requirements for the issuance of no-knock warrants.
- States should enact laws that require law enforcement agencies to report data regarding complaints of excessive force and other constitutional violations. States should collect

information, including figures regarding the settlements and awards paid, as well as litigation costs for police misconduct lawsuits. These data should be publicly available.

- States should ensure that there is an independent agency or civilian review board that monitors SWAT deployments, no-knock warrants and use of other military equipment by law enforcement and that the agency or board has the ability to address complaints from civilians as well as recommend or implement reform. Such bodies should be empowered to evaluate trends and address patterns that emerge, rather than merely review individual cases as they arise.
- Law enforcement agencies receiving federal funds for the purchase of equipment should be required to report the equipment purchased with those funds. These reports should be publicly available.
- Congress should condition the receipt of federal funds for policing and military equipment on complying with uniform reporting and training requirements.

## **The President's Task Force on 21<sup>st</sup> Century Policing Listening Session 1.31.15 – Testimony of DeRay Mckesson**

Thank you for the opportunity to speak today at the Listening Session on Technology and Social Media. And thank you to Co-Chairs Commissioner Ramsey and Professor Robinson, and to the rest of the panel. I must also note that I am proud to see a fellow protestor, Ms. Brittany Packnett, on this panel as her membership highlights an intent to include the voices of those who have brought the issue of police brutality and misconduct to the nation's attention.

I am a protestor. I began protesting in Ferguson, Missouri in August 2014 and to continue to this day. Tweets and Instagram videos were my call-to-action – I was able to bear witness, initially from afar and subsequently on W. Florissant and Canfield Drive, to the aggressive militarization of police on American soil. I, like many others, have been tear gassed repeatedly, have had “non-lethal” weapons pointed at me by officers, have been told that it was illegal to stand still on an American street, and have been pepper sprayed – all for engaging in peaceful protest.

In no uncertain terms, Twitter saved our lives. If it were not for the tweets and vines, it is likely that officials in Missouri would have convinced you, and the world, that we did not exist. Social media allowed us to tell the story of police brutality that we were living and the untruths that we were repeatedly being told by City and State officials as we searched for truth in real-time.

Protest is purposeful confrontation. Protest is purposeful disruption. The protests continue because we have seen, with our own eyes, that police brutality is not a coincidental aspect of American life, but that it is deeply woven into the fabric of American policing and that it falls heavily along the lines of race. We repeatedly see that that unarmed black women, men and children are being killed by the police and that they are not being held accountable for such action.

So, today, I am here to suggest a role that you can play. I am here to advocate for changes related to social media and technology that you, in your role on this Task Force, can recommend to affirm that black lives do, indeed, matter and that honor the memories of the many fallen: Mike Brown, Tamir Rice, VonDerrit Myers, Rekia Boyd, Renisha McBride, Ezell Ford, Dontre Hamilton and many others.

First, it is necessary that you draft and introduce national guidance to be distributed to all police departments and municipalities receiving federal funding that clearly states that citizens have the right to film the police. We know that filming the police will not lead to justice immediately – as the death of Eric Garner so tragically highlights – but we also believe that the presence of video footage documenting cases of police brutality allows conversations about police brutality to take place, a necessary step for creating change. As a consequence, we believe every police officer in America should be required to have dashboard cameras and wear body cameras that are set to record during their entire shift, with clear consequences for non-compliance.

Secondly, there must be repercussions for officers who refuse to show their badges. The police, especially in St. Louis, have continuously shown a disregard for the law, despite the Department of Justice noting that officers are to have visible nameplates. After 176 days, there are still times where many officers do not have nameplates. And there is no consequence. This is another, subtle, provocation on behalf of the police that suggests that they are above the law. And in America, no one is supposed to be above the law.

**The President's Task Force on 21<sup>st</sup> Century Policing**  
**Listening Session 1.31.15 – Testimony of DeRay Mckesson**

Third, it is necessary for the Department of Justice, in conjunction with community organizations and local law enforcement, to develop virtual and in-person training modules whose use is mandatory by all police departments receiving federal funding that focuses on implicit bias, both recognizing bias and accounting for bias, and that has specific sections that address shooter bias in decisions related to non-white persons of interest. Ultimately, we believe that police officers who, despite their best efforts, show significant shooter bias in these trainings should not be deployed to black and brown communities.

Fourth, it is necessary for this Task Force to recommend the inclusion of a question that explicitly asks youth whether the police in their community make them feel safe, or a question akin to this, on the National Youth Risk Behavior Survey that is distributed to most high school and many middle school students each year. This would be an important first-step in collecting national data that can be segmented by race, gender, and a host of other demographic indicators about the perceptions of American policing by youth. Currently, we still do not know which police departments make youth feel safe and which do not. Collecting this data is essential to identifying the policies and practices that can improve police relations with the youth they are responsible for protecting and serving.

And fifth, the tools that we have to communicate with each other, in 2015, are unprecedented and, importantly, rely on the internet. Twitter and other social media tools were pivotal to the protest community in highlighting the American Horror Story that is police brutality in black communities. To this end, it is important that this Task Force firmly make recommendations that affirm net neutrality. This may seem to be an odd request, but our ability to communicate with each other can be willfully stifled by companies and organizations that do not have an interest in social justice or that actively work against issues facing black America and communities of color in general. The current freedom of the internet allows us to use this public good for the common good.

Ending police brutality will take innovative solutions. Black people have been systemically oppressed for centuries and the response to this oppression by the system itself has either been willful ignorance or piecemeal programs. Now, we have an opportunity to engage in deep systemic change. The recommendations laid forth above represent clear steps in the direction of the change we seek for ourselves and future generations.

Today is the 176<sup>th</sup> day of protest. We protest not to affirm the worth of our lives, but to expose the depth of the evil that we face. I am but one of many protestors who are committed to confronting and disrupting until there is systemic change. And I am hopeful that you will use your platform to assist in bringing about much needed change that recognizes the evil that we have faced, and continue to face, in blackness.

Thank you.

# *The President's Task Force on 21<sup>st</sup> Century Policing*

*Kenneth C. Miller, Chief of Police*

*Greenville, South Carolina*

*January 31<sup>st</sup>, 2014*

*Cincinnati, Ohio*

Policing a free society is complex, as it requires of the police and the public equal measures of restraint and submission to law and lawful authority. When police abuse power and discretion or when members of the public fail to submit to it, conflict thrives. But my experience tells me that the underlying cause of many of these problems is in the way we interact, and by that I mean the lack of understanding, compassion and respect that is often shown to one another. We have an obligation to manage our side of that problem more effectively than we do.

Police agencies are wildly inconsistent in how they collect and analyze and learn from complaint, use of force and early intervention data. Often, there are insufficient data or staff resources to produce a learning environment where analyses actually inform policies, practices and training. Since we don't fully trust our systems to work for us, body cameras have become more popular, serving as "independent" witnesses.

In Greensboro, we implemented police body cameras across more than 500 field officers in 2013. Our goal was to improve interactions and address complaints. We worked through a litany of privacy, legal, retention, training and financial concerns to ensure we met community expectations. Also in 2013, the Police Executive Research Forum (PERF) held a summit in Washington, DC, to discuss these issues and produced an incredibly insightful publication to guide decision making with body camera technology. We believe these systems add value by:

1. Elevating the quality of behavior on both sides of the camera; and,
2. Providing greater clarity to settle disputed facts.

But cameras and early intervention systems alone cannot produce the fair and impartial policing or the relationship development that this Task Force seeks to promote. While these systems can provide evidence of compliance with policies and training that promote fair and impartial policing, they cannot guarantee it. Through its funding programs, the federal government is uniquely positioned to influence systemic changes to produce this kind of environment. And so my recommendations are focused in that way.

**Recommendation 1.** *Avoid mandatory body-worn camera laws.* The many policy, legal, training and resource concerns vary by jurisdiction and must be locally resolved. Poor

implementation will create more problems than are solved. The marketplace will drive development and use, and growth can be encouraged through funding support and political process.

**Recommendation 2.** *Require grant funded agencies to adopt policies, practices and training that produce fair and impartial policing.*

Policies and practices include:

- a. Prohibiting the use of race, ethnicity and other class factors as general indicators of criminal activity and subsequent police action;
- b. Requiring open complaint processes and adoption of all biased-policing complaints for investigation;
- c. Track and review all stops and searches, and prohibit consent searches lacking reasonable suspicion;
- d. Require in-car or body worn video recordings of any encounter of an investigative nature.
- e. Incorporate review of video, stops and searches into the functions of an early intervention system.

Promote training on:

- f. Fair and impartial policing
- g. Conflict resolution
- h. Legitimacy and procedural justice

**Recommendation 3.** *Require state justice academies to integrate these three training programs into recruit and in-service programs.*

**Recommendation 4.** *Conduct longitudinal studies to determine body worn camera impact upon frequency of force and complaints.* Greensboro Police saw significant reductions early in its program, but complaints have risen in 2014, although it remains at lower levels than in the years prior to body worn camera implementation.

**Recommendation 5.** *Prior to implementing body worn cameras, police agencies must develop a comprehensive policy that addresses the variety of legal, retention and release, and privacy concerns.* Many of these concerns require significant dialogue among police, policymakers, educators and community members at the local level. Failure to comprehensively address these issues in advance of training and implementation create significant problems for the agency and can compromise public confidence in it.

One approach cannot resolve the tensions we are experiencing today around race, class and policing. But supporting comprehensive training and expectations with adequate supervision and technology can better control unacceptable behavior from occurring – on either side of the lens.



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Good morning, I am Chief Kenton W. Rainey of the San Francisco Bay Area Rapid Transit District Police Department. It is both a pleasure and honor for me to appear before the President's Task Force on 21<sup>st</sup> Century Policing to provide recommendations on "Body Camera Implementation." BART PD started its research into "body cameras" in September 2011, and formal implementation began in June 2012.

A little background, BART is the fifth largest transportation system in the country. The system has 104 miles of track-way that travels through four counties and 26 cities, while transporting approximately 400,000 commuters every weekday. The Police Department is comprised of approximately 300 personnel, 200 of them are sworn law enforcement officers.<sup>1</sup>

My tenure as Chief began pursuant to a tragedy that garnered international attention. During the early morning hours on January 1, 2009, BART PD personnel responded to a disturbance call at our "Fruitvale Station." Police personnel detained several individuals who were reportedly involved in that disturbance. While attempting to take one of the individuals into custody, former BART PD Officer, "Johannes Mehserle" drew his service weapon and fatally shot "Oscar Grant III" in the back. This incident was captured on BART CCTV security cameras and it was also videotaped by several witnesses via their cell phones. The incident was depicted in a major motion picture movie titled "Fruitvale Station."<sup>2</sup>

This incident led to the arrest, prosecution, and conviction of "Mehserle" on involuntary manslaughter charges. Before, during and after the trial, there were numerous street protests, acts of civil disobedience and disruptions of public meetings. All of which led the National

Organization of Black Law Enforcement Executives (NOBLE) to conduct a “top to bottom” management performance audit of BART PD and its policies and practices. NOBLE made 25 major recommendations for BART PD to undertake in order to re-establish police accountability and regain the public’s trust.<sup>3</sup> In my opinion, the recommendations contained in this management audit can serve as blueprint for this Task Force and any law enforcement agency trying to establish and maintain the public’s trust. I was hired by the BART District in June of 2010, with a specific mandate to implement the NOBLE audit recommendations.

Determined not to let this report gather dust on a shelf, my team and I used the report as a guide and systematically began to implement the recommendations to transform the organization into a 21<sup>st</sup> century professional police agency. However, a series of incidents occurred that challenged our efforts. On June 25, 2010, a BART Officer used his Taser to stun “Jason Johnson” an unarmed fare evasion suspect who was resisting arrest in downtown Berkeley, CA, a city with a rich history of civil discourse.<sup>4</sup> On July 17, 2010, BART and Oakland police officers fatally shot “Fred Collins” outside of the Fruitvale Station after he charged at them while holding knives in each hand.<sup>5</sup> On July 3, 2011, a BART police officer fatally shot “Charles Hill” on our San Francisco Civic Center Station platform as he was throwing a knife at the officer.<sup>6</sup>

The last incident was captured on a BART CCTV security camera, which would prove to exonerate the officer, but the San Francisco Bay Area still was subjected to numerous days of street protests and acts of civil disobedience. Now, after being on the job for approximately one year it was very apparent that the “honeymoon” was over and implementing the NOBLE recommendations was not going to be enough to regain the community’s trust. During this period, I also made the following key observations:

1. The three suspects in the previously mentioned incidents all had a history of mental illness and my officers seemed to respond to numerous calls for service involving people who apparently were homeless and/or suffering from mentally illness.
2. Increasingly, citizens regularly would stop and record police actions on their cell phones and then upload the recording onto social media sites.
3. While BART had an adequate CCTV security camera system, it was not capable of capturing sound.
4. An increasing number of my officers were carrying their own video recorders and taping their enforcement encounters to protect themselves against “false complaints.”
5. After the “Oscar Grant tragedy”, there seemed to be an expectation by the public that video evidence was needed to exonerate our personnel whenever there was a question regarding their actions.

At this point we made the decision that the department needed to adopt and implement its own formal “body camera” program for all of our uniformed frontline personnel. Based on my experience with “body cameras”, the following are key recommendations I would advise any agency leaders to consider before undertaking and implementing this type of program:

**Recommendation 1** Review the following document which was published by the COPS Office and the Police Executive Research Forum (PERF), “Implementing a Body-Worn Camera Program, Recommendations and Lessons Learned.”<sup>7</sup> This is an excellent guide for any department considering implementing a “body camera” program. I participated in the creation of this document and many of my recommendations are outlined in the document.

**Recommendation 2** Develop a policy that governs all recording devices, whether you do or do not provide “body camera” equipment for your personnel. “You should mandate all enforcement contacts be recorded and handled as evidence, and booked at the end of each work shift.”

**Recommendation 3** When exploring whether you want to implement a body camera program, make sure you research how much it costs to implement and maintain a program and then begin to identify possible funding sources. Generally cameras are affordable; however, the storage of the video footages can be cost prohibitive.

**Recommendation 4** Include your Information & Technology (IT) and Finance Departments in every discussion with all vendors. Based on your IT recommendations, you should establish clear guidelines, expectations and deliverables with any vendor before you beta test products. If you make the decision to implement a “body camera” program, use officers who are self-motivated credible and informal leaders with their peers to test the various products. Only test those products that meet or exceed your expectations, but more importantly only test what you can afford to maintain.

**Recommendation 5** Once you select a product, roll the program out incrementally in phases. Review and evaluate product performance, seek constructive feedback and criticism after each phase. Respond to and address legitimate concerns immediately and celebrate and share “success stories” with your personnel. Incorporate proper “body camera” use into all of your in house defensive tactics, firearms and less lethal training regiments. Use videos from your “body camera” program to validate and determine how well your personnel are adhering to internal accountability systems, i.e. policies, training, and discipline.

**Recommendation 6** Once you have fully implemented a “body camera” program make sure you regularly monitor and track your “enforcement output data” to determine if the program has

had a negative impact on officer performance and productivity. More importantly you need to continuously monitor and track your “citizen complaints and incidents of use of force data” to determine if your “body camera” program is producing the desired conflict resolution outcomes you are seeking. Below are examples of data that should be continuously monitored and tracked.

### BART PD Enforcement Contact Data

	2008	2009	2010	2011	2012	2013	2014
Felony Arrest	356	222	247	350	458	543	519
Misdemeanor Arrest	1094	607	765	957	835	1022	1064
Cite & Release	7560	3464	3942	5874	5799	6337	6728
Field Interview	23	0	2	97	3070	3063	4898

### BART PD Citizen Complaint & Use of Force Data

	2008	2009	2010	2011	2012	2013	2014
Total Complaints	13	48	66	74	104	132	143
Discourtesy Complaints	3	26	35	43	41	30	36
<b>Sustained Discourtesy Complaints</b>	<b>0</b>	<b>2</b>	<b>4</b>	<b>4</b>	<b>0</b>	<b>4</b>	<b>0</b>
Arrest/Detention Complaints	2	4	7	6	18	26	16
<b>Sustained Arrest/Detention Complaints</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>
Bias-based Policing Complaints	0	3	7	6	19	14	16
<b>Sustained Bias-based Policing Complaints</b>	<b>0</b>						
Use of Force Incidents	48	69	148	174	218	242	269
Force Complaints	9	15	16	11	15	26	25
<b>Sustained Force Complaints</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>

How the police are perceived by minorities is one of the most serious problems confronting our democracy as a nation today. Establishing and maintaining the public’s trust is the cornerstone for implementing the community policing philosophy. One of the first “bricks” that has to be laid for the community policing foundation is transparency. The use of “body cameras” goes a long way in ensuing transparency. More importantly, “body cameras” serve as a visual feedback loop that your accountability systems are adhering to 21<sup>st</sup> century constitutional policing principles.

## References

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1. Bart.gov. (n.d.). Retrieved January 26, 2015, from <http://www.bart.gov/about/history/facts>
  2. Scott, A. (2013, January 1). "A New Year, and Last Day Alive 'Fruitvale Station' Is Based on the Story of Oscar Brant III.>". *New York Times*. Retrieved January 26, 2015.
  3. *Final Report. BART Management Audit.* (2010).
  4. Woodall, A. (2010, June 25). BART under fire for Taser incident. Retrieved January 26, 2015, from [http://www.insidebayarea.com/news/ci\\_15379655](http://www.insidebayarea.com/news/ci_15379655)
  5. Martinez-Cabera, A. (2010, July 19). "Man Killed by BART, Oakland Police Identified." Retrieved from <http://www.sfgate.com/bayarea/article/man-killed-by-bart-oakland-police-identified-3258620.php>
  6. Wilkey, R. (2011, July 21). BART Releases Charles Hill Civic Center Shooting Video (VIDEO). Retrieved January 26, 2015, from [http://www.huffingtonpost.com/2011/07/21/bart-releases-civic-cente\\_n\\_906307.html](http://www.huffingtonpost.com/2011/07/21/bart-releases-civic-cente_n_906307.html)
  7. Miller, Linsey, Jessica Toliver, and Police Executive Research Forum. *Implementing a Body-Worn Camera Program/ Recommendations and Lessons Learned.*(2014).

# Recommendations to the President’s Task Force on 21st Century Policing

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This testimony makes recommendations in the areas of open data, social media, technology and technology policy.

## Social Media

Recommendation 1: Law Enforcement should selectively embrace Social Media

Most law enforcement agencies – sheriffs’ and police departments, state police and patrol agencies, and federal entities – should actively employ multiple social media channels appropriate to their community. Such channels could be websites, Twitter, Facebook, NextDoor, Instagram, blogs, or others. But each agency will need to make a decision based upon its resources and community. A blog, such as SPDBlotter<sup>1</sup> employed by the Seattle Police Department, is a specific portion of a more general website used to deliver rapid updates from the scene of crimes or major incidents. A blog can quickly provide reliable, detailed information to satisfy the needs of both traditional news outlets like newspapers, radio, and television, while also meeting the needs of community newspapers, community blogs, hyperlocal blogs, Twitter feeds and Facebook posts.

Important principles include:

- Keep the channel current. Regularly refresh the content to maintain and engage the audience.
- Be responsive and quick. Post content rapidly during incidents in order to dispel rumors and maintain the audience, as was done during the Boston marathon bombing<sup>2</sup> and the Calgary floods of 2013<sup>3</sup>.

Recommendation 2: Use Social Media for Engagement, not just Public Information

In the past, law enforcement has used social media primarily to “push” information to the news media and public. But, some forms of social media can also be used to “engage” the public, tweeting

back-and-forth, for example, or allowing comments on blogs or Facebook pages. Such engagement can help build a “following” for the agency, help improve the public image of the agency through followers and re-posting of news, and help to rapidly dispel rumors and misinformation.

Such engagement has pitfalls. For example, the New York Police Department’s ill-fated #myNYPD Twitter campaign<sup>4</sup> was poorly conceived. Strong policies about commenting on blogs or Facebook must be in place. Such policies would prohibit comments with profanity, political campaigning, comments disparaging others because of their race or gender, and similar restrictions.<sup>5</sup>

The Internet has given rise to social media, but also to a whole new set of news media sources. Many of those sources are community blogs or online news sites, which have, to some extent, replaced the community newspaper. One excellent example is the West Seattle Blog.<sup>6</sup> Such blogs often crowdsource information, either through comments on news articles (blog posts), via electronic mail, Twitter feeds, photo-sharing sites, or similar streams. Citizens contribute tips, comments, and photos. Generally the blog editors moderate comments and input to eliminate profane and abusive posts. Sheriffs’ and police departments should share as much information as possible (recognizing legal constraints and privacy concerns) with media at the scene, on blogs, and via social media. Rapid sharing disseminates important information to the public, and energizes the public to provide information via the local blog or directly to the law enforcement agency to aid in investigation of the incident.

## Open Data

Recommendation 3: Be open

Law enforcement agencies should share as much information as possible (recognizing legal constraints and privacy concerns) with the public via open data portals and similar sites. The Seattle Police Department (SPD), for example, posts detailed crime incident data, as well as, 911 call (Computer Aided Dispatch or CAD) records to [data.seattle.gov](http://data.seattle.gov). In fact, SPD posts CAD incident data for a call within a few minutes of that call taking place. The Task Force should encourage agencies to be more open in publishing such data.

Many smaller and less-well-funded law enforcement agencies do not have access to expensive open data portals such as [data.gov](http://data.gov) for posting their 911 calls and crime reports. State governments should consider funding statewide open data portals to consolidate and provide a single repository for all such open data from law enforcement agencies statewide. One obstacle to such statewide portals is the lack of standardization of data outputs from various computer-aided dispatch (CAD) and records management systems (RMS). The Task Force should encourage further adoption by law enforcement agencies and software vendors of standards such as the National Information Exchange Model.<sup>7</sup>

## Technologies including Body Worn Video

Recommendation 4: Give every law enforcement officer a smart phone and tablet computer

The first widely accepted smartphones with Internet access appeared in 2007, and the first widely accepted tablet computers in 2010. Across all sectors of the economy, businesses have adopted these tools for their employees and especially for their field forces. It is a travesty that many high school students, most package delivery drivers, and many others have these tools; but, most law enforcement professionals do not, unless the individual officer purchases the equipment personally. The applications for these devices are endless, whether it be recording witness statements (audio and visual), field report writing, criminal history searches, facial recognition and much more. Note: There are important exceptions to this lack of widespread deployment, such as San Francisco police who have embraced and deployed smart phone technology to their patrol officers, with positive results.<sup>8</sup>

Recommendation 5: Develop strategies which consider sensors, Next Generation 911 and the Internet of Things (IoT)

Approximately 25 billion sensors, machines and objects have been connected to the Internet<sup>9</sup>. Increasingly, sensors are employed in support of public safety. More than 60% of adults in the United States now have cameras, video cameras and recording devices with their smart phones. Automated license plate readers (ALPR), video surveillance cameras, body-worn and dashboard cameras are few such devices. But gunshot audio sensors, smartwatches, GPS in smart phones<sup>10</sup> and computers, sensors monitoring the metabolism of cops and firefighters, connected vehicles<sup>11</sup> (and, ultimately, automated driverless vehicles), smart grid to control electrical and water systems, and a whole variety of other sensors will be deployed in the next few years, often by private companies. These show promise to improve public safety by, for example, collecting detailed information to prosecute, prevent and ultimately eliminate driving while intoxicated. The ubiquitous deployment of sensors and video – mostly by private individuals and companies, means the ability to collect a wealth of information to quickly solve crimes as happened in the Boston Marathon bombing<sup>12</sup>. The Task Force should recommend further development of strategies to properly harness such technologies to improve public safety, including more rapid deployment of Next Generation 911<sup>13</sup> to obtain video, images and other information from the public to support law enforcement.

Recommendation 6: Implement the First Responder Network as soon as possible

The First Responder Network Authority<sup>14</sup> (FirstNet) is an independent authority in the federal Department of Commerce, created in 2012, funded with \$7 billion from the sale of telecommunications spectrum and charged to develop a nationwide public safety wireless broadband LTE network using commercial technologies. First responders have no priority on existing commercial wireless networks built for the public, however they will have priority on FirstNet. FirstNet will be nationwide, including remote and rural areas, so that it will be able to support first responder devices wherever disasters and incidents occur. FirstNet is the most ambitious, exciting, and potentially game-changing public safety project, for the United States, in a generation.

FirstNet is the enabling network which will allow deployment and use of most of the other mobile technologies described in these recommendations, e.g. transmission of body-worn video directly to supervisors and commanders. But FirstNet faces many hurdles. It is subject to very restrictive federal personnel rules, restricting its ability to hire skilled network engineers and law enforcement

professionals with incident command experience. FirstNet is also subject to the Federal Acquisition Regulation (FAR) which means network design, procurement and construction will take many years. FirstNet needs the ability to react like an entrepreneurial startup company, because technology changes rapidly. Indeed new technology and apps applicable to law enforcement appear daily. The federal government should grant FirstNet certain exceptions to these personnel rules and the FAR so it can rapidly move to design and implement this network, harnessing the latest technology, thereby supporting city, county, state and federal law enforcement officers.

Recommendation 7: Develop technologies to semi-automatically redact video

Dashboard and body-worn video cameras hold great promise for law enforcement, as President Obama recognized when he directed \$75 million of funding for these systems in December, 2014.<sup>15</sup> But, as I've written elsewhere<sup>16</sup>, there are many technological obstacles to realizing this vision. One of the most significant is the need to redact the faces and audio of witnesses, victims and others (for example, juveniles) before releasing video to the public. Private industry is researching and developing automated redaction, and the Seattle Police Department held a hackathon on December 19, 2014<sup>17</sup> to gain additional insight into the redaction challenge. As of today, such technology remains mostly in the realm of science fiction, so redaction of video prior to public disclosure is a burdensome, time-consuming, manual process<sup>18</sup>.

Recommendation 8: Fund not just body-worn video systems, but also costs of disclosure

A major barrier to use of body-worn video is the time-consuming need to redact it before public disclosure (see recommendation 9 above). States like Florida and Washington have a very liberal public disclosure laws<sup>19</sup>, forcing public disclosure of almost all such video. Indeed, the Washington State Supreme Court has ruled<sup>20</sup> that all video must be released unless part of an active investigation. The public disclosure requirement is exacerbated by requests for large amounts of such video.<sup>21</sup> Many budget-strapped agencies, faced with funding civilian positions to redact the video rather than hiring on-the-street officers, elect not to deploy this technology.<sup>22</sup> Public disclosure of video is vital to improving policing. Any recommendations by the Task Force relating to body-worn and dashboard video must take into account the public disclosure laws of all states, and also recommend adequate funding to support such disclosure.

## Technology Policy

Recommendation 9: Develop and implement privacy policies which consider new technologies

Ever-increasing use of social media, sensors, GPS and other location-sensing technology, the Internet of Things (IoT), widespread use of both private and public video cameras and other technologies still under development will end privacy as we've known it in the United States. These technologies will be deployed by private companies no matter how they are used by cities, counties, states and the federal government. Indeed, many private individuals willingly give up personal data by tagging faces or posting personal details on social media. Some cities, such as Seattle<sup>23</sup>, have recognized this issue and commissioned a privacy committee to address it. The task force should recommend further

work to develop model policies for all levels of government to appropriately protect the privacy of everyone – the public and police officers - given the vast quantities of personal information being collected and used.

#### Recommendation 10: Embrace Agile Project Management Methodology

Most police information technology projects are managed using a traditional “waterfall” project management approach. “Waterfall” projects start with detailed requirements, including hundreds or thousands of technical specifications of what needs to be built. Those specifications become complex requests for proposals (RFPs) that take three-to-five years to finish. Commercial software development now uses a radically different approach – “agile”. Agile methodology advocates values such as, “individuals and interactions over processes and tools”, “customer collaboration over contract negotiation” and “responding to change over following a plan”<sup>24</sup>. In fact, such values are almost exactly how we expect officers to act on the street when confronted by incidents and strange situations. We expect them to use their training, experience, and judgment to rapidly assess and respond to each situation.

In an age of ever improving apps, smart phones, video cameras, health monitoring wearables, and connected appliances in the hands of every resident, three-to-five year technology projects often result in brand new policing tools that are already dreadfully out-of-date. Just ask any beat cop about how well the department’s computer aided dispatch or field reporting software works. The Task Force should consider how “agile” can be applied to government and law enforcement’s embracing of new tools, technologies and policies in public safety. Max Romanik and Christopher Webster recently published a series of articles describing how the public safety community could embrace the agile philosophy to meet these challenges.<sup>25</sup>

#### Recommendation 11: Consider and engage the Street Cop

Most road deputies, state patrol troopers, and police patrol officers are dedicated, honest professionals doing a difficult job under stressful circumstances. They make decisions in seconds which others can later review at leisure in the media, courtroom trials and years of considered analysis. With social media and technology, the voice of the street cop can be heard. Tweets-by-beat<sup>26</sup> is a unique Seattle police effort to automatically tweet computer-aided dispatches of officers. Tweet-along<sup>27</sup> allows “virtual” ride-alongs as officers tweet about their daily duties. A Seattle police officer, under the handle GoHawks206, conducted an “ask me anything” on Reddit.<sup>28</sup> While technically the officer violated departmental policy, the department actually embraced and encouraged it as a shift in police culture. Some public disclosure advocates actively review police video to find officers performing heroically.<sup>29</sup>

Often, using social media along with technology tools such as smart phones and tablet computers allows street cops to “tell their story” about their daily work. This requires supervisors, commanders, and chiefs who are willing to trust some of their officers to tweet, to blog, and to reveal how they actually work to citizens. As the Task Force considers its recommendations, it, too, should actually engage and consider the voices of these officers doing the work of protecting the public every day.

## Endnotes

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- <sup>1</sup> <http://spdblotter.seattle.gov/>
- <sup>2</sup> Boston Police Department and Twitter: <http://www.businessweek.com/articles/2013-04-26/how-boston-police-won-the-twitter-wars-during-bomber-hunt>
- <sup>3</sup> Social media use by City of Calgary: <http://www.calgaryherald.com/technology/Social+media+tools+proved+vital+2013+floods/9517574/story.html>
- <sup>4</sup> [http://www.huffingtonpost.com/2014/04/22/mynypd-nypd-twitter\\_n\\_5193523.html](http://www.huffingtonpost.com/2014/04/22/mynypd-nypd-twitter_n_5193523.html)
- <sup>5</sup> See, for example, the City of Seattle's policy here: <http://www.seattle.gov/pan/SocialMediaPolicy.htm>
- <sup>6</sup> West Seattle Blog: <http://westseattleblog.com> which has won numerous regional and national awards – see <http://westseattleblog.com/awards/>
- <sup>7</sup> NIEM: <https://www.niem.gov/aboutniem/Pages/history.aspx>
- <sup>8</sup> San Francisco use of smart phone technology: <http://www.govtech.com/public-safety/Californias-JusticeMobile-Redefines-Police-Work-in-the-Field.html>
- <sup>9</sup> IoT (Internet of Things) statistics from the Federal Trade Commission: <http://www.ftc.gov/news-events/blogs/business-blog/2015/01/internet-things-ftc-staff-report-new-publication-businesses>
- <sup>10</sup> GPS in smart phone – “find my iPhone” is altering law enforcement, e.g. [http://seattletimes.com/html/localnews/2024979484\\_westneat09.xml.html](http://seattletimes.com/html/localnews/2024979484_westneat09.xml.html)
- <sup>11</sup> More about connected vehicles here: [http://www.its.dot.gov/connected\\_vehicle/connected\\_vehicle\\_tech.htm](http://www.its.dot.gov/connected_vehicle/connected_vehicle_tech.htm)
- <sup>12</sup> Boston marathon bombing use of video to identify suspects: <http://boston.cbslocal.com/2014/03/21/60-minutes-fbi-scanned-13000-videos-120000-photos-in-boston-marathon-bombings-probe/>
- <sup>13</sup> Next Generation 911: <http://www.911.gov/911-issues/standards.html>
- <sup>14</sup> FirstNet: [www.firstnet.gov](http://www.firstnet.gov)
- <sup>15</sup> President Obama funding announcement for body-worn video: <http://thehill.com/homenews/administration/225583-obama-to-provide-funding-for-50000-police-body-cameras>
- <sup>16</sup> 10 Barriers to Obama's Body-worn Video Plan, *Crosscut*, December 9, 2014: <http://crosscut.com/2014/12/09/technology/123137/10-barriers-obamas-police-body-cam-plan/>
- <sup>17</sup> Inside the Seattle Police Hackathon, *Geekwire*, December 20, 2014: <http://www.geekwire.com/2014/seattle-police-hackathon-substantial-first-step/>
- <sup>18</sup> An example of redaction technology which might be further developed is that used by Google to blur faces in its street view: <http://www.cnet.com/news/google-begins-blurring-faces-in-street-view/>
- <sup>19</sup> Washington public records act: <http://apps.leg.wa.gov/rcw/default.aspx?cite=42.56>
- <sup>20</sup> Washington State Supreme Court Ruling Fisher vs. City of Seattle: <http://caselaw.findlaw.com/wa-supreme-court/1669869.html>
- <sup>21</sup> Massive Public Disclosure Requests cause Police to Hit Pause on Body Cam Programs, *Crosscut*, November 10, 2014: <http://crosscut.com/2014/11/10/law-justice/122707/body-cams-washington-seattle-privacy-disclosure/>
- <sup>22</sup> Influx of records requests may force police to drop body cams, KOMO-TV, November 10, 2014: <http://www.komonews.com/news/local/Police-Body-Cameras-282218401.html>
- <sup>23</sup> Seattle Privacy Committee: <http://www.seattle.gov/information-technology/initiatives/privacy-initiative/privacy-advisory-committee>
- <sup>24</sup> The Agile Manifesto: <http://agilemanifesto.org/>
- <sup>25</sup> Embracing agile development: <https://www.emergency-management.expert/agile-development-for-public-safety-teams/>
- <sup>26</sup> Seattle Police implementation of tweets-by-beat: <http://www.seattle.gov/police/tweets/>
- <sup>27</sup> Tweet-along – see example in Las Vegas here: <http://www.lvmpd.com/News/PressReleases/tabid/288/EntryId/1922/LVMPD-to-Host-Tweet-Along-with-K-9.aspx>
- <sup>28</sup> Seattle Police Reddit: <http://socialnewsdaily.com/16027/seattle-police-reddit-ama-against-the-rules-but-department-approves/>
- <sup>29</sup> See, for example, Tim Clemans, a civilian in Seattle who found video of a Tukwila, Washington, police officer performing CPR in the rain: [http://www.liveleak.com/view?i=c40\\_1416141382](http://www.liveleak.com/view?i=c40_1416141382)

**Oral Statement for the Presidential Task Force on 21st Century Policing**  
**Prepared by Steve Spiker**  
**Delivered on January 31, 2015**

Dear members of the task force and other community leaders,

I'm speaking today on behalf of Urban Strategies Council, a 28 year old social justice organization in Oakland, California where I have had the privilege of being the director of research and technology for almost eight and a half years. I am also here on behalf of OpenOakland, a civic innovation organization that I co-founded with Eddie Tejada.

My work with the council has provided me with an opportunity to see how a lack of transparency in local government affects data-driven decision making, government technology, and community engagement. I've had the chance to work with many local agencies and community based organizations to help them unearth their valuable data, to analyse it and put it in context and then to help communicate the story and results of those data.

Traditionally the role of government has been perceived as a collector of data for compliance and reporting purposes, yet this is no longer sufficient in our view of 21st Century government. Government now needs to be pro-active across all agencies, especially those traditionally very closed and inaccessible. For many years we have been unearthing public data for research purposes and publishing these data openly for all to access- from data on local probationer populations, to crime reports and foreclosure filings. When we obtained both open and private data and published a report on the investor acquisitions of foreclosed homes, our work led to the creation of new laws to protect tenants and monitor housing purchases. When public data is put in the hands of communities, powerful things can happen.

We led an effort to crowd source the legislation to make open data the law in Oakland and now we have local agencies actively making data available to the public free of charge or restriction. This has led to breakthrough innovations such as OpenBudgetOakland.org which when shown to our city council led to disbelief- never before had decision makers seen their own budget in such clear context and the impact was powerful. Residents of our city were able to understand a complicated 16,000 line budget for the very first time- something made possible by opening data and by engaging the community in a respectful collaboration. Hackers, city staff and advocates working together.

Another local example of what happens when government opens up valuable data and collaborates include our earthquake safety app (<http://softstory.openoakland.org>) that helps inform low income renters if they are living in a building susceptible to collapse in the next big quake. This app was built by the community as open source and is now being deployed in a nearby city.

You'll notice I've not talked about great policing collaboration examples. For good reason. Despite generating a near real time flow of crime reports, our local police departments and sheriffs have not been eager to jump into the world of open data, yet. Given the lack of trust in the Oakland Police Department, the need for real community policing and a dearth of accessible information about policing practices and incidents, Oakland is like most other US law enforcement agencies in its need to embrace open data, to develop respectful collaborations and engagement that leads to innovation.

Given the way communities of color are impacted by crime and violence, and the number of officer involved shootings and assaults on officers, there is a very real opportunity for data to be leveraged for their benefit. Right now there are activist groups building databases of all officer involved incidents and homicides, these are duplicated efforts costing hundreds of hours of community time from projects such as Oakland's Shine in Peace to <http://killedbypolice.net/> and <http://www.fatalencounters.org/>. These projects should be taken as a leading indicator of a huge and growing demand for better transparency in our law enforcement agencies- citizens are clamouring for data to inform decision making, policy reform and civic action. When communities across the country need to collect news reports of officer involved shootings and homicides, we're missing something. When stop and frisk data are hidden from public view and not available for community research and analysis, we're missing something. When arrest information only sees sunlight in the form of aggregate yearly reports, we're missing something. That something will be realized when local law enforcement adopts a policy of open by default and begins publishing (with some obvious legal limitations) record level data of all crime reports, arrests, uses of force and weapon discharges along with stop and frisk incident data.

As individuals we do not trust that which we cannot see. Publishing data alone will not lead to better insights and operations, it is not a silver bullet to restoring community trust in police departments. However, in publishing these data on an ongoing basis, we make possible new, productive collaborations, new opportunities to engage with somewhat objective truths to work from and we allow for innovations that we could not predict. My recommendation to this task force: make open by default the new norm for our police forces, support the open publishing of these data, encourage standard data formats and support these agencies taking a leading role to learn together and to work towards common goals. Toward a future where transparency is no longer a laughable concept when it comes to law enforcement, where communities trust the information coming out of police databases and where residents can see and understand patterns and problems for themselves. Then we can have informed debates and start to remake policing in the USA in ways we agree on.



871 Regents Square, National Harbor, MD 20745

## Introduction

I'm honored and pleased to be here today, but not just because social media use by law enforcement is the sole focus of LAWS Communications. It's what we do, day in and day out. But the biggest reason I'm happy to be here is because I firmly believe that none of us would be here, if it weren't for social media.

Controversial events like police use of force incidents and officer-involved shootings were something that we didn't necessarily hear about in the past, beyond the local area in which they occurred, in most cases. And, especially the very good work done by police in their communities went largely unnoticed beyond the neighborhood or town it happened within. It's because of the existence of social media, and the somewhat sophisticated use of it by citizens, activists and other observers that the incidents in Ferguson<sup>1</sup>, New York City, Cleveland<sup>2</sup> and New Jersey<sup>3, 4</sup> are known so widely.

- Accountability / Transparency for Law enforcement and all of government

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<sup>1</sup> Grinburg, Emanuella. *What #Ferguson stands for besides Michael Brown and Darren Wilson.*

<sup>2</sup> Hanna, Jason. *Video: Boy with air gun was shot 2 seconds after Cleveland police arrived.*

November 27, 2014. <http://www.cnn.com/2014/11/26/justice/cleveland-police-shooting/>

<sup>3</sup> Stamm, Dan and David Chang, *Police Officers in South Jersey Shoot, Kill Man During Traffic Stop.*

December 31, 2014. <http://www.nbcphiladelphia.com/news/local/Person-Struck-During-Police-Involved-Shooting-in-Bridgeton-New-Jersey-287176751.html>

<sup>4</sup> Carlin, Sean and Geoff Mulville. *Video of New Jersey Man Shot by Police Raises Questions.* January 22, 2015. <http://abcnews.go.com/US/wireStory/video-jersey-man-shot-police-raises-questions-28396396>



- Open-source/open-date technology is holding all of government more accountable<sup>5</sup>
- The people have a larger voice – social media makes everything bigger
- Social media is the latest evolution in communication technology
- 24 hour news cycle<sup>6</sup>
- Only if we acknowledge the power of Social Media, and therefore that we are here because of it, will we truly understand the importance of its role in policing.
  - For community engagement / outreach / education
  - For reputation management
  - To prevent and solve crime
- The culture of social media is completely counter to the culture of policing.
  - Policing is hierarchical, social media is flat
  - Policing is paramilitary, with social media everyone at all levels has a voice and it's just as big as those at the top
- The police profession, all branches of government for that matter, stands to gain more from proactive and strategic use of social media than a business because when it comes to “marketing” and “public relations” police agencies aren't accustomed to operating in those worlds. So the gap is bigger to begin with than for large corporations.
  - The groups of great concern to policing and homeland security have become very effective
  - Terrorist recruitment
  - Anti-policing groups

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<sup>5</sup> Maasen, Paul. *Open Source and Open Government – the Challenges Ahead*. November 6, 2014. <http://www.opengovpartnership.org/blog/paul---maassen/2014/11/06/open---source---and---open---government---challenges---ahead>

<sup>6</sup> Poniewozik, James. *Don't Blame Social Media for Ferguson's Troubles*. November 25, 2014. <http://time.com/3604700/ferguson---riot---mcculloch---social---media/>



- Sovereign citizens

## **Community Digital Engagement**

- Community Engagement
  - Engaging with the 88%<sup>7</sup>
  - Cast a wide net or cast a small net to demographic sub---groups
  - Communicate public safety information
  - Improve on reputation / image
- Events Management
  - Mass demonstrations
  - Active shooter
  - Missing person
- Investigations

## **Social Media Integration into the police agency takes leadership**

- Lead, follow or get out of the way
  - Accept social media
  - Let the people who know what they're doing, do it
  - Take it seriously
- Influence of police culture
  - Social media came on seemingly fast and surprised many, not just police leaders.
    - Predicted by Marshall McLuhan in 1960s
    - Ted Nelson, 1974

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<sup>7</sup> *Preparing Police Services for the Future*. <http://www.accenture.com/us---en/Pages/insight---police---services---future---infographic.aspx#s1>



# LAW COMMUNICATIONS

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- Hesitance to accept what we don't understand
  - We wouldn't have a policy against installing telephones
  - The advent of email
- Needs to be funded it with people resources and proper hardware, software, strategy
- Provide guidance in the way of encouragement and structure through training and policy
  - Police officers who get themselves into trouble most often come from departments who have provided nothing in the way of guidance and training
  - Don't over---react when something bad happens
  - Policies needed are:
    - Communications Policy
      - Facebook Takedown Policy needs to be included
    - Investigations Policy
    - Cyber---vetting Policy
    - Data Retention Policy
- American Police leaders also need to accept that some of the best work in social media in policing is happening outside of the United States. ConnectedCOPS™ Awards for last three years has had 32% winners from U.S., 27% from Canada, 23% from UK, 14% from Australia, 1% from Australia.
  - Canada by Toronto Police and many other agencies in Ontario
  - Calgary and within pockets of the RCMP
  - In the United Kingdom, they're especially strong with uses of live video in communications with citizens
  - Australia, Iceland, Finland, Netherlands, New Zealand

## Conclusion



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The policing profession is at a point where the theory of community policing is not only possible like never before, but also where it is inevitable. There is no turning back. The question is only whether the community involvement and participation is completed truly in partnership between citizens and their police officers or with great conflict as we have recently witnessed.

In order for there to be a partnership, the police MUST embrace social media strategically and proactively and immerse the entire police agency at every operational level into the new open---source communication landscape. Police leaders who don't understand this should step aside.

We live in a time where no good or bad deed goes unnoticed, nor does it go unpunished.

The President's Task Force on 21<sup>st</sup> Century Policing and all involved should accept that social media is no utopia, but without a clear acceptance and understanding of how people use social media and expect their police to use social media it simply will not succeed. Nor will it succeed without an acceptance of the maturity and sophistication with which it should be embraced.

The extent to which the police profession has implemented social media to date has been laden with amateur players that even include current and former police officers. In order for the police profession to progress, law enforcement should treat social media as it would any other police topic. Whether it be the use of body worn cameras, use of force, mental health issues, domestic violence, cyber---bullying, police suicide, etc., the training and leadership should come from true professionals within the field.

Only by treating communication/social media strategy as an equal priority to other police priorities will the police profession gain all the benefits of social media implementation AND mitigate the risks.

**Testimony of Vincent Talucci  
Executive Director/Chief Executive Officer  
International Association of Chiefs of Police**

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Before the Task Force on 21st Century Policing  
Listening Session: Technology  
January 31, 2015



Commissioner Ramsey, Professor Robinson, Director Davis and members of the Task Force on 21<sup>st</sup> Century Policing, thank you for inviting me to testify today. My name is Vincent Talucci and I am the Executive Director at the International Association of Chiefs of Police (IACP).

The IACP is the world's largest association of law enforcement executives, with more than 22,000 members in 98 different countries. For over 120 years, the IACP has been launching internationally acclaimed programs, speaking out on behalf of law enforcement, conducting ground-breaking research, and providing exemplary programs and services to the law enforcement profession across the globe. One of the services we provide is developing and refining model policies for law enforcement on complicated issues like the use of technology.

The IACP released a model policy on body worn cameras in April of 2014 and published a technology policy framework that addresses a broad spectrum of emerging technologies and privacy and civil liberties concerns. Both of these documents incorporate the research findings, the input of leading subject experts, and the professional judgment of advisors who have combined this information with their extensive practical field and management experience.

There is no question that new and emerging technologies, like body worn cameras, play an increasingly crucial role in the daily work of police, equipping officers with enforcement and investigative tools that have the potential of making them safer, better informed, and more effective and efficient. In a time when law enforcement agencies are typically operating with a reduced force and agencies are asking their officers to respond to an ever expanding variety of calls for service, the use of technology has become essential.

Given calls for greater transparency and increasing scrutiny of law enforcement operations and performance, particularly in light of recent events, agencies need to implement technology that supports and enhances transparency in police-community interactions in order to promote public confidence and aid in a meaningful dialogue between law enforcement and the community.

Today I am focusing primarily on the use of cameras—and specifically body-worn cameras—because that has become the principal technology people are turning to in documenting police community-relations. I would like to emphasize that this certainly does not fully encompass the breadth of technology that can assist agencies, but evidence suggests that when body-worn cameras are implemented thoughtfully and with proper planning and management, that it holds significant promise in influencing behavior, providing transparency and accountability, and documenting critical interactions between police and citizens.

Video recorders and digital cameras have been useful tools in the law enforcement profession for some years. The concept of recording police-citizen encounters for law enforcement use first developed with the implementation of in-car cameras. Continual advances in technology has enabled industry to engineer smaller, lighter, more powerful, and more mobile digital camera equipment and enhanced the development of the body-worn cameras (BWC).

In many instances police agencies have found the BWC useful for officers in the favorable resolution of both administrative and criminal complaints, and as a defense resource in cases of civil liability. Officers using these recorders have a clearly documented, firsthand, objective account of what was said and done during an incident. The utilization of BWC video and audio recordings at trial can provide the court with the document of the actual statements and behavior of officers, suspects, and others that might not otherwise be admissible in court based upon hearsay rules, or might not get sufficient consideration if there are conflicting memories of the statements. In addition, recordings made at crime and incident scenes are a tangible benefit of BWCs and can provide investigators, prosecutors, and juries with far more detailed, accurate, and compelling evidence.

The use of BWCs gives officers, their agencies, administrators, and jurisdictions an additional means of defending themselves in civil litigation. Video evidence is extremely useful in resolving citizen complaints and potential civil actions. During many police-citizen contacts there are no objective witnesses to corroborate either allegations of misfeasance or explanations of the interaction and so many jurisdictions are more willing to resolve these matters by paying minor damages rather than spend time and money in litigation. An officer utilizing a BWC, however, typically has all the comments and actions of both parties on record and thus has a built-in "impartial witness" on his or her person. In one study, a Police Department found that in cases where video evidence was available, the officer was exonerated 93% of the time; in 5% of the cases the complaint was sustained. In addition, the same study showed that in a large number of instances, the citizen decided against filing a complaint once he or she was notified that there was a video recording of the incident.

To be fair, BWCs can also provide needed evidence of wrongdoing or inappropriate behavior on the part of an officer, in those rare cases where a complaint is sustained. Moreover, the video, whether taken from the in-car camera or the BWC, can also document behaviors and practices that need to be addressed in training. There have also been far too many instances in which in-car and body-worn cameras have captured the tragic death or serious injury of an officer, and the video images captured are the conclusive evidence of these desperate acts.

Contact with citizens during routine traffic stops or in other types of police-public interactions can result in confrontational situations. It has been the experience of many officers who have been in potentially hostile or confrontational situations that when they inform the subject that they are being recorded by video and/or audio means, the fact often serves to de-escalate or defuse the situation. The subject realizes in these situations that his or her statements cannot be denied or refuted later because there is a recording documenting every aspect of the encounter. In a one-year study conducted by the Rialto Police Department (CA), citizen complaints of officer misconduct fell by 87.5 percent for officers using BWCs, and the number of use of force incidents decreased by 60% department-wide during the year in which they piloted body worn cameras. The Mesa Police Department (AZ) had similar outcomes as they evaluated their body-worn camera program, with 40% fewer complaints against officers assigned to wear body cameras and 75% fewer complaints against these officers regarding their use of force.

Although I have just outlined several benefits to the use of video recording devices, they are not the sole solution. For instance, civilians may see the videos differently than a police officer experiences the situation in real life. Police are watching for certain behaviors from suspects that a civilian may not be aware of and no video can truly capture the feeling of when an officer is put in a situation where he or she fears for their life. In addition, other factors that may not be caught on video might not paint the whole picture of the incident under review or in question.

In addition other factors play into account that the video may not capture, sun glare, action going on out of the videos range of view, etc.

I would also like to note that video recording devices and all other technologies are useless and perhaps even harmful unless they are properly deployed and implemented. Just because a technology *can* be implemented, doesn't mean that it *should* be implemented. Law enforcement agencies must create and enforce comprehensive agency policies governing the deployment and use of these technologies, and the data they provide, if they are going to be successful.

Prior to the use of any technology, like BWC's, dash-cams, automatic license plate readers, etc., agencies need to have policies in place that govern the deployment and use of the technology. Moreover, the policies must address how the agency will protect the civil rights and civil liberties of individuals, as well as recognize and respect the privacy protections regarding the data collected, stored, and used. Development and enforcement of these policies is essential to effective and sustainable implementation, and to maintaining community trust.

That is why the IACP took the lead in developing a technology policy framework to identify universal principals that can be used as a guide to all law enforcement agencies as they develop effective policies for the use of technologies. Those principles include:

**Specification of Use**—Agencies should define the purpose, objectives, and requirements for implementing specific technologies, and identify the types of data captured, stored, generated, or otherwise produced.

**Policies and Procedures**—Agencies should articulate in writing, educate personnel regarding, and enforce agency policies and procedures governing adoption, deployment, use, and access to the technology and the data it provides. These policies and procedures should be reviewed and updated on a regular basis, and whenever the technology or its use, or use of the data it provides significantly changes.

**Privacy and Data Quality**—The agency should assess the privacy risks and recognize the privacy interests of all persons, articulate privacy protections in agency policies, and regularly review and evaluate technology deployment, access, use, data sharing, and privacy policies to ensure

data quality (i.e., accurate, timely, and complete information) and compliance with local, state, and federal laws, constitutional mandates, policies, and practice.

**Data Minimization and Limitation**—The agency should recognize that only those technologies, and only those data, that are strictly needed to accomplish the specific objectives approved by the agency will be deployed, and only for so long as it demonstrates continuing value and alignment with applicable constitutional, legislative, regulatory, judicial, and policy mandates.

**Performance Evaluation**—Agencies should regularly monitor and evaluate the performance and value of technologies to determine whether continued deployment and use is warranted on operational, tactical, and technical grounds.

**Transparency and Notice**—Agencies should employ open and public communication and decision - making regarding the adoption, deployment, use, and access to technology, the data it provides, and the policies governing its use. When and where appropriate, the decision - making process should also involve governing/oversight bodies, particularly in the procurement process. Agencies should provide notice, when applicable, regarding the deployment and use of technologies, as well as make their privacy policies available to the public. There are practical and legal exceptions to this principle for technologies that are lawfully deployed in undercover investigations and legitimate, approved covert operations.

**Security**—Agencies should develop and implement technical, operational, and policy tools and resources to establish and ensure appropriate security of the technology (including networks and infrastructure) and the data it provides to safeguard against risks of loss, unauthorized access or use, destruction, modification, or unintended or inappropriate disclosure. This principle includes meeting state and federal security mandates (e.g., the FBI's CJIS Security Policy), and having procedures in place to respond if a data breach, loss, compromise, or unauthorized disclosure occurs, including whether, how, and when affected persons will be notified, and remedial and corrective actions to be taken.

**Data Retention, Access and Use**—Agencies should have a policy that clearly articulates that data collection, retention, access, and use practices are aligned with their strategic and tactical objectives, and that data are retained in conformance with local, state, and/or federal statute/law or retention policies, and only as long as it has a demonstrable, practical value.

**Auditing and Accountability**—Agencies and their sworn and civilian employees, contractors, subcontractors, and volunteers should be held accountable for complying with agency, state, and federal policies surrounding the deployment and use of the technology and the data it provides. All access to data derived and/or generated from the use of relevant technologies should be subject to specific authorization and strictly and regularly audited to ensure policy compliance and data integrity. Sanctions for non - compliance should be defined and enforced.

I have already mentioned both the Mesa (AZ) and Rialto (CA) police departments that have implemented body-worn camera technology and have experienced positive results. Other

agencies like the Los Angeles (CA) Police Department, Seattle (WA) Police Department, and Chicago (IL) Police Department are either in the process of conducting pilot programs or are going to be partaking in pilot programs for body-worn cameras. These agencies are going about this process in a well-calculated and thoughtful way. It is imperative that any agency that plans to roll out this technology do so by testing it out first and thinking about important elements like privacy, when officers are required to turn on their cameras, what the protocol will be for interviewing victims, providing officers with training, etc.

Another good example of an agency that has used non-lethal technology to enhance officer safety and safeguard the public is the Philadelphia (PA) Police Department and its use of electronic control weapons. The Philadelphia Police Department successfully blended both policy and technology, through the by the completion of Crisis Intervention Training (CIT) with issuance of electronic control weapons. This ensures that all officers authorized to deploy electronic control weapons have had training in the intricacies of crisis intervention and are educated in protocols of responding to situations involving individuals with mental illness.

While technology has proven to be a useful tool for law enforcement, we must remember, that technology can both facilitate and inhibit building community bonds. The benefits that technology can bring to law enforcement and their relationship with the community can only be achieved through proper planning, implementation, training, deployment, use, and management of the technology and the information it provides. Like all resources and tools available to law enforcement, the use of new technologies must be carefully considered and managed. Agencies must clearly articulate their strategic goals for the technology, and this should be aligned with the broader strategic plans of the agency and safety needs of the public. Thorough and ongoing training is required to ensure that the technology performs effectively, and that users are well versed in the operational policies and procedures defined and enforced by the agency. Policies must be developed and strictly enforced to ensure the quality of the data, the security of the system, compliance with applicable laws and regulations, and the privacy of information gathered. Building robust auditing requirements into agency policies will help enforce proper use of the system, and reassure the public that their privacy interests are recognized and protected. The development of these policies is a proven way for executives to ensure they are taking full advantage of technology to assist in providing the best criminal justice services, while protecting the privacy, civil rights, and civil liberties of citizens.

We must also be mindful, that although the economy has substantially recovered, a lot of that recovery has not trickled down to local governments and law enforcement agencies. If the members of the Task Force decide that it is necessary for all agencies to acquire certain technologies, there needs to be resource assistance to do so.

Again, thank you for convening this listening session and for the opportunity for the International Association of Chiefs of Police to express its views on the use of technology to aid in the strengthening of community-police relations in the United States. I do hope that you will get a chance to read our technology policy framework and our model policy on the use of BWCs. I welcome any questions from Task Force members.

# Appendix



# Model Policy

<i>Effective Date</i> April 2014		<i>Number</i>	
<i>Subject</i> Body-Worn Cameras			
<i>Reference</i>		<i>Special Instructions</i>	
<i>Distribution</i>		<i>Reevaluation Date</i>	<i>No. Pages</i> 3

## I. PURPOSE

This policy is intended to provide officers with instructions on when and how to use body-worn cameras (BWCs) so that officers may reliably record their contacts with the public in accordance with the law.<sup>1</sup>

## II. POLICY

It is the policy of this department that officers shall activate the BWC when such use is appropriate to the proper performance of his or her official duties, where the recordings are consistent with this policy and law. This policy does not govern the use of surreptitious recording devices used in undercover operations.

## III. PROCEDURES

### A. Administration

This agency has adopted the use of the BWC to accomplish several objectives. The primary objectives are as follows:

1. BWCs allow for accurate documentation of police-public contacts, arrests, and critical incidents. They also serve to enhance the accuracy of officer reports and testimony in court.
2. Audio and video recordings also enhance this agency's ability to review probable cause for arrest, officer and suspect interaction, and evidence for investigative and prosecutorial purposes and to provide additional information for officer evaluation and training.

3. The BWC may also be useful in documenting crime and accident scenes or other events that include the confiscation and documentation of evidence or contraband.

### B. When and How to Use the BWC

1. Officers shall activate the BWC to record all contacts with citizens in the performance of official duties.
2. Whenever possible, officers should inform individuals that they are being recorded. In locations where individuals have a reasonable expectation of privacy, such as a residence, they may decline to be recorded unless the recording is being made in pursuant to an arrest or search of the residence or the individuals. The BWC shall remain activated until the event is completed in order to ensure the integrity of the recording unless the contact moves into an area restricted by this policy (see items D.1-4).
3. If an officer fails to activate the BWC, fails to record the entire contact, or interrupts the recording, the officer shall document why a recording was not made, was interrupted, or was terminated.
4. Civilians shall not be allowed to review the recordings at the scene.

### C. Procedures for BWC Use

1. BWC equipment is issued primarily to uniformed personnel as authorized by this agency. Officers who are assigned BWC equipment must use the equipment unless otherwise authorized by supervisory personnel.

<sup>1</sup> Some states have eavesdropping statutes that require two-party consent prior to audio recording. Consult your legal advisor for state and local laws that affect your agency

2. Police personnel shall use only BWCs issued by this department. The BWC equipment and all data, images, video, and metadata captured, recorded, or otherwise produced by the equipment is the sole property of the agency.
  3. Police personnel who are assigned BWCs must complete an agency approved and/or provided training program to ensure proper use and operations. Additional training may be required at periodic intervals to ensure the continued effective use and operation of the equipment, proper calibration and performance, and to incorporate changes, updates, or other revisions in policy and equipment.
  4. BWC equipment is the responsibility of individual officers and will be used with reasonable care to ensure proper functioning. Equipment malfunctions shall be brought to the attention of the officer's supervisor as soon as possible so that a replacement unit may be procured.
  5. Officers shall inspect and test the BWC prior to each shift in order to verify proper functioning and shall notify their supervisor of any problems.
  6. Officers shall not edit, alter, erase, duplicate, copy, share, or otherwise distribute in any manner BWC recordings without prior written authorization and approval of the chief executive officer (CEO) or his or her designee.
  7. Officers are encouraged to inform their supervisor of any recordings that may be of value for training purposes.
  8. If an officer is suspected of wrongdoing or involved in an officer-involved shooting or other serious use of force, the department reserves the right to limit or restrict an officer from viewing the video file.
  9. Requests for deletion of portions of the recordings (e.g., in the event of a personal recording) must be submitted in writing and approved by the chief executive officer or his or her designee in accordance with state record retention laws. All requests and final decisions shall be kept on file.
  10. Officers shall note in incident, arrest, and related reports when recordings were made during the incident in question. However, BWC recordings are not a replacement for written reports.
- D. Restrictions on Using the BWC
- BWCs shall be used only in conjunction with official law enforcement duties. The BWC shall not generally be used to record:
1. Communications with other police personnel without the permission of the chief executive officer (CEO);
  2. Encounters with undercover officers or confidential informants;
  3. When on break or otherwise engaged in personal activities; or
  4. In any location where individuals have a reasonable expectation of privacy, such as a restroom or locker room.
- E. Storage
1. All files<sup>2</sup> shall be securely downloaded periodically and no later than the end of each shift. Each file shall contain information related to the date, BWC identifier, and assigned officer.
  2. All images and sounds recorded by the BWC are the exclusive property of this department. Accessing, copying, or releasing files for non-law enforcement purposes is strictly prohibited.
  3. All access to BWC data (images, sounds, and metadata) must be specifically authorized by the CEO or his or her designee, and all access is to be audited to ensure that only authorized users are accessing the data for legitimate and authorized purposes.
  4. Files should be securely stored in accordance with state records retention laws and no longer than useful for purposes of training or for use in an investigation or prosecution. In capital punishment prosecutions, recordings shall be kept until the offender is no longer under control of a criminal justice agency.
- F. Supervisory Responsibilities
1. Supervisory personnel shall ensure that officers equipped with BWC devices utilize them in accordance with policy and procedures defined herein.
  2. At least on a monthly basis, supervisors will randomly review BWC recordings to ensure that the equipment is operating properly and that officers are using the devices appropriately and in accordance with policy and to identify any areas in which additional training or guidance is required.

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<sup>2</sup> For the purpose of this document, the term "file" refers to all sounds, images, and associated metadata.

Every effort has been made by the IACP National Law Enforcement Policy Center staff and advisory board to ensure that this document incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no “model” policy can meet all the needs of any given law enforcement agency. Each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions and collective bargaining agreements that must be considered. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities among other factors.

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## IACP NATIONAL LAW ENFORCEMENT POLICY CENTER

# Body-Worn Cameras

### Concepts and Issues Paper

April 2014

## I. INTRODUCTION

### A. Purpose of the Document

This paper was designed to accompany the *Model Policy on Body-Worn Cameras* established by the IACP National Law Enforcement Policy Center. This paper provides essential background material and supporting documentation to provide greater understanding of the developmental philosophy and implementation requirements for the model policy. This material will be of value to law enforcement executives in their efforts to tailor the model to the requirements and circumstances of their community and their law enforcement agency.

### B. Background

Video recorders and digital cameras have been useful tools in the law enforcement profession for some years. Advances in technology have improved camera equipment and enhanced the development of the body-worn camera (BWC). While many police agencies have taken advantage of these advancements even more have overlooked or are unaware of their usefulness, or have chosen not to deploy them.

The concept of recording police-citizen encounters for law enforcement use first developed with the implementation of in-car cameras. Initially, these devices were installed to document interactions with individuals suspected of driving under the influence, with the recordings providing supporting evidence needed for conviction.<sup>1</sup> Over time, agencies discovered that

<sup>1</sup> *The Impact of Video Evidence on Modern Policing*, IACP pg. 5, [http://www.cops.usdoj.gov/Publications/video\\_evidence.pdf](http://www.cops.usdoj.gov/Publications/video_evidence.pdf) (accessed February 12, 2014).

in-car cameras had numerous additional benefits, such as “increased officer safety; documentation of traffic violations, citizen behavior, and other events; reduced court time and prosecutor burden; video evidence for use in internal investigations; reduced frivolous lawsuits; and increased likelihood of successful prosecution.”<sup>2</sup> All of these advantages also apply to the BWC, as will be discussed further in this document.

### C. Uses for Body-Worn Cameras

Many police officers now use BWCs to document interactions with victims, witnesses, and others during police-citizen encounters, at crime and incident scenes, and during traffic stops. In many instances police agencies have found the BWC useful for officers in the favorable resolution of both administrative and criminal complaints and as a defense resource in cases of civil liability. Officers using these recorders have a clearly documented, firsthand, completely objective account of what was said during an incident in question. The utilization of BWC video and audio recordings at trial can provide the court with the actual statements of officers, suspects, and others that might not otherwise be admissible in court based upon hearsay concerns, or might not get sufficient consideration if there are conflicting memories of the statements. In addition, recordings made at crime and incident scenes are a tangible benefit of BWCs and can provide investigators, prosecutors, and juries with far more detailed, accurate, and compelling evidence.

The use of BWCs gives officers, their agencies, administrators, and employing jurisdictions an additional means of defending themselves in civil litigation. This is extremely useful in resolving citizen complaints and

<sup>2</sup> *Ibid.*, pg. 11.

potential civil actions. During many police-citizen contacts there are no objective witnesses to corroborate either allegations of misfeasance or explanations of the interaction and so many jurisdictions are more willing to resolve these matters by paying minor damages rather than spend time and money in litigation. However, an officer utilizing a BWC typically has all the comments and actions of both parties on record and thus has a built-in “impartial witness” on his or her person—a factor that has often resulted in civil suits before they would otherwise have been formally lodged. In one study of in-car camera recordings, “in cases where video evidence was available, the officer was exonerated 93% of the time; in 5% of the cases the complaint was sustained.”<sup>3</sup> In addition, the same study showed that in a large number of instances, the individual decided against filing a complaint once he or she was notified that there was a video recording of the incident.<sup>4</sup>

The BWC has also proven to be effective in helping police agencies evaluate police officer performance in a more complete and fair manner. Supervisory personnel are able to review officer conduct and performance on a random or systematic basis by reviewing BWC recordings. This allows the supervisor to ensure that the BWC is being used in accordance with department policy and to identify any areas in which additional officer training, guidance, or discipline may be required.

Introduction and subsequent broad acceptance of in-car mobile video recording equipment has played a significant role in proving the effectiveness and utility of recording equipment in law enforcement. However, vehicle-mounted video recorders are limited in their field of vision and are not of assistance to officers on foot patrol or who are engaged in investigations or interactions beyond transmission range of their vehicles. The BWC is a convenient and relatively inexpensive means of more fully documenting contacts and interactions with citizens, suspects, and others in a wide variety of situations. It gives them a reliable and compact tool to systematically and automatically record their field observations and encounters.

However, in most cases BWCs should not be viewed as a low-cost alternative to in-car video recorders, but rather a complementary technology. In-car camera systems can provide important information that is currently unavailable with BWCs. For instance, most in-car camera systems can be linked to vehicle systems and record vehicle location, speed, application of brakes; indicate activation of lights and siren; and capture other data that could be vitally important if an accident or other unanticipated event should occur. For example, recording of an officer’s activity from

the patrol car often includes accidents that occur during a traffic stop that would not necessarily be seen by the BWC while the officer interacts with the motorist. Most in-car systems also provide the option of installing a secondary camera to record any activity in the back seat of the patrol car.

Police officers are aware that contact with citizens during routine traffic stops or in other types of police-public interactions can result in confrontational situations. It has been the experience of many officers who have been in potentially hostile or confrontational situations and who are equipped with audio or video recording devices that inform the subject that he or she is being recorded by one or both of these means often serves to de-escalate or defuse the situation. The subject realizes in these situations that his or her statements cannot be denied or refuted later because there is a recording documenting every aspect of the encounter. The same concept can be applied to officer behavior. In a one-year study conducted by the Rialto, California, Police Department, citizen complaints of officer misconduct fell by 87.5 percent for officers using BWCs, while uses of force by such officers fell by 59 percent.<sup>5</sup>

Finally, the availability of video and audio recordings as evidence is critically important and can be the key to successful prosecution. For example, there is often nothing more compelling to a judge or jury than actually seeing the actions and hearing the words uttered by a suspect, including statements of hostility and anger.

Throughout the United States, courts are backlogged with cases waiting to be heard and officers who are spending time in court that could be used more productively in enforcement activities. The availability of audio and/or video recorded evidence increases the ability of prosecutors to obtain guilty verdicts more easily and quickly at trial or to more effectively plea-bargain cases, avoiding lengthy trial proceedings. In jurisdictions that employ audio and visual evidence, officers normally submit their recordings along with a written report, which is later reviewed by the prosecuting attorney. When the accused and his or her attorney are confronted with this evidence, guilty pleas are more often obtained without the need for a trial or the pressure to accept a plea to lesser charges. This substantially reduces the amount of time an officer must spend in court and utilizes prosecutorial and judicial resources more efficiently.

<sup>3</sup> Ibid., pg. 15.

<sup>4</sup> Ibid.,

<sup>5</sup> As cited in Mesa Arizona Police, *End of Program Evaluation and Recommendations: On-Officer Body Camera System*, Axon Flex Program Evaluation and Recommendations, December 2, 2013, pg. 2.

## II. ADMINISTRATIVE RESTRICTIONS ON BODY-WORN CAMERA RECORDINGS

The usefulness of BWCs has been clearly demonstrated; however, their utility is realized only when they are recording. Agency policy should require that officers activate their BWC whenever they make contact with a citizen in the course of conducting official police business. Once activated, the entire conversation should be recorded without interruption. If such interruption occurs, the officer should be required to document the reason for the interruption in a report. If an officer feels it is necessary to stop recording (e.g., while speaking to another officer, or a confidential informant) within constraints of policy, he or she may also be permitted to verbally indicate his or her intent to stop the recording before stopping the device, and upon reactivation, state that he or she has restarted the recording. This will help avoid accusations of editing the recording after the fact.

Some agencies issue BWCs to select officers rather than to all patrol officers. This approach can be used as part of an effort to more closely monitor individual officers who are suspected of having difficulty in certain areas of operation. Or it may simply be that a department cannot afford to provide cameras for all personnel. However, issuing cameras for the sole purpose of monitoring specific employees can have several negative consequences. For example, officers who know they are under close scrutiny may tend to modify their behavior only while the BWC is deployed. Selective use of BWCs can also be stigmatizing, since the officer's colleagues may interpret that he or she is being singled out as a potential problem. This can have negative short- and long-term consequences for the subject officer in dealing effectively and professionally thereafter with fellow officers. Such selective use can also be a considerable impediment to creating "buy in" from employees regarding the use and utility of video recorders. If officers regard these devices primarily as monitors for identifying problem behavior, they will be less likely to use them for the purpose they are intended. Therefore, it is strongly recommended that agencies using BWCs for patrol personnel should provide them to all such officers for use in accordance with agency policy.

In spite of their utility, the BWCs can be used for improper purposes that are counter to or inconsistent with the law enforcement mission, or in ways that are contrary to federal, state, or local law. For example, BWCs are not meant to serve personal uses whether on or off duty unless permission is granted by the department. This is a simple matter of concern over private use of governmental equipment in most cases, but it can also involve concerns over the potential of mixing personal recordings with those involving official police business. In the latter

circumstances, the evidentiary integrity of recordings could be called into question, as could issues surrounding the chain of custody of evidence contained on devices that may have been involved in personal use. Personal use of BWC equipment and comingling of recordings raise concerns about inappropriate viewing, sharing, and release of videos and associated issues of invasion of privacy and other similar types of liability.

In general, BWCs should be used for investigative purposes or field use only and should not be activated in administrative settings. Another potential for improper use that should be prohibited by the police department is surreptitious recording of communications with or between any other officers without the explicit permission of the agency chief executive or his or her designee. The purposeful activation of BWCs during personal conversations involving counseling, guidance sessions, or personnel evaluations should be prohibited unless all parties present agree to be recorded. It is important to note the dysfunction and disharmony created by surreptitious recordings in a police work environment. A cloud of suspicion and distrust exists where officers and their supervisors believe that they cannot enter into candid personal discussions without the risk of their statements being recorded and used inappropriately or harmfully against them or others. The result can undermine both the willingness of supervisors and administrators to provide candid guidance about officer performance, and the willingness of employees to provide open, truthful information.

Similarly, officers' conversations on the radio and among each other at a scene will frequently occur. Officers should inform other officers or emergency responders arriving on a scene when their recorder is active to help avoid recording inappropriate or immaterial statements. In addition, the BWC should not be activated when the officer is on break or otherwise engaged in personal activities or when the officer is in a location where there is a reasonable expectation of privacy, such as a restroom or locker room. For safety and confidentiality reasons, encounters with undercover officers or confidential informants should not be recorded.

The policy should clearly state that BWC activation is limited to situations involving official police activities authorized by law or court order, including consensual citizen encounters and investigation of law violations. Failure to follow this policy could subject an officer to disciplinary action up to and including dismissal.

## A. Legal Restrictions on Recordings

As noted in the foregoing section, the availability and use of BWCs can create the basis for legal challenges lodged by suspects or other persons. This policy applies only to the use of BWCs attached to an officer's person, and any use of the camera in a surreptitious manner by removing it and using it to monitor a situation remotely should be strictly controlled. Such surreptitious recording has constitutional implications and may be governed by state and federal wiretap laws not applicable to or addressed by this policy. It is important for officers who are equipped with BWCs to have an understanding of the restrictions on surreptitious recording of persons and to make sure their use of the BWCs is consistent with the restrictions.

This policy is intended to cover use of BWCs in situations where a person has either a reduced or no expectation of privacy and that occurs in a place where the officer is legally entitled to be present. Whether there is a reasonable expectation of privacy in a given situation is determined using a traditional Fourth Amendment analysis involving whether the person in question exhibited "an actual or subjective expectation of privacy" in the communication and whether that expectation is "one that society is prepared to recognize as reasonable." The landmark U.S. Supreme Court decision in *Katz v. United States*<sup>6</sup> that outlined these principles also made it clear that a reasonable expectation of privacy is not determined so much by the place in which the individual is located (e.g., a telephone booth, business office, or taxicab) but by what a person "seeks to preserve as private even in an area accessible to the public." The decision emphasized that the Fourth Amendment protects people, not places.

When an individual is in custody, whether in a patrol car, interrogation room, or lockup, for example, there is generally no reasonable expectation of privacy, unless the suspect is speaking in confidence with an attorney, clergyman or other individual with privilege of communication. Recording may be done in these settings unless officers have given the individual a sign or indication that the location is private, that their conversation is not being recorded, and/or if the individual is speaking with someone with privilege. Individuals who are in these settings, but who are not in custody may refuse to be recorded.

In a residence, there is a heightened degree and expectation of privacy. Officers should normally inform the resident that he or she is being recorded. If the resident wishes not to be recorded, this request should be documented by recording the request before the device

is turned off. However, if an officer may enter a dwelling without the consent of the resident, such as when serving a warrant, or when the officer is there based on an exception to the warrant requirement, recordings should be made of the incident until its conclusion. As a general rule, if the officer must legally ask permission to enter a premises, he or she should also ask if the resident will allow recording.

Notwithstanding any legal limitations, as a courtesy and so as not to create the impression of trickery or subterfuge, some police agencies require their officers to inform all persons who are being recorded by BWCs. This includes all motor vehicle stops and related citizen contacts where official police functions are being pursued.

Recording arrests and the events leading up to an arrest is an excellent means of documenting the circumstances establishing probable cause for arrest. In circumstances where *Miranda* rights are appropriate, use of BWCs is a good way to demonstrate the clear and accurate reading of *Miranda* rights to the suspect—and an invocation or waiver of those rights by the suspect. If the suspect invokes his or her rights to silence and representation by an attorney, recording is still permissible. Officers should take great care not to direct questions to the suspect regarding involvement in any crime. However, any spontaneous statements made by the suspect to officers would likely be admissible as evidence so long as the statements or comments were not elicited by officer questioning.

Finally, there may be times when officers should be given a degree of discretion to discontinue recording in sensitive situations as long as they record the reason for deactivating the recording. For instance, when talking to a sexual assault victim, or on the scene of a particularly violent crime or accident scene. This is especially true if the recording may be subject to Freedom of Information Act requests. Under such circumstances, recordings could be posted on media sites that could cause unnecessary distress for families and relatives. Whenever reasonably possible, officers should also avoid recording children who are not involved in an incident as well as innocent bystanders.

## B. Procedures for Using Body-Worn Cameras

BWC equipment is intended primarily for the use of uniformed officers although plainclothes officers may be issued such equipment. Officers who are assigned such equipment should be required to use it in accordance with agency policy unless otherwise directed or authorized by supervisory personnel.

Personnel who are authorized to use BWCs should use only equipment provided by the department. The chances of loss, destruction, or recording over materials belonging to official police investigations may be greater when these devices are used for both official and personal business.

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<sup>6</sup> A touchstone case in this matter is that of *Katz v. United States*, 389 U.S. 347 (1967).

BWC equipment should be the responsibility of individual officers assigned such equipment and should be used with reasonable care to ensure proper functioning. Equipment malfunctions should be brought to the attention of the officer's supervisor as soon as possible so that a replacement unit may be obtained. Officers should test this equipment prior to each shift in order to verify that it is functioning properly and should notify their supervisor if any problems are detected.

Officers should never erase or in any manner alter recordings. The agency must maintain strict managerial control over all devices and recorded content so that it can ensure the integrity of recordings made by officers. Failure of officers to assist in this effort or the agency to take managerial control over recordings can risk the credibility of the program and threaten its continuation as a source of credible information and evidence.

Where officers have recorded unusual and/or operational situations or incidents that may have potential value in training, they should inform their supervisor so that the recordings can be identified and evaluated. Unusual or even routine events recorded on tape can be used in basic academy and in-service training to reinforce appropriate behavior and procedures, to demonstrate inappropriate practices and procedures, to enhance interpersonal skills and officer safety habits, and to augment the instructional routines of field training officers and supervisory personnel.

Officers should also note in their incident, arrest, or related reports when recordings were made during the events in question. However, BWC recordings should not serve as a replacement for written reports.

### **C. Recording Control and Management**

Reference has been made previously to the need for control and management of BWC recordings to ensure the integrity of the recordings, secure the chain of custody where information of evidentiary value is obtained, and use recordings to their fullest advantage for training and other purposes. In order to accomplish these ends, officers and their supervisors should adhere to a number of procedural controls and requirements.

At the end of each shift, all files from the BWC should be securely downloaded. In order for a recording to be admissible in court, the officer must be able to authenticate the recording as a true and accurate depiction of the events in question. In an effort to prevent the recording from becoming evidence, the defense may question the chain of custody. Therefore, departments may wish to utilize secure downloading software or programs, or have an individual

other than the officer be responsible for downloading the data in an effort to minimize any chain-of-custody issues.<sup>7</sup>

Each file should contain identifying information, such as the date, time, BWC device used, and assigned officer. These recordings should be stored in a secure manner and are the exclusive property of the department. Accessing, copying, or releasing files for non-criminal justice purposes should be strictly prohibited.

Many states have laws specifying how long evidence and other records must be maintained. Recordings should be maintained in a secure manner for the period of time required by state law or as otherwise designated by the law enforcement agency. Retention schedules for recordings should take into consideration the possibility of a civilian complaint against an officer sometime after the encounter. Recordings in these situations can prove invaluable in resolution of the complaint. However, storage costs can become prohibitive, so agencies must balance the need for retaining unspecified recordings with the desire to have this information available.

According to the Model Policy, supervisory officers should ensure that officers equipped with BWCs use them in accordance with agency policy and procedures. One means of accomplishing this end is for first-line supervisors to review recordings of officers on their shift. This can be done on a random selection basis or on a systematic basis and should be performed routinely at least monthly. Recordings submitted by specific officers may need to be reviewed more often or more closely should there be indications that the officer's performance is substandard, if there have been internal or external complaints lodged against the officer, or if there is reason to believe that the officer may need additional guidance or training in certain operational areas.

Officers assigned a BWC should have access, and be encouraged to review their own recordings in order to assess their performance and potentially correct unsafe or questionable behaviors. The question of whether an officer should be allowed to review recordings before writing a report, especially following an officer-involved shooting or accident, is a matter that should be examined closely by administrators.

Inevitably, recordings will occur in circumstances where recording is not appropriate. By way of examples, an officer may forget to stop a recording when entering a victim's residence after being asked not to record inside, or may accidentally activate it in the locker room. In these situations, the officer should be afforded an opportunity to request that these portions of the recording be erased.

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<sup>7</sup> For additional discussion of the use of videotape evidence, please see Jonathan Hak, "Forensic Video Analysis and the Law" appendix v in *The Impact of Video Evidence on Modern Policing*.

Requests for deletions should be made in writing and must be submitted to the chief executive officer or his or her designee for approval. All requests should be maintained for historical reference.

Every effort has been made by the IACP National Law Enforcement Policy Center staff and advisory board to ensure that this document incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no “model” policy can meet all the needs of any given law enforcement agency. Each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions and collective bargaining agreements that must be considered. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities among other factors.

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## IACP TECHNOLOGY POLICY FRAMEWORK<sup>1</sup>

### January 2014

#### Introduction

New and emerging technologies increasingly play a crucial role in the daily work of police, equipping officers with enforcement and investigative tools that have the potential of making them safer, better informed, and more effective and efficient. Developing and enforcing comprehensive agency policies regarding deployment and use is a critical step in realizing the value that technologies promise, and is essential in assuring the public that their privacy and civil liberties are recognized and protected.

Technological advances have made it possible to monitor and record nearly every interaction between police and the public through the use of in-car and body-worn video, access to an expanding network of public and private video surveillance systems, and the increasing use of smartphones with digital recording capabilities by citizens and officers alike. Police can track suspects with the use of GPS tracking technologies and officers themselves can be tracked with automated vehicle location (AVL) systems. Automated license plate recognition (ALPR) systems can scan the license plates of vehicles within sight of officers in the field and quickly alert them if the vehicle has been reported stolen or is wanted. Identity can be remotely verified or established with biometric precision using mobile fingerprint scanners and facial recognition software. Crimes can be mapped as they are reported, gunshot detection technology can alert law enforcement almost instantaneously when a firearm is discharged, and surveillance cameras can be programmed to focus in on the gunshot location and stream live video to both dispatchers and responding officers. With these advancements come new opportunities to enhance public and officer safety. They also present new challenges for law enforcement executives.

The challenges include identifying which technologies can be incorporated by the agency to achieve the greatest public safety benefits, and defining metrics that will enable the agency to monitor and assess the value and performance of the technologies. Just because a technology *can* be implemented, does not mean that it *should* be. There are also challenges in integrating these technologies across different platforms, building resilient infrastructure and comprehensive security, providing technical support, and maintaining and upgrading applications and hardware. All of this can be confusing and technically demanding, underscoring the need for effective planning, strategic deployment, and performance management.

Addressing these challenges is paramount because of the broader issues that the use of this expanding array of technologies by law enforcement presents. A principal tenet of policing is the trust citizens grant police to take actions on their behalf. If that trust is violated and public approval lost, police are not able to effectively perform their duties to keep communities safe.

### **The Policy Mandate**

Creating and enforcing agency policies that govern the deployment and use of technology, protecting the civil rights and civil liberties of individuals, as well as the privacy protections afforded to the data collected, stored, and used, is essential to ensure effective and sustainable implementation, and to maintain community trust. Policies function to reinforce training and to establish an operational baseline to guide officers and other personnel in proper procedures regarding its use. Moreover, policies help to ensure uniformity in practice across the agency and to enforce accountability. Policies should reflect the mission and values of the agency and be tightly aligned with applicable local, state, and federal laws, regulations, and judicial rulings.

Policies also function to establish transparency of operations, enabling agencies to allay public fears and misperceptions by providing a framework that ensures responsible use, accountability, and legal and constitutional compliance. The use of automated license plate recognition (ALPR) technologies, unmanned aerial systems, and body-worn video by law enforcement, for example, has generated substantial public discussion, increasing scrutiny, and legislative action in recent years.<sup>2</sup> Privacy advocates, elected officials, and members of the public have raised important questions about how and under what circumstances these technologies are deployed, for what purposes, and how the data gathered by these technologies are retained, used, and shared. Having and enforcing a strong policy framework enables law enforcement executives to demonstrate responsible planning, implementation, and management.

Agencies should adopt and enforce a technology policy framework that addresses technology objectives, deployment, privacy protections, records management, data quality, systems security, data retention and purging, access and use of stored data, information sharing, accountability, training, and sanctions for non-compliance. Agencies should implement safeguards to ensure that technologies will not be deployed in a manner that could violate civil rights (race, religion, national origin, ethnicity, etc.) or civil liberties (speech, assembly, religious exercise, etc.). The policy framework is but one of several critical components in the larger technology planning effort that agencies should undertake to ensure proper and effective use of automation.

### **Universal Principles**

Given the privacy concerns and sensitivity of personally identifiable information and other data often captured and used by law enforcement agencies,<sup>3</sup> and recognizing evolving perceptions of what constitutes a reasonable expectation of privacy,<sup>4</sup> the

technology policy framework should be anchored in principles universally recognized as essential in a democratic society.

The following

*technologies that can, or have the potential to monitor, capture, store, transmit and/or share data, including audio, video, visual images, or other personally identifiable information which may include the time, date, and geographic location where the data were captured*

1. *Specification of Use*—Agencies should define the purpose, objectives, and requirements for implementing specific technologies, and identify the types of data captured, stored, generated, or otherwise produced.
2. *Policies and Procedures*—Agencies should articulate in writing, educate personnel regarding, and enforce agency policies and procedures governing adoption, deployment, use, and access to the technology and the data it provides. These policies and procedures should be reviewed and updated on a regular basis, and whenever the technology or its use, or use of the data it provides significantly changes.
3. *Privacy and Data Quality*—The agency should assess the privacy risks and recognize the privacy interests of all persons, articulate privacy protections in agency policies, and regularly review and evaluate technology deployment, access, use, data sharing, and privacy policies to ensure data quality (i.e., accurate, timely, and complete information) and compliance with local, state, and federal laws, constitutional mandates, policies, and practice.
4. *Data Minimization and Limitation*—The agency should recognize that only those technologies, and only those data, that are strictly needed to accomplish the specific objectives approved by the agency will be deployed, and only for so long as it demonstrates continuing value and alignment with applicable constitutional, legislative, regulatory, judicial, and policy mandates.
5. *Performance Evaluation*—Agencies should regularly monitor and evaluate the performance and value of technologies to determine whether continued deployment and use is warranted on operational, tactical, and technical grounds.
6. *Transparency and Notice*—Agencies should employ open and public communication and decision-making regarding the adoption, deployment, use, and access to technology, the data it provides, and the policies governing its use. When and where appropriate, the decision-making process should also involve governing/oversight bodies, particularly in the procurement process. Agencies should provide notice, when applicable, regarding the deployment and use of technologies, as well as make their privacy policies available to the public. There are practical and legal exceptions to this principle for technologies that are

lawfully deployed in undercover investigations and legitimate, approved covert operations.<sup>6</sup>

7. *Security*—Agencies should develop and implement technical, operational, and policy tools and resources to establish and ensure appropriate security of the technology (including networks and infrastructure) and the data it provides to safeguard against risks of loss, unauthorized access or use, destruction, modification, or unintended or inappropriate disclosure. This principle includes meeting state and federal security mandates (e.g., the FBI’s CJIS Security Policy<sup>7</sup>), and having procedures in place to respond if a data breach, loss, compromise, or unauthorized disclosure occurs, including whether, how, and when affected persons will be notified, and remedial and corrective actions to be taken.<sup>8</sup>
8. *Data Retention, Access and Use*—Agencies should have a policy that clearly articulates that data collection, retention, access, and use practices are aligned with their strategic and tactical objectives, and that data are retained in conformance with local, state, and/or federal statute/law or retention policies, and only as long as it has a demonstrable, practical value.
9. *Auditing and Accountability*—Agencies and their sworn and civilian employees, contractors, subcontractors, and volunteers should be held accountable for complying with agency, state, and federal policies surrounding the deployment and use of the technology and the data it provides. All access to data derived and/or generated from the use of relevant technologies should be subject to specific authorization and strictly and regularly audited to ensure policy compliance and data integrity. Sanctions for non-compliance should be defined and enforced.

### **Developing Policies and Operating Procedures**

The universal principles provide structural guidance for the development of specific agency policies and operating procedures that comport with established constitutional, legal, and ethical mandates and standards. Agency policies and procedures specify the operational components of each individual technology implementation, deployment, and management, and should typically include and address the following factors:<sup>9</sup>

1. Purpose
  - a. A general discussion of the purpose of a specific agency policy to include the agency’s position on protecting privacy.
2. Policy
  - a. A discussion of the overarching agency policy regarding the deployment and use of a specific technology, its application to members of the agency, and reference to relevant laws, policies, and/or regulations that authorize the agency to implement a technology, or that relate to the use and deployment of a technology.
3. Definitions

- a. A description of the technology, its components, and functions.
  - b. Definitions and acronyms associated with the technology.
4. Management
- a. Strategic Alignment: Describe how the technology aligns and furthers the agency's strategic and tactical deployment objectives.
  - b. Objectives and Performance: Identify objectives for the deployment and conditions for use of a technology, and a general strategy for assessing performance and compliance with the agency's policy.
  - c. Ownership: Clearly specify that the hardware and software associated with the technology is the property of the agency, regardless whether it has been purchased, leased, or acquired as a service, and that all deployments of a technology are for official use only (FOUO). All data captured, stored, generated, or otherwise produced by a technology are the property of the agency, regardless where the data are housed or stored. All access, use, sharing, and dissemination of the data must comply with the policies established and enforced by the agency.
  - d. Classification of Data: Clearly specify the data classification and its level of sensitivity (e.g., top secret, secret, confidential, restricted, unclassified, private, public, etc.), whether the data captured, stored, generated, or otherwise produced by a technology are considered public information, and whether it is subject to applicable public records act requests and under what circumstances.
  - e. Privacy Impact: Develop or adopt and use a formal privacy impact assessment (PIA)<sup>10</sup> or similar agency privacy assessment on technology and the data it captures, stores, generates, or otherwise produces.
5. Operations
- a. Installation, Maintenance, and Support: Require regular maintenance, support, upgrades, calibration, and refreshes of a technology to ensure that it functions properly.
  - b. Deployment: Identify who is authorized to officially approve the deployment and use of a technology, and the conditions necessary for deployment and use, if applicable.
  - c. Training: Require training, and perhaps certification or other documented proficiency, if applicable, of all personnel who will be managing, maintaining, and/or using a technology. Training should also cover privacy protections on the use of the technology, and the impact and sanctions for potential violations.
  - d. Operational Use: Identify specific operational factors that must be addressed in deployment and use of a technology. (For example, for ALPR, the officer should i) verify that the system has correctly "read" the license plate characters; ii) verify the state of issue of the license plate; iii) verify that the "hot list" record that triggered the alert is still active in the state or NCIC stolen vehicle or other file, and confirm the

hit with the entering agency; and iv) recognize that the driver of the vehicle may not be the registered owner).

- e. Recordkeeping: Require recordkeeping practices that document all deployments of the technology, including who authorized the deployment; how, when, and where the technology was deployed; results of deployments; and any exceptions. Recordkeeping will support efforts to properly manage technology implementation, ensure compliance with agency policies, enable transparency of operations, enable appropriate auditing review, and help document business benefits realization.

#### 6. Data Collection, Access, Use, and Retention

- a. Collection: Define what data will be collected, how data will be collected, the frequency of collection, how and where data will be stored, and under what authority and conditions the data may be purged, destroyed, or deleted in compliance with applicable local, state, and/or federal recordkeeping statutes and policies, court orders, etc. Identify the destruction/deletion methods to be used.
- b. Access and Use: Define what constitutes authorized use of data captured, stored, generated, or otherwise produced by a technology. Define who is authorized to approve access and use of the data, for what purposes and under what circumstances.
- c. Information Sharing: Specify whether data captured, stored, generated, or otherwise produced by a technology can be shared with other agencies, under what circumstances, how authorization is provided, how information that is shared is tracked/logged, how use is monitored, and how policy provisions (including privacy) will be managed and enforced. Any agency contributing and/or accessing shared information should be a signatory of a data sharing Memorandum of Understanding (MOU). Dissemination of any shared information should be governed by compliance with applicable state and federal laws, standards, agency privacy policies, and procedures as agreed in the MOU.
- d. Security: Define information systems security requirements of the technology and access to the data to ensure the integrity of the systems and confidentiality of the data. The security policy should address all state and federal mandated security policies, and clearly address procedures to be followed in the event of a loss, compromise, unauthorized access or use, destruction, modification, or unintended or inappropriate disclosure of data, including how and when affected persons will be notified, and remedial and corrective actions to be taken.
- e. Data Retention and Use: Establish data retention schedules in accordance with state or federal law or policy, access privileges, purge,

and deletion criteria for all data captured, stored, generated, or otherwise produced by a technology. Agencies should consider differentiating between data that are part of an ongoing or continuing investigation and information that is gathered and retained without specific suspicion or direct investigative focus. Agencies may wish to limit the retention of general surveillance data. Empirical research assessing the performance of a technology may assist in determining an appropriate retention schedule.

7. Oversight, Evaluation, Auditing, and Enforcement
  - a. Oversight: Establish a reporting mechanism and a protocol to regularly monitor the use and deployment of a technology to ensure strategic alignment and assessment of policy compliance.
  - b. Evaluation: Regularly assess the overall performance of a technology so that it can i) identify whether a technology is performing effectively, ii) identify operational factors that may impact performance effectiveness and/or efficiency, iii) identify data quality issues, iv) assess the business value and calculate return on investment of a technology, and v) ensure proper technology refresh planning.
  - c. Auditing: Audit all access to data captured, stored, generated, or otherwise produced by a technology to ensure that only authorized users are accessing the data for legitimate and authorized purposes, and establish regular audit schedules.
  - d. Enforcement: Establish procedures for enforcement if users are suspected of being or have been found to be in noncompliance with agency policies.

## **Conclusion**

Realizing the value that technology promises law enforcement can only be achieved through proper planning, implementation, training, deployment, use, and management of the technology and the information it provides. Like all resources and tools available to law enforcement, the use of new technologies must be carefully considered and managed. Agencies must clearly articulate their strategic goals for the technology, and this should be aligned with the broader strategic plans of the agency and safety needs of the public. Thorough and ongoing training is required to ensure that the technology performs effectively, and that users are well versed in the operational policies and procedures defined and enforced by the agency. Policies must be developed and strictly enforced to ensure the quality of the data, the security of the system, compliance with applicable laws and regulations, and the privacy of information gathered. Building robust auditing requirements into agency policies will help enforce proper use of the system, and reassure the public that their privacy interests are recognized and protected. The development of these policies is a proven way for executives to ensure they are taking full advantage of technology to assist in providing the best criminal justice services, while protecting the privacy, civil rights, and civil liberties of citizens.

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<sup>1</sup> This Technology Policy Framework was developed by an ad-hoc committee of law enforcement executives and subject matter experts representing IACP Divisions, Committees, Sections, the IACP National Law Enforcement Policy Center, and other organizations and groups, including the Criminal Intelligence Coordinating Council, Major Cities Chiefs Association, National Sheriffs' Association, Major County Sheriffs' Association, Association of State Criminal Investigative Agencies, the Institute for Intergovernmental Research (IIR), the Integrated Justice Information Systems (IJIS) Institute, and federal partners.

<sup>2</sup> The American Civil Liberties Union (ACLU) recently released two reports addressing law enforcement technologies—ALPR and body-worn video. Both reports discuss the value of the technology to law enforcement operations and investigations, and both call for policies addressing deployment, operations, data retention, access, and sharing. Catherine Crump, *You are Being Tracked: How License Plate Readers Are Being Used to Record Americans' Movements*, (New York: ACLU, July 2013), at <https://www.aclu.org/technology-and-liberty/you-are-being-tracked-how-license-plate-readers-are-being-used-record>, and Jay Stanley, *Police Body-Mounted Cameras: With Right Policies in Place, a Win for All*, (New York: ACLU, October 2013), at <https://www.aclu.org/technology-and-liberty/police-body-mounted-cameras-right-policies-place-win-all>. Also see, Massachusetts Senate Bill S.1648, *An Act to Regulate the Use of Automatic License Plate Reader Systems*, Cynthia S. Creem, Sponsor, at <https://malegislature.gov/Bills/188/Senate/S1648>; Cynthia Stone Creem and Jonathan Hecht, "Check it, then chuck it," *The Boston Globe*, December 20, 2013, at <http://www.bostonglobe.com/opinion/2013/12/20/podium-license/R1tKQerVOYAPLW6VCKodGK/story.html>; Shawn Musgrave, "Boston Police halt license scanning program," *The Boston Globe*, December 14, 2013, at <http://www.bostonglobe.com/metro/2013/12/14/boston-police-suspend-use-high-tech-license-plate-readers-amid-privacy-concerns/B2hy9UizC7KzebnGyQ0JNM/story.html>; Ashley Luthern and Kevin Crowe, "Proposed Wisconsin bill would set rules for license-plate readers," *Milwaukee Journal Sentinel*, December 3, 2013, at <http://www.jsonline.com/news/milwaukee/proposed-wisconsin-bill-would-set-rules-for-license-plate-readers-b99155494z1-234324371.html>; Dash Coleman, "Tybee Island abandons license plate scanner plans," *Savannah Morning News*, December 3, 2013, at <http://savannahnow.com/news/2013-12-02/tybee-island-abandons-license-plate-scanner-plans#.UqCAy8RDuNO>; Kristian Foden-Vencil, "Portland police are collecting thousands of license plate numbers every day," *Portland Tribune*, December 3, 2013, at <http://portlandtribune.com/pt/9-news/2013130-portland-police-are-collecting-thousands-of-license-plate-numbers-every-day>; Alicia Petska, "City Council split over how to handle license plate reader concerns," *The News & Advance*, (Lynchburg, VA), November 12, 2013, at [http://www.newsadvance.com/news/local/article\\_5327dc78-4c18-11e3-bc28-001a4bcf6878.html](http://www.newsadvance.com/news/local/article_5327dc78-4c18-11e3-bc28-001a4bcf6878.html); Jonathan Oosting, "Proposal would regulate license plate readers in Michigan, limit data stored by police agencies," *MLive*, (Lansing, MI), September 9, 2013, at [http://www.mlive.com/politics/index.ssf/2013/09/proposal\\_would\\_regulate\\_licens.html](http://www.mlive.com/politics/index.ssf/2013/09/proposal_would_regulate_licens.html); Katrina Lamansky, "Iowa City moves to ban traffic cameras, drones, and license plate recognition," *WQAD*, June 5, 2013, at <http://wqad.com/2013/06/05/iowa-city-moves-to-ban-traffic-cameras-drones-and-license-plate-recognition/>; Richard M. Thompson, II, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Legislative Responses*, (Washington, DC: Congressional Research Service, April 3, 2013), at <http://www.fas.org/sgp/crs/natsec/R42701.pdf>; Somini Sengupta, "Rise of Drones in U.S. Drives

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Efforts to Limit Police Use,” *New York Times*, February 15, 2013, at <http://www.nytimes.com/2013/02/16/technology/rise-of-drones-in-us-spurs-efforts-to-limit-uses.html?pagewanted=all>; Stephanie K. Pell and Christopher Soghoian, “Can You See Me Now? Toward Reasonable Standards for Law Enforcement Access to Location Data That Congress Could Enact,” *Berkeley Technology Law Journal*, Vol. 27, No. 1, pp. 117-196, (2012), at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1845644](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1845644); and Stephen Rushin, “The Legislative Response to Mass Police Surveillance,” *79 Brooklyn Law Review* 1, (2013), at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2344805](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2344805). All accessed December 30, 2013.

<sup>3</sup> Personally identifiable information (PII) has been defined as “...any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual’s identity, such as name, Social Security number, date and place of birth, mother’s maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.” Government Accountability Office (GAO), *Privacy: Alternatives Exist for Enhancing Protection of Personally Identifiable Information*, (Washington, D.C.: GAO, May 2008), p. 1, at <http://www.gao.gov/new.items/d08536.pdf>. McCallister, *et. al.*, define “linked” information as “information about or related to an individual that is logically associated with other information about the individual. In contrast, *linkable* information is information about or related to an individual for which there is a possibility of logical association with other information about the individual.” Erika McCallister, Tim Grance, and Karen Scarfone, *Guide to Protecting the Confidentiality of Personally Identifiable Information (PII): Recommendations of the National Institute of Standards and Technology*, (Gaithersburg, MD: NIST, April 2010), p. 2-1, at <http://csrc.nist.gov/publications/nistpubs/800-122/sp800-122.pdf>. McCallister, *et. al.*, go on to describe *linked* and *linkable* information: “For example, if two databases contain different PII elements, then someone with access to both databases may be able to link the information from the two databases and identify individuals, as well as access additional information about or relating to the individuals. If the secondary information source is present on the same system or a closely-related system and does not have security controls that effectively segregate the information sources, then the data is considered linked. If the secondary information source is maintained more remotely, such as in an unrelated system within the organization, available in public records, or otherwise readily obtainable (e.g., internet search engine), then the data is considered linkable.” *Id.* Both accessed December 30, 2013.

<sup>4</sup> Justice Harlan first articulated a “constitutionally protected reasonable expectation of privacy” in *Katz v. United States*, 389 U.S. 347 (1967), at 361. Justice Harlan’s two-fold test is “first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as ‘reasonable.’” *Id.* Many of the technologies being deployed by law enforcement capture information that is publicly exposed, such as digital photographs and video of people and vehicles, or vehicle license plates in public venues (i.e., on public streets, roadways, highways, and public parking lots), and there is little expectation of privacy. “A person traveling in an automobile on public thoroughfares has no reasonable expectation of privacy in his movements from one place to another.” *United States v. Knotts*, 460 U.S. 276 (1983), at 281. Law enforcement is free to observe and even record information regarding a person’s or a vehicle’s movements in public venues. The U.S. Supreme Court, however, has ruled that the electronic compilation of otherwise publicly available but

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difficult to obtain records alters the privacy interest implicated by disclosure of that compilation. *U.S. Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989). Automation overwhelms what the Court referred to as the *practical obscurity* associated with manually collecting and concatenating the individual public records associated with a particular person into a comprehensive, longitudinal criminal history record. “[T]he issue here is whether the compilation of otherwise hard-to-obtain information alters the privacy interest implicated by disclosure of that information. Plainly there is a vast difference between the public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country and a computerized summary located in a single clearinghouse of information.” *Id.*, at p. 764. This has subsequently been referred to as the “mosaic theory” of the Fourth Amendment. *United States v. Maynard*, 615 F.3d 544 (D.C. Cir.) (2010). See also, Orin Kerr, “The Mosaic Theory of the Fourth Amendment,” *Michigan Law Review*, Vol. 111, p. 311, (2012), at <http://www.michiganlawreview.org/assets/pdfs/111/3/Kerr.pdf>. Accessed December 30, 2013.

<sup>5</sup> These universal principles largely align with the Fair Information Practices (FIPs) first articulated in 1973 by the Department of Health, Education & Welfare (HEW). HEW, *Records, Computers and the Rights of Citizens*, July 1973, at <http://epic.org/privacy/hew1973report/default.html>. See, Robert Gellman, *Fair Information Practices: A Basic History*, Version 2.02, November 11, 2013, at <http://bobgellman.com/rg-docs/rg-FIPShistory.pdf>. Comparable principles have been articulated by various governmental agencies, including the U.S. Department of Homeland Security, (Hugo Teufel, III, *Privacy Policy Guidance Memorandum, Number: 2008-01*, (Washington, DC: DHS, December 29, 2008), pp. 3-4, at [http://www.dhs.gov/xlibrary/assets/privacy/privacy\\_policyguide\\_2008-01.pdf](http://www.dhs.gov/xlibrary/assets/privacy/privacy_policyguide_2008-01.pdf)); the Home Office in the United Kingdom (Home Office, *Surveillance Camera Code of Practice*, (London, UK; The Stationery Office, June 2013), pp 10-11, at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/204775/Surveillance\\_Camera\\_Code\\_of\\_Practice\\_WEB.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/204775/Surveillance_Camera_Code_of_Practice_WEB.pdf)); and the Information and Privacy Commissioner of Ontario, Canada (Ann Cavoukian, *Guidelines for the Use of Video Surveillance Cameras in Public Places*, (Ontario, Canada: Information and Privacy Commissioner of Ontario, September 2007), pp. 5-6, at: [http://www.ipc.on.ca/images/Resources/up-3video\\_e\\_sep07.pdf](http://www.ipc.on.ca/images/Resources/up-3video_e_sep07.pdf), and Ann Cavoukian, *Privacy and Video Surveillance in Mass Transit Systems: A Special Investigative Report (Privacy Investigation Report MC07-68)*, (Ontario, Canada: Information and Privacy Commissioner of Ontario, March 3, 2008), p 3, at: [http://www.ipc.on.ca/images/Findings/mc07-68-ttc\\_592396093750.pdf](http://www.ipc.on.ca/images/Findings/mc07-68-ttc_592396093750.pdf)). Also see, National Research Council, *Protecting Individual Privacy in the Struggle Against Terrorists: A Framework for Program Assessment*, (The National Academies Press: Washington, D.C., 2008), at [http://nap.edu/catalog.php?record\\_id=12452](http://nap.edu/catalog.php?record_id=12452). All accessed December 30, 2013.

<sup>6</sup> Law enforcement is not, for example, expected to notify the subjects of lawfully authorized wiretaps that their conversations are being monitored and/or recorded. These deployments, however, are typically subject to prior judicial review and authorization. See, e.g., *Katz v. United States*, 389 U.S. 347 (1967); *Berger v. New York*, 388 U.S. 41 (1967); *Title III, Omnibus Crime Control and Safe Streets Act of 1968*, 18 U.S.C. §§ 2510-2522, as amended by the *Electronic Communications Privacy Act of 1986*.

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<sup>7</sup> Federal Bureau of Investigation, *Criminal Justice Information Services (CJIS) Security Policy*, Version 5.2, August 9, 2013, CJISD-ITS-DOC-08140-5.2, at <http://www.fbi.gov/about-us/cjis/cjis-security-policy-resource-center/view>. Accessed December 30, 2013.

<sup>8</sup> Additional guidance regarding safeguarding personally identifiable information can be found in the Office of Management and Budget (OMB) Data Breach notification policy (M-07-16), at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf>, and state data breach notification laws available from the National Conference of State Legislatures, at <http://www.ncsl.org/research/telecommunications-and-information-technology/security-breach-notification-laws.aspx>. Accessed December 30, 2013.

<sup>9</sup> See, e.g., International Association of Chiefs of Police, *Model Policy: License Plate Readers*, August 2010 <http://iacppolice.ebiz.uapps.net/personifyebusiness/OnlineStore/ProductDetail/tabid/55/Default.aspx?ProductId=1223>; Paula T. Dow, Attorney General, *Directive No. 2010-5, Law Enforcement Directive Promulgating Attorney General Guidelines for the Use of Automated License Plate Readers (ALPRs) and Stored ALPR Data*, (Trenton, NJ: Office of the Attorney General, December 3, 2010), at <http://www.state.nj.us/oag/dcj/agguide/directives/Dir-2010-5-LicensePlateReadersl-120310.pdf>; Office of the Police Ombudsman, *2011 Annual Report: Attachment G: Body-Worn Video & Law Enforcement: An Overview of the Common Concerns Associated with Its Use*, (Spokane, WA: Spokane Police Ombudsman, February 20, 2012), at <http://www.spdombudsman.com/wp-content/uploads/2012/02/Attachment-G-Body-Camera-Report.pdf>; ACLU, *Model Policy: Mobile License Plate Reader (LPR) System*, (Des Moines, IA: ACLU, September 19, 2012), at <http://www.aclu-ia.org/iowa/wp-content/uploads/2012/09/Model-ALPR-Policy-for-Iowa-Law-Enforcement.pdf>. Many of these policy elements are also addressed in the National Research Council's report, *op. cit.*, specifically in chapter 2, "A Framework for Evaluating Information-Based Programs to Fight Terrorism or Serve Other Important National Goals," at pp. 44-67. All accessed December 30, 2013

<sup>10</sup> A privacy impact assessment (PIA) is "a systematic process for evaluating the potential effects on privacy of a project, initiative or proposed system or scheme." Roger Clarke, "Privacy Impact Assessment: Its Origins and Development," *Computer Law & Security Review*, 25, 2 (April 2009), pp. 125-135, at <http://www.rogerclarke.com/DV/PIAHist-08.html>. Law enforcement agencies should consider using the Global Advisory Committee's *Guide to Conducting Privacy Impact Assessments for State, Local, and Tribal Justice Entities* at <https://it.ojp.gov/gist/47/Guide-to-Conducting-Privacy-Impact-Assessments-for-State--Local--and-Tribal-Justice-Entities>. This resource leads policy developers through appropriate privacy risk assessment questions that evaluate the process through which PII is collected, stored, protected, shared, and managed by an electronic information system or online collection application. The IACP published *Privacy Impact Assessment Report for the Utilization of License Plate Readers*, (Alexandria, VA: IACP, September 2009), at [http://www.theiacp.org/Portals/0/pdfs/LPR\\_Privacy\\_Impact\\_Assessment.pdf](http://www.theiacp.org/Portals/0/pdfs/LPR_Privacy_Impact_Assessment.pdf). For a list of PIAs completed by the U.S. Department of Justice, see <http://www.justice.gov/opcl/pia.htm>; Department of Homeland Security, see <https://www.dhs.gov/privacy-office-privacy-impact-assessments-pia>. All accessed December 30, 2013.



## FORT WORTH POLICE OFFICERS ASSOCIATION

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Richard W. Van Houten, Jr.  
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January 31, 2015

University of Cincinnati  
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### The President's Task Force on 21<sup>st</sup> Century Policing

The law enforcement profession is rapidly changing and it is imperative that input be sought from all perspectives as decisions are made to formulate the road map that will lead us all into the future of 21<sup>st</sup> century policing. Specifically, if the boots on the ground do not have a voice in the implementation of policy, procedure and new technology there will be resistance to the implementation of the technology regardless of how beneficial it may be to the profession and the citizens being served. The end user of any tool must have confidence in the tool and the desired result of its use in order to willingly deploy the tool as intended.

The law enforcement profession is continuously evolving in an effort to deliver the services that citizens demand and deserve. Advances in technology are being developed at an astounding rate and it is incumbent on the leaders of our profession to analyze the various products while always keeping in mind the possible impact on the constitutional and due process rights of the public and the police. Body cameras are inevitable in our profession, thus it is necessary that all decision makers implement them with caution, making every effort to ensure they are only used as a tool to help bridge the gap between perception and reality in regards to officer interactions with the public.

It is a common belief in public safety labor that we represent the very finest that our society has to offer. Any individual that would willingly go into harm's way in the protection of others is truly a remarkable and selfless person. Many of us in the law enforcement community have been advocating for years for the ability to use body camera technology. We know, intuitively, that body cameras have positive effects on any situation that our officers find themselves in. In the end, everyone, citizen and officer, behave better when they know a camera is recording.

### **Body Cameras - Research and Legal Considerations**

Body cameras are a technology that has just recently become available to law enforcement. Currently, the Fort Worth Police Department (approximately 1500

officers serving just under 800,000 residents) is a national leader in the use of body cameras with 595 units already purchased, 488 currently deployed and a pending needs assessment for an additional 250. While, admittedly, our policy is a constant work in progress, it was developed in a collaborative effort between management and labor. During the policy development and implementation process we quickly realized that we were dealing with an emerging technology that would have vast implications that would have to be addressed to create a sustainable advancement in how we serve the public.

Recording of minors and the retention of those recordings is an identified issue that must be resolved. Officers interact with the public daily and in various environments. Many of those environments have minors present and while they may not be the focus of the interaction, their image is recorded because they are present. The majority of states, if not all states, closely regulate the recording, photographing and retention of data by law enforcement concerning minors.

The release of video under Open Records and the time consuming nature of redacting all recorded information from the video that is currently required to be released when properly requested is another issue. Redacting information from video is currently performed frame by frame making it extremely costly and time consuming.

These are just a couple of examples of unforeseen issues that must be resolved to create a sustainable policy for the use of body cameras. Through cooperative relationships between management and labor, a truly realistic body camera policy will be achieved in Fort Worth, Texas.

### **Body Cameras – Implementation**

The implementation of body cameras cannot be done in a vacuum. It is imperative that there be dialogue between all of the stakeholders and affected parties. Current knowledge of body camera technology and implementation that conforms to the various state and national statutes is merely the tip of the iceberg. It will take an ongoing effort by all to discover and properly address every issue that arises. There must be an acknowledgement by all involved in the implementation process that body cameras cannot be a Pandora's Box nor will they be a panacea. In order for successful implementation of body cameras, an understanding must be gained by all that a body camera is a tool with very specific limitations.

Pandora's Box – Law enforcement labor leaders are stringent advocates for officers' rights. The core function of a public safety labor union is the advocacy for pay, benefits, working conditions and due process rights while being true to the primary goal of all police officers which is honoring the oath of office we swore to put the safety of citizens above all else. The use of body cameras is a technology that will be able to document an incident from a single perspective. It must be used within the parameters for which it is intended. It cannot nor should it be allowed to be used to

micromanage an officers' daily activities for disciplinary purposes. Fishing expeditions by management will significantly erode the trust that is necessary for officers to record their interactions with the public.

Panacea – Organizations that are directly advocating for the use of body cameras from the sole stand point of police reform, transparency and accountability for police have to recognize that this technology is a tool with limited ability. Body cameras are not nor will they ever be the global eye in the sky that delivers an all knowing account for any and all police encounters. It is a two dimensional image from a specific point of view that will never capture the entire picture or even see everything that an officer will see. It will never tell the complete story of any event and due to these limitations it has to be viewed in the context of its limitations.

## **Recommendations**

Policy Development – While it is wise for model policy recommendations to be developed on a national level, it should only be developed as a rough template with the local control being given to the individual policing agencies entrusting them with the ability and discretion to customize the policy to fit within their unique departmental structure. No policing agency accomplishes their mission in the same fashion. Whether state to state or city to city all are governed and operate differently. Some agencies have labor contracts that have been negotiated over decades and others simply governed by civil service rules or a version of local charter governance. The individual agencies should be highly encouraged to seek input in the policy development process from their local labor leaders, citizens, local ACLU chapter, faith-based partners and local legal departments.

Funding – Nationwide, public safety budgets are stressed and continue to be diminished, this Task Force must be mindful to not create unfunded mandates. Body camera technology is expensive and the cost does not end with the purchase of the equipment alone. The greater on-going cost is encountered with the storage, maintenance and use of the data that must be preserved under stringent controls to comply with evidentiary protocols. Federal funding must be provided if the goal is to equip officers throughout the country with body cameras.

Open Records – Video recordings should not be subject to open records requests. The only time video from body cameras should be compelled to be released is when it is evidentiary in nature and then only after all judicial proceedings including appeals are concluded or a court orders the release of specific video. Critics will be swift to condemn this policy but when the totality of the circumstances are weighed, premature release of video evidence has the ability to rapidly taint the juror pool and negatively impact judicial proceedings denying individuals of their constitutional rights. Critical police incidents such as use of force situations should be allowed to be investigated fully prior to the compelled release of any video evidence that has the ability to potentially aggravate community/police tensions.

Privacy – Privacy concerns are fundamental in the implementation of body cameras. Not only are there legitimate privacy concerns for the public, the officers themselves have legitimate privacy concerns as well. Body cameras should not be on at all times. In fact, they should only be activated when necessary and in an interaction with the public. Since two-party consent is only mandated in select states, the issue of obtaining consent should be left to local control. However, if body cameras are to be used to record all interactions between police and the public as a form of monitoring behavior, then all interactions should be recorded regardless of consent. You cannot mandate that an officer record every public interaction without also mandating that the public allow every interaction to be recorded. Some privacy advocate groups would argue that there should be a presumption created against the officer for failing to record an interaction yet they also argue that the public has a right to deny consent to being recorded. This thought process is counter intuitive and will only lead to a further divide between police and the public. Regarding privacy, consistency is key.

Accountability – Accountability cuts both ways. Police officers are held accountable for their actions on a daily basis by their supervision and the policies agencies have enacted to allow for citizen complaints. Body cameras will disprove allegations against police officers in greater proportion than the technology will sustain allegations. Members of the public that provide false statements against police officers that are definitively disproven by video evidence should be held criminally accountable for their false allegations. For those that would argue that body cameras should solely be used for monitoring officer behavior, police reform, transparency and accountability, an argument can and should be made that the counter is true as well. Body camera video should be used as a tool for the truth to be recorded regardless of who is in the wrong and in the greatest majority of the instances the officer will be shown to have been acting in the right. Once again, if an individual makes a false complaint against a police officer and that complaint is proven to be false through the use of the officers' body camera, the individual must be held criminally accountable for their false allegations.

Advancing Technology – Much like the technology of in-car video cameras, it was discovered early on that humans, regardless of training, focus primarily on dangers and threats during high stress situations. Officers will frequently get distracted from activating their body camera during these high stress encounters. The solution to in-car video was to have mechanical triggers activate the camera such as the activation of emergency lights and sirens or the vehicle speed reaching a predetermined rate. Funding should be dedicated to advancing this technology if it is truly going to be a tool that improves policing in the end.

## **Conclusion**

If implemented with careful consideration of these issues, the use of body cameras and related technology has the potential to dramatically improve the service police

agencies provide to the public. However, the considerable danger of this powerful technology is the equal potential to destroy the sometimes fragile trust between the public and the police. It is through thoughtful dialogue that emerging technologies can be implemented in the best interest of the public and law enforcement professionals alike.

# **Testimony before the *President's Task Force on 21<sup>st</sup> Century Policing***

**January 31, 2015**

## **What We Know, Do Not Know and Need to Know About Police Officer Body-Worn Cameras**

Michael D. White, Ph.D., Professor, Arizona State University

My name is Michael D. White. I am a Professor of Criminology and Criminal Justice at Arizona State University. I am also a Senior Diagnostic Specialist for the Office of Justice Programs (OJP) Diagnostic Center, and a Senior Subject Matter Expert for the Bureau of Justice Assistance's Smart Policing Initiative. In August 2013, a year before Michael Brown's death in Ferguson, the OJP Diagnostic Center commissioned me to write a report on a new emerging technology, police officer body-worn cameras (BWCs).<sup>1</sup> The goals of that report, which was published in April 2014, were twofold. First, I sought to "lay out on the table" all of the claims that had been made about body-worn cameras, both by advocates and critics. Much like the edge pieces of a puzzle, the report was intended to provide a framework for the discussion surrounding this new technology. Second, I conducted an extensive review of available research and assessed the current state of knowledge for each of the identified claims.

Within a few months of this report becoming publicly available, the tragic deaths of Michael Brown in Ferguson and Eric Garner in New York, both at the hands of the police, sparked a national debate over police use of force against citizens, and the degree to which officers are held accountable for their actions when a citizen is killed. Much of the dialogue over how to increase accountability has focused on police officer BWCs. The discourse over police use of force, accountability, and the potential role of BWCs culminated in the creation of this Task Force by President Obama, as well as a proposed *Body Worn Camera Partnership Program* that would provide \$75 million to police departments across the country to buy BWCs.

There has been wide-ranging speculation over the potential impact of BWCs. Advocates claim that the technology can increase accountability and can even prevent officer killings of citizens. Critics have raised questions about the technology's impact on citizen and officer privacy, and the significant cost required to successfully manage a BWC program. Unfortunately, there have been few balanced discussions of BWCs, and as a result, there are many questions about what to expect when officers begin wearing cameras. Below is a brief overview of what we currently know and do not know about BWCs, along with some specific recommendations for this Task Force.

### What We Know

There are two things we know with certainty regarding this technology. First, BWCs, if used properly, provide a permanent video record of what transpires during a police-citizen encounter. For many police chiefs this benefit, by itself, is sufficient justification to adopt the technology. Consider the Michael Brown incident in Ferguson. Two vastly different accounts of what transpired during the encounter emerged based on the officer and eyewitness statements. If

Officer Wilson had been wearing a camera during the encounter, we would have been able to observe what happened during that tragic incident.

Second, the decision by a police department to start a BWC program represents an enormous investment of money, manpower and resources. There are, of course, up-front costs in terms of buying the hardware and training officers. The real costs, however, come on the back-end in terms of managing the vast amount of data that is generated by the cameras. Just last week, the acting Chief of the Phoenix Police Department announced that it would cost their department \$3.5 million to 1) outfit all of their officers with body cameras, and 2) successfully manage the body-worn camera program.<sup>2</sup> The video data must be stored securely, in some cases, for years. A BWC program impacts all units in the police department, as well as numerous outside stakeholders including prosecutors and defense attorneys. This is a fact, and any police chief who is contemplating the creation of a body-worn camera program should carefully consider the resource implications of such a program.

### What We Think We Know

A handful of research studies have provided some insights into several key questions surrounding BWCs. Much more research is needed, but there are several important themes that have emerged from the current small, but growing body of work.

First, several studies have linked BWCs to significant declines in officer use of force and citizen complaints against officers. Following the start of their body-worn camera program, the Rialto (CA) Police Department documented a near 90% drop in citizen complaints, and a 60% drop in officer use of force.<sup>3</sup> Those notable changes have continued during the second year of the Rialto study. Similar findings have emerged from studies of the Mesa (AZ) and Phoenix Police Departments (though the reductions in Mesa and Phoenix are not as large as the Rialto findings).<sup>4</sup> Three studies are not nearly enough to draw firm conclusions, but the consistency in findings across these studies is intriguing. More research is needed to determine whether the reductions in these two important outcomes persist in other jurisdictions.

Second, it is reasonable to assume that BWCs provide video evidence that can be used in criminal prosecutions, civil lawsuits and investigations of citizen complaints. There is some research in Great Britain to support this potential benefit, but research in the United States has not sufficiently investigated the evidentiary value of BWCs. As a result, the evidentiary value of BWCs, especially for prosecutors in criminal cases, is largely unknown.

Third, it also seems reasonable to assume that BWCs could serve as a valuable training tool. Police recruits could wear BWCs during scenario-based training exercises, and then instructors and recruits could review the video afterwards to evaluate performance. BWCs could also be used to monitor rookie officers on the street during field training. Very few police departments are using BWCs in training, however.

Fourth, BWCs also allow police to engage in a full review of encounters where force is used by an officer, including deadly force. Police-citizen encounters are transactional events, with each participant making decisions and responding to the decisions of the other participant. As a result,

use of force by a police officer is the culmination of a series of earlier actions and reactions. However, review of force incidents traditionally ignores earlier stages of an encounter and focuses entirely on the final-frame decision. James Fyfe called this the split-second syndrome, and he argued that this narrow focus excuses unnecessary violence resulting from improper training, incompetence and poor decision-making.<sup>5</sup> BWCs represent an opportunity to overcome the split-second syndrome because the technology can provide a permanent video record of the entire police-citizen encounter. BWCs allow for a full review of all decisions made by the officer during an encounter, from start to finish. Did the officer make decisions early on in the encounter that escalated the potential for violence? Did the officer miss opportunities to resolve the encounter peacefully? BWCs can facilitate a comprehensive review of forceful encounters to determine why they ended in violence; and to identify best practices for resolving encounters peacefully.

Last, BWCs may serve as a foundation for a sentinel events review process. Sentinel event review is a strategy developed in health care to fully investigate a negative event (death or injury) through a comprehensive, non-blaming review. In 2014, the National Institute of Justice began a Sentinel Events Initiative to explore the utility of the strategy in criminal justice.<sup>6</sup> BWCs provide a unique opportunity to explore the viability of sentinel event review in policing because the technology can capture the entirety of a critical incident. Such reviews would occur independently of internal and criminal investigations, and would focus on identifying ways to reduce the likelihood of future sentinel events.

### What We Do Not Know

There is much we do not know regarding the impact and consequences of BWCs. First, we do not fully understand the impact of BWCs on citizen privacy. There is potential for BWCs to violate a citizen's expectation of privacy. There are also questions about whether to record encounters with vulnerable populations. What if a sexual assault victim asks an officer to turn off the BWC? What if children are present during a domestic dispute? These privacy concerns are real, and officers will need guidance on how to deal with them. That guidance should come in the form of detailed administrative policy and training. When police departments develop their policy, they should engage with multiple stakeholders, including victim advocacy groups, to insure that they fully understand the important issues and concerns surrounding the impact of BWCs on victims, children and other vulnerable populations.

Second, there are also questions about the impact of BWCs on officer privacy. Police unions have opposed BWCs in a number of jurisdictions, arguing that adoption of the technology must be negotiated as part of the collective bargaining agreement.<sup>7</sup> Several unions have expressed concerns about BWCs because the technology gives supervisors the opportunity to go on "fishing expeditions" against officers in their command. Police chiefs need to gain buy-in from line officers and their unions at the beginning of the process.

Advocates argue that BWCs have a "civilizing effect." That is, the presence of the camera causes both the officer and the citizen to behave better. While the reductions in use of force and complaints described above are compelling, we have no idea what caused them. Do BWCs cause

the officer's behavior to change? The citizen's behavior to change? Both? We simply do not know. Some of the reductions in complaints may be caused by citizens being less likely to file frivolous complaints. A related question is whether BWCs can prevent tragic encounters like those that ended the lives of Michael Brown and Eric Garner. And the answer is again – we simply do not know.

### Recommendations

Based on the available research on BWCs, and the ongoing discourse surrounding the technology, there are a number of recommendations that this Task Force should consider when offering guidance on the technology.

1. Police Departments should create an Advisory Group at the start of the BWC adoption process. The Advisory Group should include line officers, union representatives, and members from a host of other departmental units including research and planning, technology and internal affairs. The Advisory Group should also include external stakeholders such as representatives from the prosecutor's office, the defense bar, advocacy groups and citizens. This approach will give each group of stakeholders the opportunity, throughout the process, to ask questions, express their concerns and offer input on policy and training. The work done up front with the Advisory Group will greatly reduce the potential for resistance from those stakeholders later on after the technology is deployed in the field.
2. Emphasize the importance of research. Core questions remain unanswered. However, given the tremendous interest in the technology, there is potential to grow the body of scientific knowledge very quickly. But that can only happen if police departments engage with researchers as they implement their body-worn camera programs. As the technology diffuses widely, so too should research on the technology.
3. Create a repository of departmental policies governing BWCs. Though there is some guidance in terms of policy development (e.g., the IACP model policy), departments have few places to turn to get information regarding core areas of the technology and its implementation. The administrative policy repository would be a tremendous resource for police leaders who are at the initial stages of developing their body-worn camera programs. Moreover, the repository should include a detailed review of the core issues that must be covered in an administrative policy, as well as a discussion of the variation in those issues across the available policies. What do policies say about camera activation? What do they say about data storage and retention? A review of commonalities and differences across policies would allow police departments to make informed decisions about their own administrative policies.
4. Promote the potential for BWCs to be used as a training tool, both in the academy and during field training for rookie officers. The training benefits of body-worn cameras remain largely untapped.

5. BWCs hold tremendous promise as a violence reduction tool, and researchers and police leaders should explore this potential benefit. BWCs represent an opportunity to overcome the split-second syndrome because the technology can provide a permanent video record of the entire police-citizen encounter. BWCs can facilitate a comprehensive review of forceful encounters to determine why they ended in violence; and to identify best practices for resolving encounters peacefully. BWCs can also serve as the foundation for the development of a sentinel events review process after critical incidents.
6. Emphasize that expectations about the impact of BWCs must be reasonable. In cities like Ferguson, the relationship between police and the community is defined by long-standing anger and distrust. BWCs, on their own, cannot alter that relationship. But BWCs can represent a starting point for police to demonstrate transparency and a willingness to engage with citizens. This first step is especially important in cities like Ferguson where police officers are seen as enemies and threats, rather than public servants and problem solvers.

**Michael D. White** is a Professor in the School of Criminology and Criminal Justice at Arizona State University, and is Associate Director of ASU's Center for Violence Prevention and Community Safety. He is also a Senior Diagnostic Specialist for the Office of Justice Programs Diagnostic Center, and a Senior Subject Matter Expert for the Bureau of Justice Assistance's Smart Policing Initiative. He received his Ph.D. in Criminal Justice from Temple University in 1999. Prior to entering academia, Dr. White worked as a deputy sheriff in Pennsylvania. Dr. White's primary research interests involve the police, including use of force, technology, and misconduct. His recent work has been published in *Justice Quarterly*, *Criminology and Public Policy*, *Criminal Justice and Behavior* and *Crime and Delinquency*. He is co-author of *Jammed Up: Bad Cops, Police Misconduct, and the New York City Police Department*, and co-editor of *Race, Ethnicity and Policing: New and Essential Readings* (both published by New York University Press). Dr. White has commented extensively in the media on police officer body-worn cameras, including in *Scientific American*, *Wall Street Journal*, *New York Times*, *Washington Post*, *TIME Magazine*, *NPR*, and *MSNBC*. Dr. White is currently conducting a multi-site randomized controlled trial testing the impact of police officer body-worn cameras in Tempe, Arizona and Spokane, Washington (funded by the Laura and John Arnold Foundation). He is also author of a US Department of Justice report titled, *Police officer body-worn cameras: Assessing the evidence*. The full report can be found at:

<https://www.ojpdagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf>

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<sup>1</sup> White, Michael D. (2014). *Police officer body-worn cameras: Assessing the evidence*. Washington, DC: U.S. Department of Justice, Office of Justice Programs Diagnostic Center and the COPS Office.

<sup>2</sup> <http://www.azcentral.com/story/news/local/phoenix/2015/01/21/phoenix-police-body-cameras-beneficial-costly/22142475/>

<sup>3</sup> Ariel, Barak, Farrar, William A. & Sutherland, Alex. (In press). The effect if police body-worn cameras on use of force and citizens' complaints against the police: A randomized controlled trial. *Journal of Quantitative Criminology*, DOI 10.1007/s10940-014-9236-3.

<sup>4</sup> Mesa Police Department. (2013). *On-officer body camera system: Program evaluation and recommendations*. Mesa, AZ: Mesa Police Department.

Kurtenbach, M. & Katz, C. (9/5/13). *Personal interview on the Phoenix Police Department body-worn camera project*. Arizona State University.

<sup>5</sup> Fyfe, J.J. (1986). The split-second syndrome and other determinants of police violence." In *Violent Transactions*. (eds.) Anne T. Campbell and John J. Gibbs. Oxford: Basil Blackwell.

<sup>6</sup> National Institute of Justice (September 2014). *Mending justice: Sentinel event reviews*. Washington, DC: US Department of Justice.

<sup>7</sup> Santora, M. (8/13/13). Order that police wear cameras stirs unexpected reactions. *New York Times*. Available at: <http://www.nytimes.com/2013/08/14/nyregion/order-that-police-wear-cameras-stirs-unexpected-reactions.html? r=0>.

Schoenmann, J. (5/7/12). Police union threatens legal action over Metro's decision to test body-mounted cameras. *Las Vegas Sun*. Available at: <http://www.lasvegassun.com/news/2012/may/07/police-union-threatens-legal-action-over-metros-de/>.



Each police station should have an Instagram account that people in the area can follow for updates on local happenings. Examples of this are traffic updates, cone zones, missing person reports, and warnings about suspicious characters. These accounts could also be used to show the personalities of policemen and women; for example, they might post a selfie with the cat they saved from a tree -- playful things! Lastly, each police station's account could be branded with their own hashtag so that community members could also interact with the accounts. They would be able to use the hashtag on their own photos so that policemen and women could see their comments.

– Christina Robertson, Betsy Thomas, Charity Peets, and Jean Kim



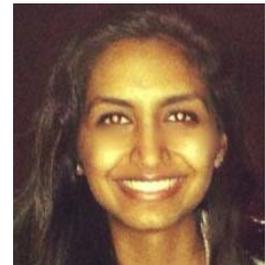
Police departments should make creative/informative videos discussing their duties and responsibilities to educate youth about their jobs. – Xae Yang

Ask officers to participate in more social events and ask them to volunteer for the community. Those events are the best chance for them to connect with the public and gain their trust back. –Tom Chen



A way for the police force to reach out to youth is to post honestly about presently occurring or recent crimes on social media outlets. If the police helped youth become more aware of their surroundings, they might feel safer and learn to trust police presence. This could also be a means for the youth to post crimes that they are witnessing. – Sabrina Lee

Because a great deal of youth use Facebook, Twitter, and Instagram religiously, it would be in the interest of the community police to place ads on these sites that encourage youth to participate in internships or volunteer positions that they are offering. Even if an individual is not interested in this type of advocacy or line of work, these ads would improve their perception of the police in their area. –Veena Bansal



Trust could be built between police and their local community if police used social media as an outlet to take responsibility for their actions, right and wrong. If policemen and women are publicly honest and held accountable for their practices in interacting with civilians as well as questionable individuals, the public might be able to trust them again. – Glenda Li



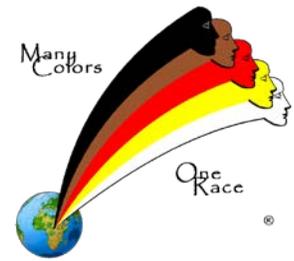
To create a climate of respect with youth, law enforcement should use social media as a platform to ask for youths' ideas and feedback on the current state of the police force and respond to their ideas and queries when possible. Occasionally, law enforcement might give a shout-out to youth in specific areas in the community, asking them about something that is relevant to their corner of the city or simply interacting with them on a more personal level; law enforcement might also create friendly competitions or drawings (being careful to avoid exacerbating any already existing rivalries). These activities will make youth feel like they are being heard and respected by law enforcement, enable them to become more familiar with their law enforcement officers, and give them opportunities to learn more about how community ideas are implemented. – Stefanie Molina

Date: January 8, 2015

To:

From: Sandy L. Holman, Director & Student Interns of The Culture C.O.---O.P.

Re: **Topic of Building Trust and Legitimacy: Police and Youth Relations**



The Culture C.O.---O.P.

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**The current state of policing and the resistance to developing strong relationships based on mutual trust with local police forces in communities of color is a national phenomenon and rooted in our country's history.** The components of this distrust are multifaceted, complicated, and deeply entrenched, and date back beyond the emergence of police forces as institutions in our country – a country whose birth was steeped in a foundation of nationally legalized discrimination, nefarious practices, policies and biased constructs which favored those with white skin. In fact, the dynamics we see today are truly symptomatic of deeper issues in a nation which has not been able to effectively address structural, historical, deeply rooted racism and other inequities which plague all our institutions. These inequities play a central role in a majority of the challenges faced by poor communities and communities of color. It is critical that we explore the oppressive disproportionality primarily absorbed by economically disadvantaged communities and by people of color in almost every facet of life. If we view this as a systemic problem within a greater cultural context, then the solutions we propose will have a higher likelihood of seeing success in any institution. This systemic approach considers historically institutionalized practices, current human systems dynamics and their interconnectedness, and future objectives and goals that offer the greatest potential for sustainable changes. **If we come up with a laundry list of items to implement without the aforementioned considerations, we will be using a twig where a dam is needed. It is with this in mind that I offer some considerations for improving relations between police and youth.** It is my deepest hope that the recommendations below are but one leaf on the full tree that needs to be nurtured. **Because we are focusing on youth, I have invited several college students to share their ideas also and they follow the suggestions I have made.** Thanks for your consideration and your work on this very important endeavor.

**Suggestions for building trust between youth, communities and police forces By Sandy Lynne Holman, Director of The Culture C.O.---O.P. and United In Unity. These organizations focus on promoting equity/diversity, cultural competency, reading and a quality education for all. We work with all age groups and a variety of institutions with the goal of making sure all people have the opportunity to thrive. 530---902---4534/[info@cultureco---op.com](mailto:info@cultureco---op.com)/[www.cultureco---op.com](http://www.cultureco---op.com)**

- 1) All police departments and employees should be required to participate in a comprehensive seminar exploring historical underpinnings and practices that have created the trends we observe today, in**
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communities of color in particular. This would go a long way towards dismantling stereotypes, which contribute to bias, profiling, and racist practices when policing people of color. It would challenge belief systems which influence how we act towards others and address the fact that we all have been conditioned to see darker skinned people as inferior, criminally inclined, and uneducated. This seminar would have to be done well and give a basic understanding of past structures, policies, and inequities that have created many of the dynamics we see today in police departments and the country. A basic understanding of "Human Systems Dynamics" would be critical also and would go beyond your standard diversity training.

- 2) In addition to the seminar above, officers should be required to attend quarterly educational sessions which would build upon each other and give a deeper understanding of a variety of essential factors that would affect how officers do their work and see groups in their community. These additional presentations would continue to create an environment and officers with a deeper, nuanced understanding of a variety of topics. Sample topics would include the following: "The history of policing and engagement with communities, the good and the bad," "Systemic practices which have impacted the behavior of officers and individuals," and "What contributes to unconscious bias and the proclivity towards police profiling and excessive use of force," just to name a few.
  - 3) All police departments should be required to submit to a local and national data bank (right now it is optional) that tracks key data around policing in general and creates an external accountability system. We cannot give assistance to departments in dire need of interventions without good, consistent data.
  - 4) All police departments, with the help of outside experts, leadership, and staff, should do a complete assessment of operational procedures, policies and practices which perpetuate unhealthy work environments and employees. This is critical since it impacts how people engage their communities. This process is better served when there is a core group that understands system dynamics, equity concepts and human development in at least a basic way. A national template detailing the characteristics of healthy, successful police forces and practices should exist to lead this process. This internal and external self-examination should happen at least yearly. Changes should be made based on findings within each department
  - 5) Psychological examinations of all officers should be ongoing because working in certain occupations in which stress and safety are constantly factors can cause mental deterioration and/or create a culture in which deviant behavior increases over time. These examinations should be at least once every two years and provide support and help to those officers who seem to be developing violent tendencies. This is important so that other officers and community members are protected from an officer who has gone "rogue."
  - 6) Initial psychological assessments currently used for potential new hires should be reexamined for their effectiveness in rooting out individuals who have "issues" that would affect their policing.
  - 7) All new hires at police departments should go through a series of orientations, which focus on all the things I mentioned above. There should also be specialized instruction and information on the demographics of their particular community so that employees have a basic understanding of cultural dynamics in their city.
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Date: January 8, 2015

- 8) A system that would create transparency with the community should be developed and made available to anyone interested in knowing how departments operate. Information on circumstances surrounding controversial cases should be made available as soon as possible.
- 9) A local “think---tank committee,” which includes all stakeholders, should come up with ways to increase trust and strengthen relationships with communities and youth. There is so much more to share, but in the spirit of giving youth a voice I will now list their suggestions and glorious ideas. Thanks for your time.

10)

**Youth Speak: Below are suggestions from youth who represent a variety of cultures, backgrounds and disciplines. I hope you take their wisdom to heart.**



I believe that police could strengthen relations with youth if there were more options for restorative justice for misdemeanor crimes; these options should be diverse and educational to give troubled youth opportunities to channel their interests outside of criminal behaviors. --Glenda Li



I think that psychological testing is key within the police force, specifically ongoing psychological testing. In addition, I think that the public should have access to police records online for free. I also believe the police force should have diversity training with trained professionals to help them move through different climates with youth. --Amanda Eke



One thing that could be done to build trust between youth and the police is to hold more forums and public events between the community and the police; for example, public works projects would give the police the opportunity to educate the community on how the justice system works. This would enable youth to better understand the reasoning behind police actions and help eliminate the “Us vs. Them” mentality. --Christina Phan, Jean Kim, Melissa Marzan, Felicia Alvarez, and Christy Robertson (L to R)

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The first thing that comes to mind in regards to the poor relationship between youth and the police force is the view of police as "the enemy". As a result, there needs to be an increase in effort put out by the police force to improve the channels of communication between youth and police. Due to recent unfavorable events in particular, police nationwide need to understand that a sense of trust has been lost amongst many Americans, youth especially, and police must be active in their efforts to gain back this trust in any way possible. –Betsy Thomas



Thomas



The police could offer internships to youth and allow them to tag along for light police work so that the youth could see how policemen work in real life and see how much they actually help the people in their community. –Shengzhou Wang and Sabrina Lee

We need better and more strategic reform/education in the police force surrounding issues of race. This reform needs to avoid targeting recent controversies, which have the potential to make police feel attacked and reduce their willingness to listen openly, and it needs to assume that most police officers are morally sound, approaching them on the basis of sociological statistics that identify the prevalence of disproportionate violence against people of color. Emphasize that the institution is the problem --- not the officers themselves --- and encourage officers to become a team with the duty and the power to make their institution great. –Stefanie Molina



Officers should have a required diversity training series. The series could introduce a communication component in which youth and officers have the opportunity to share their concerns and perspectives. –Charity Peets

Adding cameras to police uniforms would give people more trust in the actions and judgments of law enforcement officers. –Tom Chen



Police Departments should each contain an Outreach Unit made up of sworn officers whose goal is to reach out to build trust and relationships with their community. This unit would lead programs and events that would encourage community and law enforcement interaction and cooperation. Their primary goal would be to become the liaison between the community and their law enforcement. –Jessica McDonald



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In order to improve youth and police relations, one solution that must be implemented is some type of mentoring program, where police officers are giving their time back to the community by getting to know an at-risk youth and providing support for that individual. This will build trust and understanding which are of the utmost importance at this pivotal moment in history. –Gabbi Cerezo

I believe that many of the issues that have arisen between the police force and youth could be minimized if communication between the two parties were to improve. Communication can be strengthened by having youth send letters to the police detailing their concerns and having the police issue comprehensive statements that address *how* they will improve in these areas. Back-and-forth dialogue in any way, shape, or form is imperative. –Veena Bansal



Police officers should implement criminal justice academies and programs on high school campuses to introduce youth to police duties and increase transparency within the community. –Xae Yang

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Written Testimony for the President's Task Force on 21st Century Policing  
Julie Parker, Media Relations Division Director  
Prince George's County Police Department, Palmer Park, MD  
January 28, 2015

### **Introduction**

Thank you for the opportunity to submit written testimony on the topic of Technology and Social Media for consideration by the President's Task Force on 21<sup>st</sup> Century Policing. It's an honor to be invited to generate recommendations to strengthen public trust in law enforcement and build relationships between police officers and the citizens they are sworn to serve and protect. As a former Washington, DC, TV news reporter and the current Director of the Media Relations Division for the Prince George's County Police Department (PGPD), the 28th largest police department in the nation, I strive to inform and engage our community about the work of our 1,700 sworn officers. Seven days a week, our division uses a portfolio of social media resources: Facebook, Twitter, YouTube, Instagram, Vine and our own blog, [pgpolice.blogspot.com](http://pgpolice.blogspot.com), to engage in a meaningful dialogue with the public. Leveraging the power of multiple platforms and operating just like a newsroom, we share our messages directly with our citizens. Social media is a game-changer for law enforcement when it comes to telling a department's story; no longer does a department have to rely on the traditional media to do it for them. Police departments can control and share unfiltered messages and social media serves as a catalyst for building a culture of inclusion, where law enforcement and the public work *together* to improve community safety. Now, more than ever before, both sides of the story are being told.

### **Information Release: Run Your Media Division Like a Newsroom**

Perhaps the most beneficial and basic reason for a law enforcement agency to utilize social media is to release information. The medium could be Twitter, Instagram or any other platform. No matter if detectives need assistance in tracking down a suspect, a homicide case has gone cold with no leads or your patrol officers just rescued a puppy from a hot car on a July day, distributing your department's information to a wide audience is easily achieved through social media. When an agency shares its news in language similar to traditional media outlets, it's far more likely traditional media will pick up the story and promote it throughout their channels and large audiences, thereby amplifying the police message exponentially. Additionally, a news release written almost as if a journalist would write it has a better chance of running on a television news station's website, for example, nearly unedited. Newsrooms are increasingly strapped for resources and pressed to put out fresh content. When your release is essentially ready to publish, sometimes it will be released by the news station almost verbatim, much like the way your police department crafted it. The following release was posted on the PGPD's blog and Tweeted. Due to the nature of the situation, the content of the release, to include demonstrative visuals, and the timeliness and transparency of the release, the media

coverage in the Washington, DC market surrounding this police-involved shooting was at a minimum, fair, if not favorable, toward the department.

### **PGPD News Blog**

*News and Information from the Prince George's County Police Department*

**Friday, May 30, 2014**

#### **PGPD Investigates Police-Involved Shooting in Suitland**

*The Prince George's County Police Department is investigating a fatal police-involved shooting in Suitland. The Special Investigation Response Team (SIRT) is leading the investigation.*

*On May 30, 2014, at approximately 2:15 am, patrol officers were called to the 3300 block of Curtis Drive for the report of two men arguing. A 911 caller reported seeing one of those men holding a long gun.*

*After arriving on the scene, two patrol officers cautiously approached the two men and used the corner of an apartment building as cover. The officers saw that one of the men was carrying what appeared to be an assault rifle. The officers ordered the armed man to drop the weapon, but he did not comply. Both officers, in fear for their lives, were forced to discharge their weapons, striking the armed suspect. The suspect was pronounced dead at a hospital.*



*The weapons in the photographs were recovered from the scene. The rifle was recovered from the deceased suspect. The handgun was recovered from the second male. He was not hurt. It has since been determined that both weapons are pellet guns. Pellet guns such as the ones recovered today in Suitland are often manufactured to look as realistic as possible.*



*Both officers are on routine administrative leave pending the outcome of the investigation. Neither officer was injured.*

#### **Recommendations:**

Proofread before posting. Every post, Tweet or Facebook comment is a representation of your department. Ensure what you put out is well written, spell-checked, accurate and professional. Ensuring constant attention to detail is key as failing to do so could do more harm than good. A congratulatory post to the troops with a wrong squad name, for example, could hurt your reputation from an internal standpoint. Additionally, if crime

statistics you tout are inaccurate, you risk damaging your credibility with the community. Double source your information whenever possible prior to publishing. You will be judged on your online appearance.

Release timely content. If something is fresh, it will be of greater interest to your community, add a sense of urgency and help attract traditional media to also share the story. An interesting arrest could become a TV news story, if it happened recently. A dated event is much harder to pitch if your goal is to get the news out via print, radio or TV news outlets.

Include photos or video. The saying "a picture is worth a thousand words" exists with good reason. Helping people visualize what occurred will always transcend words. The visuals, whether they be photos or videos, will increase engagement exponentially. Always strive to add that element to your posts and Tweets.

### **Community Engagement: To Know a Department is to Love It. Or at Least It**

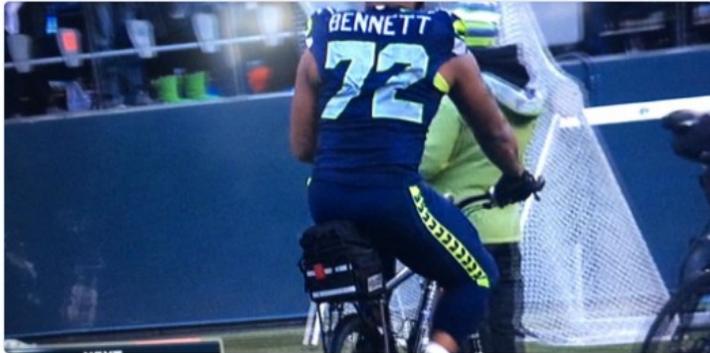
It's much easier to dislike someone you don't know. Can you "know" someone you haven't met? To a degree, yes. Beginning in the summer of 2011, the Prince George's County Police Department turned to social media to begin rebranding the department's once-troubled image. The mission was to change the community's perception, that some would say was tainted by a constant barrage of negative media stories in the decade or so prior. Tweet by Tweet, post by post, the PGPD's media team worked to share the department's good news. Not all of it was remarkable, but simply sharing what officers did on a daily basis was a refreshing change. TweetAlongs, akin to a virtual ride-along, became the norm for the department. Giving the public a glimpse into the life of law enforcement helped enlighten citizens in a dynamic way. Engaging with the citizens in real time, by responding to Tweets, showed the department wanted to interact with its community. In July of 2014, the Washington Post featured the PGPD for its work using social media to reshape the perception of the department.

[http://www.washingtonpost.com/local/crime/prince-georges-police-leveraging-social-media-to-change-its-reputation/2014/07/08/a57ff4c6-fb02-11e3-b1f4-8e77c632c07b\\_story.html](http://www.washingtonpost.com/local/crime/prince-georges-police-leveraging-social-media-to-change-its-reputation/2014/07/08/a57ff4c6-fb02-11e3-b1f4-8e77c632c07b_story.html)

Using humor on social media is proven successful strategy for community engagement. The notion of something lighthearted in the midst of arrests, crime and serious news is unexpected and appreciated. Combining the humor with a timely, national event such as the NFL playoffs can be a recipe for a tremendous virtual response. Seattle Police scored big with this Tweet featuring a photo of Michael Bennett of the Seattle Seahawks who snagged a police bike for a joyride after winning the NFC championship game:

Seattle Police Dept. @SeattlePD · Jan 18

Just bring the bike back before  
#SuperbOwlXLIX @mosesbread72 :-)



11K 11K View more photos and videos

With one Tweet, the department paints itself as in-touch, hometown-loving, witty, likable organization. With outreach like this, it's little wonder the agency has a following of about 100,000 on Twitter alone.

### **Recommendations:**

Reach out and touch someone. A simple response to an online query tells that citizen its police department cares enough to listen and to answer.

Social media is a two-way conversation. When you put up a photo on Instagram and multiple people post something complimentary about your officers, say a collective thank you to the group.

Don't ignore or delete all rude comments. Occasionally, you can turn what appears to be a negative remark around by simply taking the time to respond to see if there's something you can do to help. Sometimes citizens just want to vent. Your one interaction can frame that person's perception of your police department.

If a social media post is obscene or racist, you can block or report that user.

### **Crisis Communications: Convey Critical Messages to Your Community**

Any law enforcement agency's public information officer (PIO) can attest that during an emergency, the more hands on deck the better. When minutes matter, social media can save your PIO valuable time by expediting the sharing of your story like nothing else. Particularly on Twitter, a news-driven message-sharing site beloved by journalists and the general public, a crisis can become a viral phenomenon depending on the circumstances, much as it did for the Boston Police Department on April 15, 2013.



For the next four days, BPD engaged its community and the entire world in a mesmerizing series of informative, transparent Tweets. The Huffington Post wrote, "The police department's stream of tweets ended up being the best defense against misinformation and Bostonians' lifeline for communication about the men terrorizing their city."

Then, on the evening of April 19, @bostonpolice, with its following of 300,000, sent one of the most shared police Tweets ever:



The BPD's handling of the communications piece of the Boston Marathon proved a law enforcement agency has the capability of being a trusted news source and THE source for its department's news at a time of crisis.

### **Recommendations:**

Announce what you can early on in a crisis, thereby declaring yourself a valuable source and the authoritative source of your department's news. Even when the only confirmed information you have are reports of an emergency, i.e. an active shooter at a mall, but you know your officers are responding to the scene, confirm you have officers en route and that more information will be shared when available.

If possible, assign personnel to monitor traditional and social media for inaccurate information. People take to social media to learn the news, but some will carelessly spread rumors or, worse yet, blatant lies.

If misinformation is spreading, as will often happen during unfolding situations, use social media to correct it. No need to declare a particular media outlet wrong, simply state what is right. If appropriate, include what is prompting your particular message. For example, "Despite reports of 2 suspects being on the loose, @PoliceDepartmentXYZ believes there is a lone suspect who is still unaccounted for. Call Crime Solvers w/info."

Think about your "voice" on social media during a time of crisis. As a law enforcement agency, you want to assure your community you're working to keep people safe.

Authoritative, credible and caring are all warranted images to convey, particularly during a time of fear.

### **Track Your Traffic: Increasing Your Reach Spreads Your Message**

For police departments in 2015, it's not enough to simply be on social media. Want to be better? Track your progress. What kind of traffic are you experiencing? Are you reaching the audiences you want to reach? For example, if you announce a crime involving high school students in your community, take note of who is retweeting, responding to your Instagram posts, or commenting on Facebook. Take a look at their profiles. Are these young people? If you're not getting traction with the groups you want to target online, brainstorm on how to best reach those audiences. There are a number of free tools to analyze your reach and manage your messages:

<http://www.techrepublic.com/article/10-free-analytics-tools-to-help-you-manage-social-media/>

A common misconception is that chasing followers is akin to competing in a popularity contest. As a law enforcement agency on social media, one of your main goals should be the ability to reach your target audience in the midst of a crisis. The larger your following, the more people will hear and spread your message. And more importantly, they will receive the information directly from an unfiltered source: you. The quest to expand your following should, in part, be based on the goal of creating a captive audience.

### **Recommendations:**

Be thoughtful and deliberate about your social media reach. Track your progress year to year, month to month and/or day to day, depending on how growth-focused you are and how motivated your department is to increase its social media following.

Set social media-specific goals. Write them down, share them with your team, keep your people updated on your progress. You may consider featuring a chart on your office wall comparing yourselves to other agencies of your size, your neighboring jurisdictions, or those you most want to emulate. Try offering an incentive program to reward a team member who shows initiative. For example, buy lunch for the person who generates a post resulting in a sizable number of new followers.

Social media creates a real dialogue and plays a major role in helping to shape public opinion. Push yourselves. There's no place for complacency when it comes to ramping up efforts to increase visibility and building relationships between law enforcement and the public. It's a dynamic profession and your online presence should reflect that. If you've generated strong response on one social media site, such as Facebook, take the next step to engage your community and expand your audience by starting to use Twitter, Vine or Pinterest.

## **Digital Morale Boosts: Self-Promotion Benefits Officers and the Community**

A key element of a law enforcement agency's social media strategy should be self-promotion. The benefits are twofold: you inform your community about the service your officers provide and you give the officers credit, publicly, for such work. At a time in this country when law enforcement is under more public scrutiny than ever, a simple Facebook post (example below) congratulating officers who have done a good job can have a real impact on these officers and their families. At the same time, you're sending kudos to your police family, letting the community know about your department's hard work and giving citizens a chance to say thank you. Before social media, an opportunity like this rarely existed. Highlighting the PGPD's Officers of the Month, or in the following example, our District III Patrol Squad of the Month, are often among our most popular posts, generating hundreds of "likes" and comments on Facebook.

### **Recommendations:**

Search for your department's news. Very often there's a story to be told, which is frequently ignored in the fast-paced world of policing. Don't miss an opportunity to highlight the good work your patrol officers and detectives accomplish on a daily basis. The result can be profound when a member of your community, for example, reaches out to thank your officers for their heroic efforts:



Establish and cultivate relationships with appropriate personnel (Shift Lieutenants, District Commanders, etc.) to ensure your media team is apprised of accomplishments. The mindset that a great arrest or a heroic act is "...no big deal, it's what police officers do" must be replaced with a push to highlight exceptional acts. Media Division members should nurture those relationships by checking in frequently and culture shift occurs that keeps the media team top of mind when something newsworthy on and in the department emerges.

### **Conclusion**

The conversation on social media is taking place with or without you. It's in the best interest for the law enforcement profession as a whole to embrace the technology and use it to the best of their ability. The days of only using traditional media are long gone,

especially in a world with so many platforms for consuming information. Social media is a resource that allows a law enforcement agency to connect with the community, refute incorrect information, alert the public to a crisis, rebrand its image, inspire trust and tell its own story. Never before has policing had such a valuable and powerful tool and ally in crafting its message and image. Social media is a force multiplier and the price is one all of public safety can embrace: free. Posting once every few weeks and failing to respond to community members who reach out will detract from any good intentions. Be ready to commit. It should be a daily priority. Engage, share and be responsive, and then experience the benefits social media can and will provide.



# Association of State Criminal Investigative Agencies

January 28, 2015

Charles Ramsey  
Commissioner  
Philadelphia Police Department  
Co-Chair  
President's Task Force on 21<sup>st</sup> Century Policing

Laurie Robinson  
Clarence J. Robinson Professor of Criminology, Law and Society  
George Mason University  
Co-Chair  
President's Task Force on 21<sup>st</sup> Century Policing

Dear Commissioner Ramsey and Professor Robinson,

On behalf of the members of the Association of State Criminal Investigative Agencies (ASCIA) I am pleased to submit the attached testimony for the task force's consideration. ASCIA is happy to provide any additional perspectives for task force members.

Thank you for your commitment to leading this effort.

Sincerely,

A handwritten signature in black ink that reads 'Ronald C. Sloan'. The signature is fluid and cursive, with a long horizontal line extending from the end.

Ronald C. Sloan  
President, ASCIA  
Director, Colorado Bureau of Investigation

## **Introduction**

The Association of State Criminal Investigative Agencies (ASCIA) is pleased to provide testimony for the President's Task Force on 21<sup>st</sup> Century Policing. ASCIA membership consists of the senior executives of statewide criminal investigative agencies in the United States, whether they are an independent bureau within the state or a state police agency with both criminal and other enforcement responsibilities. While our membership is qualified to provide input on a broad range of topics before the task force, this testimony focuses on three areas: 1) Investigations of officer involved shootings (OIS); 2) Responsible use of criminal intelligence and information sharing; and 3) Responsible use of technology and social media by law enforcement investigators.

## **Investigations of officer involved shootings by police**

State criminal investigative agencies are in positions to ensure that investigations of police use of force or other actions that result in serious injury and/or death can be conducted in a skilled, impartial, unbiased, and fair manner that focuses on fact finding. While investigations of this nature are not standardized across the country today, best practice foundational protocols can enhance public trust. A recent survey of ASCIA members reveals that over the last two years, state criminal investigative agencies have successfully conducted in excess of 1500 investigations of officer involved shootings. Drawing on this considerable experience with these investigations, ASCIA would offer the following as a recommended approach.

Agents of a state's criminal investigative agency should either conduct these types of investigations, or participate on a team of investigators from different agencies. Where possible, the team of investigators should be independent from the agencies that employ the subject officers. Operational responsibility for the investigative team should be a management level agent of the state criminal investigative agency, working in conjunction with the appropriate prosecutor's office for legal guidance pursuant to any assessment of findings.

Both during and at the conclusion of an investigation, the "managing agent" for the state criminal investigative agency should work in conjunction with the prosecutor with jurisdiction and senior management of the state agency to communicate as appropriate with the involved law enforcement agency's Chief Law Enforcement Officer for purposes of managing local community communications and internal law enforcement agency concerns. Where possible, crime scene response and processing should be conducted by the state criminal investigative agency, or with involvement of the state criminal investigative agency that is focused on fact finding. Any required forensic examination of evidence should be conducted by the state criminal investigative agency.

Protocols for the timing of interviews or voluntary statements by subject officers in OIS should be written and agreed upon in advance and adhered to by the investigating agency or team. Protocols for the timing and allowances for legal representation, psychological support and/or de-briefing, administration of Miranda advisements, and the collection of non-testimonial evidence should be written and agreed upon in advance and adhered to by the investigating agency or team. Standards should be developed for collecting data associated with the case. Additionally, final prosecutorial decisions should rest with the prosecutor in whose jurisdiction the agency is located or in the jurisdiction where the incident occurred (if different from where the agency is located).

ASCIA recognizes that not all states give their state criminal investigative agency the explicit statutory authority to take over an investigation. In these states, there should be a clear set of protocols in place that encourages joint investigative teams, which have been trained to work under the direction of a special prosecutor. This can help alleviate concerns of bias and predetermined outcomes. For example, in South Dakota, the state investigative agency is the lead agency in all OIS that happen within the state. This has

come about by tradition rather than state legislative action. Clear and trusted protocols have been developed that make transparent what should be expected when a Chief or Sheriff makes a request for assistance. Additionally, through these protocols, the press and public have become accustomed to how long an investigation will take and informed of the conclusions that have been made. This has helped to engender trust with the public that the investigation will be fair and impartial.

In any criminal investigation, including officer use-of-force whether deadly or not, one of the key components is the collection and analysis of physical evidence in order to gather all facts pertaining to an incident. When properly tested and analyzed, forensic evidence can provide investigative leads, corroborate or refute testimony, and provide critical information regarding the event in question. Crime scenes should be processed by qualified individuals who are experts in the preservation and collection of evidence. Analysis of evidence should be performed by an accredited laboratory and qualified analysts. Due to the nature of these types of investigations it is imperative that the analysis of evidence be prioritized and expedited to the greatest extent possible without jeopardizing the quality or integrity of the analysis. In cases involving a death, an autopsy should be performed by a qualified medical examiner experienced in these types of cases. All ancillary testing and analyses should be done by an accredited laboratory. All aspects of the medical legal investigation should be prioritized and expedited to the greatest extent possible without jeopardizing quality or integrity. Communication between prosecutors, investigators, crime scene specialists, laboratory personnel, and medical examiner personnel should be maintained at all times. Good communication will ensure that a thorough forensic investigation is completed in an effective, timely manner.

### **Responsible use of criminal intelligence and information sharing**

Criminal intelligence and information sharing help investigators work smarter and inform effective public safety strategies. Major progress has occurred over the past decade thanks to strong vision by policing leaders; policy leadership by entities like the Program Manager for the Information Sharing Environment (PM-ISE), the Global Justice Information Sharing Initiative (Global), and the Criminal Intelligence Coordinating Council (CICC); and groundbreaking innovation by industry partners.

But “the last mile” of a nationwide information sharing environment remains uncharted. For example, most investigators still cannot search the basic records systems of America’s police departments like computer aided dispatch (CAD) and records management systems (RMS) to perform searches that can “connect the dots” in investigations. In many states the ability of one major city to find out if another major city has had involvement with a “Mr. John Smith” still requires a phone call. The value of sharing RMS records with Federal partners is also mostly unrealized, but where it occurs routinely it has significant impact on Federal investigative efforts. Local jurisdictions manage 85 percent of all public safety information, and while innovations in multijurisdictional collaboration like the National Network of Fusion Centers (fusion centers) and the Criminal Intelligence Enterprise (CIE) have greatly helped to break down barriers, more progress is essential to make criminal investigations more effective and efficient. Some states are independently moving toward that “last mile,” but funding and coordinated policy support is needed for a comprehensive solution based upon national standards and privacy principles.

There are currently 78 recognized fusion centers in the United States, all of which were established by state and local governments following the attacks of September 11, 2001. ASCIA member agencies “own” the designated state fusion center in 34 states. From a federal perspective, these centers play an important counterterrorism and preparedness role by enabling both vertical and horizontal information sharing on threats to the homeland. But they have become very valuable in addressing crime every day. Early on, most of these centers adopted an “all crimes” approach. This was in recognition that the primary value of

these centers was in supporting local and state police operations to more effectively and efficiently provide services to the community, engage in advanced criminal intelligence analysis, partner with the public, and help develop prevention strategies.

Fusion centers can be leveraged for the application of "smart policing" or "information-led policing" to support local agency initiatives on a broader scale including in rural areas. The fusion centers play a critical role in making more efficient use of information provided by the community in a proactive manner to address crime, strengthen homeland security, and provide situational awareness to public safety and community leaders. They provide analytics to help local police departments and sheriffs offices utilize understaffed patrol units more effectively to patrol areas of high hazard and provide information to the public, civic groups, parole, probation, private sector and corrections partners. Better analytics and information sharing also allow the police to address the crime problems confronting neighborhoods by using tactics that are less intrusive, less disruptive to the fiber of the neighborhoods, and consistent with privacy and civil liberties imperatives. The use of information coordinated by fusion centers can enhance prevention and assist in more rapid apprehension of criminal suspects. Dealing effectively with these criminals instills in the community the feeling that law enforcement is addressing true threats to neighborhood peace and stability and reduces future victimization.

A cornerstone of accountability in law enforcement information sharing and analysis is Chapter 28 of the Code of Federal Regulations, Part 23 (28 CFR Part 23). It contains guidelines and implementing standards for law enforcement agencies working with criminal intelligence systems. It was last clarified in the late 1990s. While the guidance has stood the test of time and helped thousands of agencies, ASCIA recommends that an initiative be undertaken to refresh 28 CFR Part 23 to address the myriad issues that have developed in criminal intelligence analysis and sharing over the past 15 years. Additionally, standardization of law enforcement criminal intelligence units can be supported through a refresh of Law Enforcement Intelligence Unit (LEIU) standards.

Deconfliction is an important information sharing practice among law enforcement agencies. It enhances officer safety by preventing "blue-on-blue" incidents, it enhances operational coordination, and is a professional courtesy to notify jurisdictions about operational activity. Major progress has occurred over the past year to make the largest national deconfliction technical systems interoperable, and more should be done to ensure deconfliction is standard practice across all law enforcement agencies.

### **Responsible use of technology and social media by law enforcement investigators**

To conduct effective criminal investigations in the 21<sup>st</sup> Century, law enforcement at all levels must be able to access digital evidence with appropriate legal process. Many of today's crime scenes are full of digital evidence – information that can help generate leads, identify criminal networks, and help implicate or exonerate a suspect. Given this reality, law enforcement officials and lawmakers have aired concerns about the "going dark" phenomenon – the increasing difficulty in obtaining access to potential evidence of a crime via communications systems and computing devices.

Even when an impartial judge has signed a search warrant indicating probable cause that evidence of a crime will be found in a search of communications content, law enforcement may not be able to access the information. For example, some increasingly popular communications methods (e.g. Voice over Internet Protocol; messaging via Internet enabled gaming consoles) were not engineered to enable lawful intercept activity by law enforcement. These technologies enable criminals to communicate with less fear of their activity being detected or intercepted by law enforcement. Another example is technology companies that are now selling communications devices with encryption enabled as a default setting for information on the device. Even with a warrant, investigators will be unable to access information from the devices unless

the owner “unlocks” the device with a PIN code, which current law does not allow law enforcement to compel. As a result, evidence of criminal conduct on the device such as child sexual exploitation, human trafficking, and illegal drug distribution becomes undiscoverable.

ASCIA members certainly understand the imperative to protect individual privacy and prevent cyber threats. However, ASCIA strongly believes that policy makers and the public should have a clear understanding – through transparent debate – of the potential consequences of criminal investigators’ inability to obtain evidence that can solve crimes. Put yourselves in the shoes of a crime victim or their family members – do you want certain evidence to be technically impossible to obtain by investigators who are working to bring justice to the victim?

The Communications Assistance for Law Enforcement Act (CALEA) was enacted to ensure that law enforcement has the ability to conduct electronic surveillance activities pursuant to a lawful court order. An update to CALEA should be considered to ensure that 21<sup>st</sup> Century law enforcement investigators can obtain access to evidence that is increasingly important in criminal investigations, while strengthening safeguards for citizens’ privacy and civil liberties. Similarly, emergency provisions should be strengthened in existing laws (e.g. Stored Communications Act). Today, federal law puts the decision in the hands of communications providers to determine whether an “emergency” public safety situation exists that would enable providers to provide certain information to investigators. This should be reversed: with appropriate oversight and after-action process, the decision to deem an “emergency” situation should be made by law enforcement – not communications providers.

Congress should also consider updating the Stored Communications Act to equate “addressing information” for newer technologies with addressing information in traditional communications technologies. Current law makes a distinction between these two types of information despite their functional equivalency, which requires different levels of legal process to obtain the same type of information.

New investigative technologies continue to play a crucial role in helping criminal investigators generate leads and solve crimes. Without the ability of law enforcement to take advantage of available technology, it simply means that unnecessary roadblocks are thrown in front of investigators. Automatic license plate readers, facial recognition software, “IMSI-catchers”, social media research, and other tools are increasingly important in generating and analyzing information in an investigation. ASCIA fully recognizes and appreciates the concerns of the public and policy makers over the use of technology by law enforcement. However, in many instances these concerns are based on misinformation, innuendo, and a misunderstanding of how the technology works, how it is used in practice, and the nature of the data it collects.

With appropriate constraints, law enforcement should be able to take advantage of ever-improving technology just like any other profession. Policy makers should make an extra effort in the 21<sup>st</sup> Century to understand the application of these technologies to public safety and criminal investigations so that legislative and regulatory protections for citizens’ privacy, civil rights, and civil liberties do not prevent the use of technology or the data that is produced.

For instance, automatic license plate readers (LPR) are important tools that police use daily to recover stolen vehicles, generate investigative leads, and solve crimes. Despite the effectiveness of this and many other technologies, however, some are pushing false narratives and misinformation about law enforcement “tracking” innocent people. The real story about law enforcement’s use of technology to investigate crimes is one of responsible use every day that is guided by strict adherence to relevant laws and policies. Yet we

still must work across all levels of law enforcement to solidify policies regarding allowable use, privacy protections, and officer accountability. To help with this, there should be recognition of the need by any agency that wishes to acquire certain technologies that standards and policies must be established *prior* to operationalizing the technology. The International Association of Chiefs of Police (IACP) published a helpful resource (*IACP Technology Policy Framework*) for law enforcement executives in January 2014 that should be consulted to assist agencies with policy development. This includes promotion of social media research policies that explain how and when social media can be used to support criminal investigations.

More generally, we encourage policy makers and law enforcement executives to think about 21<sup>st</sup> Century technology in policing from a broader perspective than simply developing one-off policies for different types of technology. The core of the issue is how law enforcement should handle *data* in terms of collection, analysis, and sharing. We suggest that universal principles should regulate law enforcement's use of data. Specifically, policies should specify **access restrictions** to certain technologies and data, **mandatory audits** of technology use and data access, and **reporting of metrics** that indicate the value of the technology or data in supporting policing outcomes.

Technology advancements help law enforcement to more efficiently generate high-quality investigative leads and gather evidence. While we must be able to take advantage of the latest innovations to support our mission, we must do more to proactively communicate with policy makers, political leadership, and our communities about how we use technology to create better understanding of its effectiveness.

### **Conclusion**

The issues we addressed above represent just a few of the many considerations that ASCIA members believe are important to advance policing in the 21<sup>st</sup> Century. As criminal investigators, our people are extremely good at tackling tough and often emotionally disturbing challenges in the aftermath of a crime. But preventing crime in the first place is always preferable. Effective evidence-based prevention and intervention programming such as the Gang Resistance Education and Training (GREAT) program and Community Anti-Drug Coalitions should be supported with substantial investment by all levels of government in collaboration with the private sector. Doing more across all communities to encourage respect for fellow human beings and the rule of law is essential.

The efforts of local police to effectively engage the community to develop trust and respect for the role of law enforcement in preventing crime will always be a fundamental element of crime control. Without basic policies that support the historic notion that the police are nothing more than members of the community with responsibility to maintain community safety and order, we will never be successful in engendering the trust and cooperation of community members in general. That partnership is essential as the police innovate strategies designed to continue the significant reduction of crime that we have experienced across the country.

Through clear and consistent policies that ensure an independent and fair process to investigate officer involved shootings, to “connect the dots” through greater use of criminal intelligence and information sharing, and to take advantage of cutting-edge investigative technologies, ASCIA members believe that we will get even better at investigating crimes in the 21<sup>st</sup> Century while maintaining high levels of trust with the communities we serve.



Submitted to  
The President's Task Force on 21<sup>st</sup> Century Policing  
Written Testimony on the topics of

## **Youth Engagement and Social Media**

Samuel Somers Jr.  
Chief of Police  
Sacramento Police Department

*City of*  
**SACRAMENTO**  
Police Department



## **Police-Community Trust**

Last year, a number of high profile use of force incidents around the nation involving law enforcement garnered a significant amount of public scrutiny. In light of these recent events, concern regarding use of force by law enforcement and their relationship with the communities they serve has increased dramatically. The role of law enforcement in society is one that should be built on a foundation of trust, accountability, and legitimacy. A trusting relationship between law enforcement and the community is developed over time and must be continually cultivated in order to be effective.

Of utmost importance in the building of these relationships is the positive engagement of youth. This is fundamental to the development of long term trust of law enforcement in our communities. These relationships not only lead to reductions in crime and increased graduation, employment and college entrance rates, they can also help break the generational mistrust of law enforcement in some communities.

The information and recommendations this Task Force seeks to obtain is essential to further develop and foster those critical police-community relationships across our nation.

## **Geographic Policing**

Like many police departments, the Sacramento Police Department has been a dedicated practitioner of Community Oriented Policing for decades. At its peak, the department had a robust Problem Oriented Policing Unit, assigned throughout the city. Facing significant budget reductions, the department reduced most of its specialized policing services, including Problem Oriented Policing teams. In 2013, after five years of cuts, the department began to rebuild and in the process, adopted a number of new initiatives. This began with a new strategic vision of "Making Sacramento the Safest Big City in California," while simultaneously enhancing our Community Oriented Policing approach to a geographic-based model.



Our Geographic Policing model involves the assignment of officers, sergeants and lieutenants to smaller, more manageable regions of the city. These smaller areas of responsibility allow officers to develop meaningful connections with residents, businesses, schools and community groups. The goal of these partnerships is to reduce crime, increase communication with residents and work in partnership on quality of life issues. This program blends a problem solving, prevention-oriented philosophy throughout the organization. Patrol lieutenants maintain ultimate responsibility for the crime and community connections within their regions. The lieutenant, along with the sergeants and officers in that geographic area, develop ownership of the issues in their assigned neighborhoods, and members of the community have a clear path for communication with the police department.

The results of these initiatives, the dedication of our employees, and a tremendous amount of engagement by our community have allowed Sacramento to enjoy in two, back-to-back years of crime reduction. In 2013, Sacramento lowered its Part 1 crime rate 10.1 percent from the previous year, followed by a 14.68 percent crime reduction in 2014 compared to the previous year. The homicide rate was also the lowest it has been in over four decades. The last time the city of Sacramento had a lower homicide rate was in 1973. The most meaningful story from these statistics is that 5,468 fewer people have been victims of serious crime in our city over the last two years.

### **Recommendations**

The three recommendations presented in this document are not intended to be an all-encompassing approach to building public trust or reducing crime. They are practical options based upon programs related to youth engagement, community outreach and social media that the Sacramento Police Department has used to effectively strengthen the relationship between the members of our agency and the community we serve. We share these recommendations in hopes that others will benefit in the same manner we have by looking at the successful endeavors of other agencies throughout the nation.



***Recommendation #1 – Develop partnerships between police and local faith-based groups in an effort to build relationships and legitimacy with high risk youth. The goal of this relationship is to increase community engagement and reduce youth violence.***

One of the more important programs in our commitment to “Making Sacramento the Safest Big City in California” is our Cops & Clergy program. Our agency recognized the importance of faith-based leaders from our neighborhoods, who can enhance the relationship between at-risk individuals, the congregations, our agency and the public at large. Many of these congregations have been in existence for generations and bring with them the ability to help build relationships and provide mentorship to at-risk individuals and their families. The goal of the program is to build community trust and reduce gang violence through outreach and intervention efforts.

Currently, the Sacramento Police Department’s Cops & Clergy program has approximately 20 trained clergy, who twice a month, ride in a patrol car with uniformed officers. The officers accompany the clergy members as they make contact with 10 to 20 at-risk individuals who have been referred from a variety of sources. The officers simply make the introduction and facilitate dialogue, allowing meaningful interaction between the clergy, the individual, and often, the family. Sociology students from a local university assist the program with case management and, if needed, connect the family to available resources. The officers assigned to this program often visit the congregations, engaging them in dialogue about crime, prevention and intervention efforts, recruiting and other community-wide concerns. The program has helped our agency develop relationships that previously did not exist.

***Recommendation #2 – Use a social media platform that brings neighbors together in a partnership with law enforcement to increase communication, community connection and crime prevention.***

As the Sacramento Police Department began its Geographic Policing transition it sought out technology solutions that would enable the department to greatly expand its ability to communicate online and through social media outlets with city residents. We determined that Nextdoor.com was the most suitable social media platform to advance our community engagement efforts. Nextdoor.com is a



social media platform that connects neighbors to each other. This platform fosters communication and empowers people to take responsibility for the safety of their neighborhoods. Nextdoor.com enables law enforcement agencies to send and receive targeted communications to geographically distinct areas of the city which perfectly support our Geographic Policing approach.

The Sacramento Police Department accesses Nextdoor.com through four geographically-based command pages and one headquarters page. From each of the command pages, all of the captains, lieutenants and sergeants assigned to that geographic area have access to the page. Through the use of Nextdoor.com, law enforcement is able to post timely crime and safety information directly to all of their neighborhoods in one consistent message post. Posts generally range from information on a specific recent crime in their neighborhoods to a newly identified trend to tips neighbors can utilize to avoid becoming a victim. The platform also allows neighbors to communicate information directly back to our agency. Through the headquarters page, the Public Information Office and the Neighborhood Watch Program have access to the entire city and can utilize Nextdoor.com to send media releases, alert residents of critical missing persons, share positive stories or events in the community along with information on Neighborhood Watch training.

When we began utilizing Nextdoor.com in June of 2013, there were approximately 1,500 residents that had already been using the technology. We are pleased to report that after an extensive media and training campaign, Nextdoor.com in Sacramento has grown from the original 1,500 users to over 26,000 users today that represent 86 percent of the neighborhoods in our city.

***Recommendation #3 – Increase visible partnerships with school districts in an effort to build positive youth interaction with law enforcement, develop life skills and improve academic success.***

For almost two decades the Sacramento Police Department has partnered with the California Department of Education and local school districts to create Criminal Justice Academies in four area high schools. These career technical education programs help prepare students, many from at-risk environments, for both college and careers. The cohort style program teams a police officer with a



teacher in the classroom who co-instructs the program. The students are required to meet minimum GPA, attendance and community service requirements. The 500+ students in the program receive regular training in leadership, team building, fitness, college mentoring, and SAT preparation courses funded by a private foundation.

While we hope the program generates interest in law enforcement careers, the goal is to raise high school graduation and college entrance rates. To that end we have been very successful with high school graduation rates – 10 percent to 15 percent higher than their non-academy peers. Over 90 percent of the graduating seniors enter college or the military.

Understanding the need to engage our youth in positive interaction at a younger age, we began an Adopt-A-School program for all the elementary and middle schools in our city. Our program is operated by patrol officers who work day shift and each have an adopted school. This simple partnership with local schools allows our officers to go on campus a couple of times a month and engage in positive interactions with students during recess or their lunch period. Some teachers have also asked the officers to come into the classroom to talk about safety or read with the students.

### **Conclusion**

Strengthening public trust between law enforcement and the communities they protect can be a complex challenge. Our agency values the opportunity to share input with this Task Force as it seeks to develop ways to address the critical issue of 21<sup>st</sup> Century Policing.



# THE NATIONAL CENTER FOR CAMPUS PUBLIC SAFETY

Kim Vansell, Director

## TESTIMONY

### President's Task Force on 21<sup>st</sup> Century Policing

Thank you for the opportunity to submit testimony on the topics of Policy and Oversight and Technology and Social Media for consideration by the Task Force. The National Center for Campus Public Safety (NCCPS) was created to connect institutions of higher education with available federal and non-federal resources, and with each other, to identify and prioritize the needs of the field, and develop comprehensive responses to facilitate collaboration around issues of campus public safety.

As a clearinghouse of information for campus public safety and emergency managers, the NCCPS is in a position to observe national trends in the challenges campus communities face when addressing new and emerging critical safety issues, while ensuring they have adequate resources to address the full spectrum of potential incidents.

#### Policy and Oversight

Campus police and public safety professionals have engaged in community policing for decades. The campus environment provides excellent opportunities for fostering strong relationships between law enforcement and the multicultural communities they serve and protect, as well as strengthening public trust and promoting effective crime reduction. Across the nation, campus law enforcement agencies enjoy an on-going collaborative relationship with faculty, staff, and students. There are numerous examples of not only on-campus coalitions, but also coalitions with officials and representatives from host municipalities and local service providers. Campuses and communities have worked successfully to coordinate efforts in identifying and developing comprehensive strategic plans to apply an environmental strategies approach to crime prevention and reduction, as well as behavioral threat management.

The changing demographics of the American population are reflected in increasingly diverse campus communities. This diversification occasionally results in tension between community members along racial, religious, ethnic and sexual orientation

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lines. At times, tension may also exist between community members and campus law enforcement. Consistent with the tenets of community policing, a number of campus law enforcement agencies have dedicated officers to serve as liaisons with campus groups representing various interests. This approach can, among other things, serve as an early warning system for rising tensions. While campuses may have on-site resources to assist with community tensions, several campuses have availed themselves of the resources provided by the U.S. Department of Justice Community Relations Service (CRS). Ideally, the CRS is called upon to serve in a proactive role before tensions rise to the level of damaging actions. However, CRS can also assist campuses after the fact to reduce tensions, and identify a pro-social path forward.

Large-scale civil unrest is another challenge that our campus law enforcement agencies have experience with. Over the last five decades, campus law enforcement agencies have learned and incorporated many valuable lessons for balancing the constitutional rights of our citizens to peacefully protest with the vital need to maintain public safety. The approaches taken by campus law enforcement to prevent and respond to unlawful civil disorder may hold lessons transferrable to state and local law enforcement agencies.

The outcome of these collaborations is increased awareness and public trust, as well as experiential learning opportunities for students. Highlighting these collaborative efforts/models could show examples of the public safety community at large establishing community-based relationships.

In addition to effective collaboration strategies, higher education institutions also provide numerous resources to the communities in which they reside. College campuses are rich supplies of human resources, as students engage in their topic areas of study. Numerous communities benefit from students' engagement in their community, varying from research to service learning. This model of student engagement is also incorporated into policing services. Campus police and their communities have benefited from partnering with students in academic classes to conduct problem-solving research, maximize resources, assist in strategic planning, provide cultural diversity opportunities and education, and participate in citizen police academies.

Higher education institutions are facilitators of learning, and can host discussions of large populations dealing with similar challenges. Out of these discussions, partnerships and mentorships can be developed and effective promising practices measured and shared. In addition, higher education institutions can investigate technological advances to be used by law enforcement for strategic, innovative purposes.

Community crime reduction strategies include law enforcement working closely with prevention and harm reduction professionals, widely available on college campuses, to further understanding of a comprehensive, community-wide environmental strategies approach. In addition, campuses have developed strategic methods to partner with local school districts to share prevention education

strategies and mentorships. Academic departments are infusing prevention education messages throughout their curriculum instruction to ensure the next generation of educators and service providers have a basic understanding of comprehensive, community---wide environmental strategy approaches to a variety of challenges. Through this process, the role law enforcement plays becomes part of the larger strategic plan and relationships develop throughout populations as community members work together to resolve local challenges. By identifying and expanding upon what currently exists in the areas of curriculum infusion and mentorship programs, we can continue to educate the broader community around a variety of social issues.

University campuses should also be modeling civil rights enforcement to local school districts, specifically as it pertains to Title IX compliance, behavioral threat management, and violence prevention. Many colleges and universities have behavioral threat management programs that involve campus security and local law enforcement; administration; counseling; judicial officers; attorneys; student affairs; faculty; risk management; human resources; and students. Federal cooperative agreements and grants have funded many of the training courses and seminars offered for campus personnel on this subject. In the true spirit of community policing, behavioral threat assessment relies upon collaboration and partnerships within in the community. Fostering relationships between campuses and school districts in their communities will provide the opportunity for mentorship in creating and sustaining behavioral threat assessment programs and allow for the sharing of information regarding program and civil rights enforcement lessons learned and effective practices.

#### Recommendations:

- Encourage state, local and campus law enforcement agencies to develop early warning systems to identify community tensions, and to utilize all appropriate and available resources to resolve those tensions, including the resources of the CRS and the Office of Community Oriented Policing Services (COPS), as well as comparable resources at the state and local level, and in the non---profit sector.
- Encourage state and local law enforcement agencies to examine and replicate, as appropriate, the strategies employed by campus public safety agencies to prevent and respond to mass civil unrest. Examples of promising practices are included in the Bureau of Justice Assistance document, "Maintaining Safety and Order on College and University Campuses During Protests and Demonstrations: Promising Practices."<sup>i</sup>
- Encourage state and local law enforcement agencies to partner with colleges and universities to identify the root causes of police---community tensions, and work with all stakeholders to identify solutions that work for a specific community.
- Continue to support efforts to decrease fragmentation and communicate

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federal and non-federal resources to communities, including college campuses.

- Highlight campuses as models of relationship building and collaborative networks.
- Promote universities as research providers and facilitators of innovative practices for crime reduction and developing community trust.
- Provide universities with resource incentives to work strategically and innovatively to enhance local community problem solving and using technology to enhance crime prevention and community interaction.
- Identify existing partnerships that exist where institutions of higher education are working with local school districts for prevention education, building relationships of trust, and modeling civil rights enforcement.
- Support opportunities for colleges to provide mentorship to local school districts and educators, as well as developing standards for including critical messaging into higher education academic curriculum.

### Social Media

The use of social media by police and public safety agencies has grown commensurate with its prevalence as a pathway for communication. The International Association of Chiefs of Police's Center for Social Media identifies several important characteristics that make the use of social media by police an important strategy for building relationships. These include the immediacy of the message and the ability to therefore control the conversation better; the facilitation of interaction and engagement by the agency and its community; the free accessibility of social media by the community; and the manner in which social media can be integrated into the agency's communication strategy.

Through social media, law enforcement agencies are able to engage the citizens they serve in a manner never before possible. Law enforcement is using social media to establish an important relationship and trust with the community. Agencies provide information about local crime; share suspect descriptions and relevant safety concerns; establish trust through regular, proactive conversation; invite community members to events where people can meet police; ask for assistance locating suspects; and announce police actions alongside a range of other uses that put information literally into the hands of the community at very little financial cost, if any. The vast majority of people engage in social media through mobile devices, smart phones and other handheld devices. For example, roughly 85% of Twitter users access the social media service through a mobile device and 46% of Internet users are on Facebook.

There are other ways, however, in which law enforcement should engage social media. Just as police agencies can use social media to share information, so can and do those in the community who carry on with criminal intentions. Law enforcement's monitoring of social media for these purposes is gaining greater popularity.

Not to be overlooked for its value, social media monitoring also plays a significant role. Scanning social media for acts of violence, self-harm, threats, and criminal activity, amongst other uses, can't be dismissed. Using social media as a source of intelligence in supporting the agency's mission to protect its community is a critical tool. It's time to employ the "digital beat cop" much in the way we do the beat cop.

Applications are numerous: criminal interdiction teams use social media to identify drug traffickers and buyers, while tracking fencing operations for stolen goods; sex crimes investigators actively monitor offenders public social media feeds for indications of recidivism; tactical teams scan a location for publicly available social media in anticipation of a hostage rescue or breach looking for information being shared by the target or the hostage/victims.

The bottom line is that police agencies should continue to utilize social media as not only a tool to communicate with their communities, but as a source of information to gather from their communities. There is a tremendous amount of information available in the digital cloud, and law enforcement has only but to look.

#### Recommendations:

- Encourage the use of technology, including social media and smartphone applications for two-way communication with the community.
- Support the use of social media intelligence to enhance crime prevention and intervention.
- Support identification and evaluation of social media intelligence gathering technologies.

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<sup>i</sup> U.S. Department of Justice Bureau of Justice Assistance, Federal Bureau of Investigation, U.S. Department of Homeland Security. "Maintaining Safety And Order On College And University Campuses During Protests And Demonstrations: Promising Practices." (2013). Print.



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Written Testimony of the  
National Council of Churches of Christ in the USA

President's Task Force on 21<sup>st</sup> Century Policing  
Policy and Oversight and Technology and Social Media

Submitted by

Mr. Jim Winkler  
President and General Secretary



Thank you again for the National Council of Churches' (NCC) opportunity to weigh in on the second phase of the information gathering process in your efforts to identify best practices and make recommendations to President Obama on the issue of 21<sup>st</sup> century policing. We applaud the President's establishment of the task force and the desire to look at ways to reform the current criminal justice system.

In the past year there has been a spotlight on our country's policing policies and the disparate negative impact those policies have had on people of color and the economically disenfranchised. We have seen national and international outrage in response to unarmed African American men, women and even children being shot, beaten or harshly treated by police for minor infractions. We are a country that can boast of being a super power and number one in the world in innovation, sports, economics, and military might. But we are also the world leader in incarcerating our own people. We are a nation founded on fundamental principles of freedom – freedom to assemble, freedom of speech and freedom to protest. Yet we have seen those freedoms compromised in conflicts between civilians and the local police and government entities. We have seen police departments respond to protest action with military arsenal that should be reserved only for enemy combatants and not displeased citizens expressing their discontent.

The establishment of this task force is born out of the civil unrest resulting from long term over criminalization and the militarization of local police. The NCC is a council of 37 member communions, over 100,000 churches and 40 million people grounded in the belief that all human beings are created in the image of God and should be treated with dignity and respect. As a people of faith and hope we pray that the efforts of the task force will lead us to a more perfect union at the local, state and national level. To this end we make the following recommendations.

## **Policy and Oversight**

- **Influence of police culture**
  - o **Overhaul the justice system such that the end goal is not primarily punishment but rather reconciliation and restoring balance.**
  - o **Address the “us” verses “them” nature of engagement between police and citizens.**
  - o **A justice system should address disruptions in the balance of society. Response to disruptions should be commensurate with the harm caused.**
  - o **Incorporate conflict transformation training as part of police training and a standard alternative or additional option for addressing offenses and criminal infractions.**



- o **Reward police departments and officers for effective community policing strategies and not just arrest and ticketing quotas.**
- o **Promote a culture of mutual respect internally and externally. Much of the recent unrest between police and the community is grounded in a feeling by both that the other is not respected or being heard.**
- o **Civilian oversight boards should be incorporated to ensure that law enforcement policies have civilian input and buy-in**
- **Early intervention systems**
  - o **The inherent racial disparity in the system needs to be addressed.**
  - o **Mandatory training and continuing updates for all law enforcement on issues of cultural sensitivity, interaction with the mentally ill, and responding to sexual assaults.**
  - o **Provide incentives for police departments that are culturally and ethnically diverse and also includes a cross section of faith traditions.**
  - o **Address patterns of excessive force, racism, and misogynistic behavior with appropriate training, counseling or disciplinary action (up to and including termination).**
- **Use of force**
  - o **In cases where there is a police shooting and criminal charges are possible, the case should not be handled by the local prosecutor. A special prosecutor should be appointed or a community panel of representative stakeholders should review the case.**
  - o **Create a database for reporting police shootings, excessive force and death in custody - including demographics/profile. Make report available to public excluding names.**
  - o **Implement nationwide mandatory use of body cameras and provide federal funding for communities that cannot afford them.**
  - o **Police officers who do not wear their badges must provide business card with name and badge number and face disciplinary action if they fail to provide such information.**
  - o **Ensure that police have an avenue for addressing disparity and internal concerns without fearing retribution from peers and superiors**
  - o **Incorporate mandatory training in de-escalation tactics**



- **Mass demonstration/civil rights<sup>i</sup>**
  - **The first priority is to protect civil rights and preserve human life.**
  - **Police should attempt to engage protestors to determine if there is an amicable way to resolve the issue leading to the action.**
  - **Military equipment and riot gear should not be used except for extreme circumstances.**
  - **Arrest should be targeted to individual behavior and not entire groups or “mass” arrest.**
  - **In every way possible there should be broad latitude to allow for freedom of assembly and expression.**
  
- **Military equipment**
  - **Discontinue the 1033 program**
  - **If not discontinued, the 1033 program should be revised to include more specific ways the equipment can and cannot be used. Military equipment should not be used against local communities exercising constitutional rights to protest.**
  - **Require police departments to provide a report on how and why equipment was used and include a criteria in which the equipment can be confiscated.**
  - **Military equipment should only be used as an absolute last resort when there is a threat to life and security that cannot be addressed by traditional policing efforts.**

## **Technology and Social Media**

- **Technology can be used to address infractions that do not require incarceration:**
  - **GPS devices and even cell phones for checking in**
- **Taking into consideration applicable confidential information, data pertaining to disciplinary action, statistics, accolades, etc., of police departments should be accessible to the public.**



## **Overhaul the criminal justice system**

**Address the problem of over criminalization and the indiscriminate application of laws implemented by local police departments and the impact it has on communities and families**

- o **When one's time has been served for infractions against society he or she should be fully reintegrated into society.**
- o **Voting rights should be restored.**
- o **Returning citizens should be given access to social service resources that will help them acclimate to a life outside of jail and enhance the chance of success (i.e. access to jobs, social services, etc.).**

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<sup>i</sup> Many of the points in this section are drawn from the "Proposed Rules of Engagement" from the website of the **Don't Shoot Coalition**, <http://www.dontshootstl.org/>.