

THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING

Technology and Social Media **Submitted Public Comment Received between January 14-31, 2015** **Presented Alphabetically by Last Name**

Primary Source Documents

This document contains all Primary Sources for Public Comment submitted to the Task Force for the listening session on Technology and Social Media. The submissions 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. In addition, emails and twitter submissions are compiled into separate documents for easier review.

Public Comment Submitted:

1. Calabrese, Chris: Center for Democracy and Technology
2. Ellis, Christian: CEO-Alternative Ballistics
3. Grewal, Madhu: Policy Counsel-The Constitution Project
4. Harris, David: Distinguished Faculty Scholar and Professor of Law-University of Pittsburgh School of Law
5. Henderson, Wade: President-The Leadership Conference
6. Lum and Koper: Center for Evidence-Based Crime Policy
7. Martinez, Travis: Lt.-Redlands PD



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January 28, 2015

President's Task Force on 21st Century Policing
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Dear Members of the Task Force on 21st Century Policing:

The Center for Democracy & Technology (CDT) writes to provide recommendations related to body-worn cameras in response to the Task Force's consideration of the issue and request for public comment.¹ CDT is a nonpartisan, non-profit technology policy advocacy organization dedicated to protecting civil liberties and human rights while encouraging the continued development of the Internet and other technological innovations that empower individuals. With use of body cameras rapidly expanding across the country² and federal legislation being offered for nationwide use,³ we are pleased to see the Task Force addressing this important new technology, and its impact on privacy and civil liberties.

Body cameras have significant promise to reduce misconduct and increase public confidence in law enforcement.⁴ However, they also represent a powerful new technology that could be co-opted as tool for mass surveillance. While initial use of body cameras has been encouraging, varying standards threaten to cause serious privacy harms. We believe the Task Force should put forward recommendations for use of body cameras to serve as guiding principles for programs being implemented throughout the country, as well as for any federal legislation expanding the role of body cameras or requiring their use. Federal funding for camera use should be tied to both best practices and robust involvement from local communities controlling how camera technology is deployed and used.

Recommendations for use of body cameras⁵ must address the following areas:

1) Requirements and Limits for Recording: The most fundamental policy question is when cameras should be on. This policy should strive to make sure any potential interaction that could result in misconduct or a complaint is recorded, but also account for privacy interests of both officers and civilians, and questions of practicality. Research demonstrates that providing greater discretion for when cameras must be turned on results in a substantial decrease in video recordings.⁶ Therefore, a model general recording requirement should limit discretion, and require cameras generally be turned on whenever officers are interacting with the public. The Police Executive Research Forum also recommends a broad recording policy.⁷ However, a broad general recording policy should be paired with strong exceptions to compensate for privacy needs of both officers and civilians. An effective means of addressing this may be to require that cameras be turned off in locations where civilians have a reasonable expectation of privacy, such as bathrooms, dressing rooms, and locker rooms.⁸ However, a more strict recording policy may be necessary when responding to a call for service or engaging in a law enforcement activity to guarantee oversight of the most critical interactions between the police and public. Finally, policies should ensure that issues of practicality do not interfere with general recording requirements, such as requirements that cameras are equipped with a “pre-event video buffer” and standardized rules for switching batteries⁹ and maintenance checks of cameras.

2) Rules for Notification and Opting-Out: While a broad recording policy is advisable to ensure that important interactions and potential misconduct are recorded,¹⁰ individuals should be given as much control as possible in regulating what video directed at them, and the ability to “opt out” as desired. This will promote individual privacy from unwanted government surveillance, but also facilitate police interviews with witnesses that may be reluctant to discuss an investigation on video. Generally, requiring officers to turn off a body camera when requested by an individual being recorded is consistent with existing body camera guidelines in numerous jurisdiction where state law requires consent to record.¹¹ Additionally, allowing for individuals to opt out will better ensure that crime victims and witnesses will not refuse to interact with officers out of fear of being recorded as cooperating, a significant concern for police departments.¹² In order to achieve this goal, some form of notification should be required that cameras are recording. This could occur via an explicit statement – as is required by departments in jurisdictions with two-party consent laws¹³ – or through indirect notification such as a “recording” light accompanying a camera. Quite simply, individuals cannot exercise a right to opt out of being recorded if they do not know a video feed is on.

3) Requirements and Limits on Retention: Limitations on retention are a crucial after the fact method of ensuring that body cameras serve as an oversight tool, and prevent creeping use of cameras for dragnet surveillance. However, limits on retention must account for factors such as civilian complaints, evidentiary use, and examination of evidence by criminal defendants. As an overall baseline, departments should be required to retain all video for the length of time civilians may file complaints.¹⁴ Evidentiary video - video consisting of “an incident or encounter that could prove useful for investigative purposes, such as a crime, an arrest or

citation, a search, a use of force incident, or a confrontational encounter with a member of the public,”¹⁵ – has significant potential value for civilian complaints of misconduct, criminal investigations, and criminal defendants. However, the range of criminal offenses should be taken into account in establishing longer retention periods for evidentiary video; the value of video related minor and non-violent crimes must be weighted against technical limits to storage and privacy concerns. State evidentiary rules could serve as an effective foundation for obtaining this balance, where evidence for minor crimes is limited, but evidence for more serious crimes – such as homicides – can be indefinite.¹⁶ At a minimum, evidentiary video should be retained until adjudication or final disposition of the relevant investigation, to permit review by potential criminal defendants.¹⁷ However, beyond these fairly narrow circumstance – evidence of a crime or police misconduct – video footage should be promptly deleted.

While video is being retained, access should be limited. Video should be generally inaccessible, unless needed as evidence or for internal investigations. Strict prohibitions should exist against any editing of video apart from the retention rules for scheduled deletion. Officers should not have access to their own feed prior to filing of reports to prevent retroactive development of justifications for police actions, such as a Terry stop or arrest. High standards for data security should exist, regardless of whether videos are directly held by the department or a third party storage provider.¹⁸

4) Limits and Protections Regarding Dissemination: While the added accountability of body cameras can only be achieved if video feed can be released to affected civilians and other parties devoted to oversight, dissemination rules must account for the privacy interests of those being recorded, especially given that such recordings can occur in intimate situations such as the execution of a search warrant or interviewing of a crime victim. Furthermore, dissemination rules should account for issues of practicality.¹⁹ While civilians alleging police misconduct will have the most direct interest in obtaining video from body cameras, other parties – such as civil rights groups, government transparency groups, and media – will also have a legitimate interest in obtaining video feed for legitimate goals related to enhancing accountability and supporting the public interest.

However, if body camera video feed is to be made generally available, precautions should exist to protect the privacy of individuals recorded, especially given potential sensitivity of police interactions. Therefore, body camera feeds should be redacted to block 1) any personally identifiable information and 2) video whose disclosure constitutes a clearly unwarranted invasion of personal privacy.²⁰ The Police Executive Research Forum supports a broad disclosure policy containing exemptions for sensitive private information.²¹ While redaction efforts will require time and resources, tools such as face blurring technology can make the process significantly easier, and are already being employed by some departments.²² Required redactions could be waived if the affected party consents to their release.

5) Limits on Use of Facial Recognition: Use of facial recognition in combination with body cameras represents a significant risk to privacy. In order to prevent

overbroad surveillance and monitoring, use of facial recognition for recordings from police body cameras should be barred or sharply limited. Development of face prints from body cameras represents a significant threat to privacy, and activities protected by the First Amendment. Face prints could be cataloged from officers' recordings of religious ceremonies, political rallies, or public protests, such as developing a face print identification lists of all individuals in a Mosque or attending a "Black Lives Matter" demonstration.²³

Allowing officers to run *existing* face prints against video that is being recorded from body cameras offers risks to privacy as well. This practice could be used to locate, and monitor the activities of individuals not suspected of wrongdoing, especially in cities with large police forces.²⁴ Courts and state legislatures are increasingly recognizing the privacy value of location information – including in public – and establishing warrant-for-location requirements. Use of facial recognition in combination with body cameras should not serve as a loophole for these protections.

We are confident that body cameras can be a significant aid to safe and effective policing in the 21st century, and that with appropriate guidelines, their use will not inhibit privacy or civil liberties. We look forward to the chance to work with the Task Force in achieving these goals. If you have any questions regarding our comments, please contact Chris Calabrese, Senior Policy Director, at ccalabrese@cdt.org, or Jake Laperruque, Fellow on Privacy, Surveillance, and Security, at jlaperruque@cdt.org.

Sincerely,

Chris Calabrese
Senior Policy Director

Jake Laperruque
Fellow on Privacy, Surveillance, and Security

¹ COPS Office, *Listening Session: Technology and Social Media*, available at <http://www.cops.usdoj.gov/Default.asp?Item=2768>.

² See generally, Michael D. White, *Police Officer Body-Worn Cameras: Assessing the Evidence*, Office of Community Oriented Policing Services, available at <https://ojpdiagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf>, hereafter, *Assessing the Evidence Body Camera Study*.

³ See e.g., the Camera Authorization and Maintenance Act, which would require all state and local law enforcement agencies that receive Department of Justice grants to have their officers wear body cameras. H.R. 5865, 2014.

⁴ In one pilot program study, use of body cameras reduced citizen complaints *Assessing the Evidence Body Camera Study* at 20.

⁵ While our recommendations discuss body cameras, similar guidelines should exist for other oversight technologies such as cameras mounted on firearms and Tasers.

⁶ A yearlong test study in Mesa resulted in a 42 percent decrease in body camera use when a more discretionary policy was in effect For a six months period, the

Mesa police department employed a policy that, “When practical, officers will make every effort to activate the on-officer body camera when responding to a call or have any contact with the public.” For the following six months, the policy was changed to have officers “exercise discretion and activate the on-officer body camera when they deem it appropriate.” Officers recorded 42 percent less video files during the second six-month period when the discretionary policy was in effect. *Assessing the Evidence Body Camera Study* at 8-9.

⁷ Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Washington, DC: Office of Community Oriented Policing Services (2014), 40, available at <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>, hereafter, *PERF Recommendations Report*.

⁸ This restriction already exists in some jurisdictions using body cameras such as Salt Lake City. See, Utah police regulations III-535 MOBILE VIDEO RECORDERS. Further, because federal wiretap laws and state peeping tom laws in many states prohibit video recording in such situations, the bounds of a “reasonable expectation of privacy” standard have strong legal foundation and can be readily adopted for body cameras.

⁹ TASER International’s AXON system, a commonly used body camera system, includes a battery pack that generally lasts 12 to 14 hours. See, *PERF Recommendations Report* at 10.

¹⁰ See, *PERF Recommendations Report* at 12-14.

¹¹ See, *Assessing the Evidence Body Camera Study* at 27; see also, *PERF Recommendations Report* at 14.

¹² *Id.*, at 12 (“[O]fficer discretion is needed in sensitive situations, such as encounters with crime victims or witnesses who are concerned about retaliation if they are seen as cooperating with the police”); see also, *Assessing the Evidence Body Camera Study* at 27.

¹³ *PERF Recommendations Report* at 56.

¹⁴ This is the leading factor for retention policy in a number of jurisdictions employing body cameras. *Id.* at 17.

¹⁵ *Id.*

¹⁶ See, *Id.* at 16 (“For example, many state laws require that footage involving a homicide be retained indefinitely, but video of a traffic citation must be kept for only a matter of months”).

¹⁷ However, maintaining ability to obtain video for civilian complaints should always be the dispositive rule. If this is shorter than the length of time civilians may file misconduct complaints, retention should be extended to this time period.

¹⁸ *PERF Recommendations Report* at 44 (“[A]gencies should take all possible steps to protect the integrity and security of the data . This includes explicitly stating who

has access to the data and under what circumstances, creating an audit system for monitoring access, ensuring there is a reliable back-up system, specifying how data will be downloaded from the camera, and including protections against data tampering prior to downloading”).

¹⁹ In states such as Washington where video requests are governed by unrestricted public record laws, police departments have been overwhelmed with the magnitude of requests received. See, *Washington State police overwhelmed by public requests for dash- and body-cam footage*, Homeland Security News Wire (November 27, 2014), available at <http://www.homelandsecuritynewswire.com/dr20141127-washington-state-police-overwhelmed-by-public-requests-for-dash-and-bodycam-footage>.

²⁰ This requirement is adopted from the Utah public records request law – GRAMA – which governs the Salt Lake City Police Department’s rules for dissemination of video from its body camera program. See, UCA 63G-2-302(2)(d).

²¹ See, *PERF Recommendations Report* at 17.

²² See e.g., Jon Fingas, *Seattle police get help publishing body camera videos online*, Engadget (November 24, 2014), available at <http://www.engadget.com/2014/11/24/seattle-police-get-help-posting-body-camera-videos/>.

²³ The NYPD “Demographic Unit” tasked with monitoring the activities of Muslim communities and FBI presentation highlighting potential use of facial recognition technology to tag individuals at campaign rallies reflect that these are genuine concerns See, Matt Appuzo and Joseph Goldstein, *New York Drops Unit That Spied on Muslims*, The New York Times (April 15, 2014), available at http://www.nytimes.com/2014/04/16/nyregion/police-unit-that-spied-on-muslims-is-disbanded.html?_r=0; see also, Richard W. Vorder Bruegge, *Facial Recognition and Identification Initiatives*, Federal Bureau of Investigations, 4, available at https://www.eff.org/files/filenode/vorder_bruegge-facial-recognition-and-identification-initiatives_0.pdf

²⁴ Chicago and Washington DC contain on average over 50 officers per square mile, while New York City contains an average of 119 officers per square mile. All three cities are currently implementing body camera programs. Whet Moser, *City Size and Police Presence*, Chicago Magazine (August 30, 2012), available at <http://www.chicagomag.com/Chicago-Magazine/The-312/August-2012/City-Size-and-Police-Presence/>.

Written Testimony by Alternative Ballistics for the President's Task Force on 21st Century Policing

In a continuing effort to improve public safety, preserve and protect every life, bind our country more closely together and reassure our citizens that law enforcement is committed to a proactive and strong relationship, we at Alternative Ballistics believe more attention should be given to the use of less lethal technology.

Every day, law enforcement officials from the local to federal level face a unique set of challenges. They encounter a wide range of individuals such as those suffering with mental health and substance abuse illnesses to drug traffickers and sex offenders. Law enforcement officials must be prepared to make split-second decisions and in an escalating situation, time is of the essence. Given the unpredictable nature of the job, it is essential for officers to have all the tools necessary to de-escalate a hostile situation, while protecting themselves and the public.

New innovative less lethal products, such as bullet capturing devices (BCD) developed by Alternative Ballistics, represents a critical “missing link” between lethal force and less-lethal force. Our BCD works like an air bag for a bullet, knocking the suspect down while lessening the lethal potential of the fired bullet. By utilizing our bullet capture technology in appropriate situations, police are likely to prevent loss of life to the public at large in a way that was – until now – not possible.

THE ALTERNATIVE™ decreases the velocity of the bullet and allows the alloy projectile to impact the threat, lessening the bullet's penetrating energy. Once the gun is fired, the bullet embeds itself inside the alloy projectile with no chance of escape, simultaneously transferring its kinetic energy and propelling it toward the target. As soon as the bullet is fired from the gun into the projectile they become one unit. The docking automatically ejects from the weapon and the firearm returns to its normal function before it cycles in a new round (faster than the trigger can be pulled again). The officer can then follow up with a live round immediately with no further manipulation if the threat continues.

THE ALTERNATIVE™ sits in a pouch on the officer's belt for immediate use if needed. It is designed to allow for fluid, one-handed removal of the device and the subsequent seating of THE ALTERNATIVE™ onto the top of the weapon within seconds. Most importantly, this can be accomplished without the danger created by an officer removing his or her eyes and weapon from the threat in a lethal force encounter. Keep in mind, lethal force is already justified; THE ALTERNATIVE™ helps mitigate the risk of death in those situations.

Should the crisis be resolved without the need to discharge the weapon, the officer can quickly and easily remove THE ALTERNATIVE™ from the top of the weapon and return it to the belt pouch with one hand for later use.

The following is a true situation: A call goes out across the radio - a domestic violence incident where a 15-year-old girl has a kitchen knife. She has already cut her mother and herself. As the

officers pull up to the house the mother is in the front yard covered in blood screaming, “My daughter is inside and has gone crazy. She has not taken her medication and has threatened her own life with the knife.” The officers approach the front door of the house. The last thing an officer wants to do in this situation is to use lethal force against a child. This particular situation is what the bullet capture device was developed for - to give another option for lethal force encounters.

THE ALTERNATIVE™ has been thoroughly and independently tested with years of law enforcement and Special Forces feedback on design and function. Additionally, this product has been favorably received by Members of Congress and has garnered interest from hundreds of law enforcement agencies nationally and worldwide.

Independent testing was conducted at Chesapeake Testing in Belcamp, MD to evaluate the penetration and blunt trauma characteristics of THE ALTERNATIVE™. Below is a portion of their executive summary:

“Alternative Ballistics bullet capture device system allows a standard weapon to be converted to a less lethal device. The system is designed for use in scenarios where lethal force is warranted, and offers another option to resolve the situation. The individual will be incapacitated due to the blunt force of the impact, but with a diminished risk of serious injury or death when compared to the use of firearms. Independent testing was conducted at Chesapeake Testing (Belcamp, MD) to evaluate the penetration and blunt trauma characteristics of THE ALTERNATIVE™.

The system consists of two main components, a dock and a slug. The system mounts directly on the muzzle of a standard, unmodified handgun. When the handgun is fired, the bullet is captured in the slug, and the resulting projectile is launched toward the target. The dock is then ejected from the handgun during the cycling process and falls to the ground.

Penetration testing was conducted for the 9-mm and .40-cal slugs, and all tests resulted in laceration injuries but no penetrations. Calculated energy densities of $17.5 + 0.3 \text{ J/cm}^2$ for 9-mm tests and 16.5 J/cm^2 for .40-cal tests are well below the 50% risk of penetration of 23.99 J/cm^2 determined in the literature. Statistical analysis indicates that the penetration risk of THE ALTERNATIVE™ is less than 2%.

Blunt trauma testing was performed using a clay surrogate to determine the ability to incapacitate an individual. Values were compared to the 44-mm limit established for body armor testing, since values above the 44-mm limit can result in moderate to serious injuries that would incapacitate an individual. Testing resulted in average deformation values of 68.6 mm for the 9-mm testing and 60.6 mm for the .40-cal testing.

Mathematical predictive models, including Blunt Criterion and AIS predictions were used to further quantify the blunt trauma characteristics of THE ALTERNATIVE™. Data analysis indicates THE ALTERNATIVE™ produces a BC range of 1.06 to 1.26, resulting in an AIS range of 2.0 to 2.3. AIS Level 2 injuries are very likely to incapacitate an individual and may require medical treatment, but with a low probability of a lethal result.”

RECOMMENDATION:

Our recommendation for the Task Force would be to have every Law Enforcement officer who carries a firearm to protect our citizens be appropriately trained and outfitted with THE ALTERNATIVE™ as an option to lethal force.

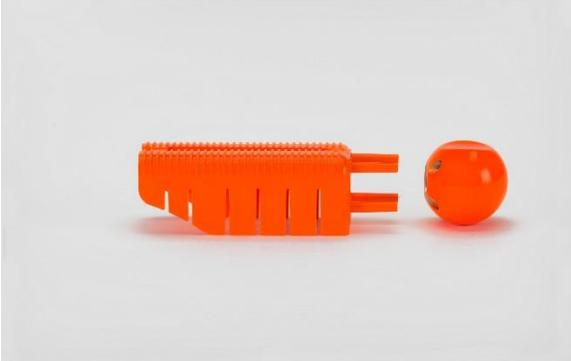
Under no circumstances do we suggest the use of our product when the suspect has a firearm or when the officer has to react instantaneously to protect life and limb. Not every lethal force situation calls for a bullet just because lethal force is justified. THE ALTERNATIVE™ is an option for those lethal situations.

For years, law enforcement has only had one option in dealing with lethal force encounters: guns with bullets. By applying THE ALTERNATIVE™ to the equation they now have another option for lethal force situations, at the same time keeping people on both sides of the gun safer. We all know the damage bullets can do. From suicide by cop to a mentally ill person to a violent individual strung out on an illicit substance, there are many situations where THE ALTERNATIVE™ is applicable. Utilizing a bullet capture device helps give the suspect and law enforcement officers a second chance.

For video simulation and additional product info, please take a moment to visit our website: <http://www.alternativeballistics.com/>.

Thank you for your time and commitment finding solutions aimed at improving law enforcement and community relationships.

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THE **CONSTITUTION PROJECT**



Safeguarding Liberty, Justice & the Rule of Law

**THE USE OF BODY-WORN CAMERAS
BY LAW ENFORCEMENT**

GUIDELINES FOR USE

&

BACKGROUND PAPER

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

Introduction

The Constitution Project Committee on Policing Reforms (“Committee”) is grateful to the President’s Task Force on 21st Century Policing (“Task Force”) for soliciting comments regarding the use of body-worn cameras by law enforcement. The Committee comprises diverse individuals with expertise in law enforcement and the constitutional issues discussed in the attached brief.¹

Given the recent creation of the Task Force and its 90-day mandate, the Committee worked on a compressed schedule to prepare this submission; 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 submits its current views and recommendations for consideration by the Task Force as important policy decisions are contemplated by the Administration and the U.S. Department of Justice.² Over the next month, the Committee will further refine its views and publish an official report and set of recommendations, which will be available on The Constitution Project's website. Additionally, as more stakeholders weigh in, more agencies adopt this technology, and more empirical research is conducted, new questions are bound to arise which may require further evaluation of the use of body-worn cameras by law enforcement.

Background

The implementation of body-worn cameras has gained increased attention and use among law enforcement professionals, who use them for functions such as obtaining evidence during investigations, promoting officer safety, and improving law enforcement community relations, and accountability. Police body-worn cameras present novel legal and policy questions. Proponents of body-worn cameras suggest they will protect due process and equal protection values while promoting police accountability. However, any new surveillance technology and recording devices implicate privacy, First Amendment, and other constitutional concerns as well. Agencies must carefully tailor body-worn camera programs to retain the benefits of such use while limiting any infringement on rights. The attached policy brief outlines the legal issues, potential benefits, and potential disadvantages of adopting police body-worn cameras. It then provides recommendations for implementing such programs in a manner that promotes transparency and accountability, improves relations between law enforcement and community members, and protects privacy.³

The attached background paper raises a host of constitutional, legal, and policy questions – detailed further in Appendix B – that have been raised with the implementation of body-worn cameras. The Committee believes that the recommendations below must be implemented to promote transparency, protect privacy rights, and improve relations between law enforcement and community members.

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

² The Constitution Project encourages the Task Force to review its report: *Guidelines for Public Video Surveillance: A Guide to Protecting Communities and Preserving Civil Liberties*, available at <http://www.constitutionproject.org/wp-content/uploads/2012/09/54.pdf>. The report addresses many of the concerns raised by experts in criminal justice, privacy rights, and civil liberties regarding the use of body-worn cameras by law enforcement.

³ The Constitution Project sincerely thanks the law firm of Morgan, Lewis & Bockius LLP, which provided a team of pro bono attorneys to guide the Committee on Policing Reforms in crafting this submission. The attorneys included Erik M. Kosa and Mark L. Krotoski, who provided significant time and tremendous guidance to this effort.

Recommendations

The use of body-worn cameras by law enforcement agencies presents a number of potential benefits as well as risks. As such, the recommendations below seek to maximize the potential advantages of body cameras while minimizing or eliminating the disadvantages. The Committee on Policing Reforms recommends that policymakers and law enforcement agencies adhere to the recommendations below when implementing body-worn camera programs. Finally, the role of community input cannot be understated. One of the core functions of body-worn cameras is to improve community trust; therefore, input from community members must be sought and considered by policymakers and law enforcement agencies on an on-going basis as policies are developed and implemented.

Written policies

1. Written policies should exist clearly laying out how the cameras are to be used and the footage maintained.
2. Written policies should describe, at a minimum, when recording is required; how officers should determine recording responsibilities if multiple officers are on the scene; whether or not (and how) officers are to announce that an encounter is being recorded; what events officers should *not* record during an encounter; when supervisors can review footage; selection of technology vendors for purchase and maintenance of cameras, as well as for retention and audits of footage; elements of officer training; data storage and management requirements; video download procedures; video redaction procedures; preparation of video for use in prosecution; maintenance and upkeep of equipment; and how long video is to be retained.

Implementation

1. **Law enforcement considerations:** Before implementing a body camera program, law enforcement agencies should identify the specific objectives behind the program, as well as the anticipated benefits, costs, uses, and privacy impact of body-worn cameras.
2. **Engaging law enforcement personnel:** Body-worn cameras should be introduced by agencies incrementally, starting with pilot programs and soliciting feedback from law enforcement personnel. Incremental implementation will allow for adjustments to department policies that better balance accountability, privacy, transparency, and community relationships as the program develops.
3. **Engaging the community:** The community should be consulted about how their local law enforcement agencies will use body-worn cameras prior to implementation and finalizing department policies as well as on an on-going basis. Policies should be posted online.

When to record

1. **When to begin recording:** Policies should set clear rules regarding the types of interactions that are to be recorded and when that recording must begin. The benefits of body cameras are undermined when recording is discretionary and such policies should be rejected. Recording should begin either (1) during every interaction with the public, or (2) when responding to law enforcement-related calls for service, meaning calls for service, traffic stops, arrests, searches, interrogations, and pursuits. There must be a clear written policy spelling out the requirements and defining what requires activation of the cameras. When in doubt about whether an encounter should be recorded, the default should be to record the encounter.

2. **Notification:** Officers should be required to clearly inform subjects they are being recorded unless doing so would be unsafe or impossible under the circumstances.
3. **Termination of recording:** If recording is limited to law enforcement-related activities, once activated, the camera should remain on until conclusion of the incident, the officer has left the scene, or a supervisor has authorized (on camera) that recording may cease.
4. **Consent:** Officers should be required to obtain consent before recording crime victims. Interviewing crime victims can be especially sensitive (particularly in rape and domestic violence cases). Agencies must have a written policy regarding consent and officer discretion. For instance, agencies may give officers limited discretion to record in these situations or require officers to obtain victim consent to record these sensitive encounters. Citizen requests for cameras to be turned off should themselves be recorded to document – either in writing or by recording – such requests. If the officer denies the request to consent, such a denial should also be recorded.
5. **Mandatory exceptions to recording:** Agencies should prohibit recording of:
 - Conversations with confidential informants and undercover officers.
 - Places where a heightened expectation of privacy exists, e.g., restrooms and locker rooms.
 - Strip searches.
6. **Consequences for missing footage:** Policies should be written and clear about each officer’s obligations to record and store footage and the potential administrative penalties for violating the recording policy.
7. **Documentation:** Officers should document – in writing or on camera – the reasons for not activating or deactivating a camera in situations that otherwise require it to be recorded. To prevent *ex post* explanations, officers should be required to document these reasons contemporaneously.
8. **Other exemptions:** In order to make the use of body-worn cameras as predictable as possible and to protect their legitimacy, additional exemptions should apply.
 - Recording should never be used to surreptitiously gather information based on First Amendment protected speech, associations, or religion.
 - Law enforcement agencies should be aware of the heightened right to privacy in a home and other private spaces; policies should be developed to take reasonable expectations of privacy into account.

How to maintain the data

1. **Flagging videos to be kept:** The following types of footage should be automatically flagged for retention: (1) those involving a use of force; (2) incidents leading to detention or arrest; or (3) where either a formal or informal complaint has been registered.
 - Any subject of a recording should be able to flag the recording for retention, even if not filing a complaint or initiating an investigation.

- Police department personnel should also be able to flag a recording for retention if they have a basis to believe police misconduct has occurred or have reasonable suspicion that the video contains evidence of a crime.
 - If useful evidence is obtained during an authorized recording, the recording should be retained in the same manner as any other evidence gathered during an investigation.
2. **Chain of custody:** The chain of custody must be clearly preserved and recorded.
- Policies should clearly describe the responsibility of the officer to turn in and download recorded footage, except for certain clearly-defined incidents – such as officer shootings or use of force – in which case the officer’s supervisor should take physical custody of the camera.
 - Data should be downloaded at the end of each shift. Data should be properly categorized according to type of event captured: if the camera recorded a law enforcement-related event, it should be tagged as “evidentiary”; if not, it should be tagged as “non-event.”
 - Safeguards should be designed to prevent deletion by individual officers.
 - Policies should clearly state where data is to be stored.
3. **Data security:** The method of storage must be safe from data tampering or unauthorized access, both before uploading and prior to downloading. Third party vendors must be carefully vetted.
4. **Auditing:** There must be effective audit systems in place and clear policies on who may access the data and when.
- An agency’s internal audit unit, not an officer’s direct chain of command, should conduct random review of footage to monitor compliance with the program.
 - Policies should specifically forbid personnel from accessing videos for any other use than those specifically authorized by the policy, such as personal use and/or uploading to social media websites. Policies should contain specific measures for preventing access for personal use (such as built-in audits to accurately trace who has accessed the system).
 - Agencies should collect statistical data concerning camera usage, including when video footage is used in criminal prosecutions and when it is used in internal affairs matters. Agencies should conduct studies evaluating the financial impact of camera programs, including the cost of purchasing equipment, cost savings (including legal fees in defending lawsuits), and complaints against officers.
 - Agencies should conduct periodic reviews to assess the efficacy of their body-worn camera programs.
5. **Deletion:** To protect privacy, videos should be deleted after the elapse of a specified period of time. Policies should clearly state the length of time data is to be retained.
- Non-evidentiary footage: The retention period of non-evidentiary footage should be measured in weeks, not years. Most existing policies retain such footage between 60-90 days.
 - Evidentiary footage: Videos which are part of an investigation should be maintained until the investigation and any ensuing litigation is concluded. In serious felony cases resulting in the conviction and sentence of a number of years or imposition of a death sentence, the footage should be retained indefinitely.

Data Access

Most state open records laws exempt records from disclosure if they are part of an ongoing investigation. But most state records laws were written before the use of body cameras and may not take into consideration the novel privacy issues presented by their use; such laws may need to be amended in jurisdictions where body cameras are used.

1. When to disclose footage to the public:

- Videos should be deleted after the conclusion of investigation/litigation to protect privacy interests.
- Policies should be in compliance with state open records laws and specifically outline who in the agency is responsible for complying with open records requests; where possible, policies should prescribe liberal disclosure.
- Redaction should be used in disclosed recordings when feasible.
- Unredacted or unflagged recordings should not be subject to public disclosure without the consent of the subject of the recording.

2. Supervisor review:

- Written policies should clearly state that supervisors must be allowed to review officer footage, e.g., to investigate a complaint against the officer or a specific incident in which the officer was involved, or to identify videos for training purposes.

3. Litigation-related access

- In litigation involving an incident that is recorded, there should be mandatory disclosure of the recording to defendants and/or plaintiffs.

4. Filming of law enforcement

- Legislation criminalizing citizen recording of the police should be eliminated.

Training

1. Training should be required for all law enforcement personnel who wear cameras or will have access to video footage, including supervisors, auditors, etc. Training should address all practices included in the agency's policy, an overview of relevant state laws and department policies governing consent, evidence, privacy, public disclosure, procedures for operating the equipment effectively, and scenario-based exercises that replicate situations officers may face in the field.

Ongoing research

1. There remains insufficient empirical research to fully support or refute many of the claims made about police body-worn cameras. Police departments implementing body-worn camera programs should be flexible in the development of their policies and willing to learn from other departments and make adjustments as needed.
2. Further empirical research on the effects of body-worn cameras is vital. Researchers should examine all aspects of the technology, including its perceived civilizing effects, evidentiary benefits, impact on citizen perceptions of law enforcement, and on privacy rights for both citizens and police officers. Research should include citizen surveys to capture perceptions of the technology and its effect on trust in law enforcement.

APPENDIX A

The following members of The Constitution Project Committee on Policing Reforms endorse this submission to the President's Task Force on 21st Century Policing (please note that affiliations are listed for identification purposes only):

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APPENDIX B

THE **CONSTITUTION PROJECT**



Safeguarding Liberty, Justice & the Rule of Law

BACKGROUND PAPER

THE CONSTITUTIONAL IMPLICATIONS OF THE USE OF BODY-WORN CAMERAS BY LAW ENFORCEMENT

BY

THE CONSTITUTION PROJECT COMMITTEE ON POLICING REFORMS

I. Introduction

Police departments across the country are increasingly using body-worn cameras, and many of those who are not are considering implementing them. The availability of this new technology presents unique and novel issues, including: (1) whether to record; and (2) if so, when and how to record. On the first question, individual police departments can best weigh the benefits and costs of implementing police body-worn cameras given their local law enforcement needs, resources, and objectives. This policy brief focuses on the second question. As more departments consider implementing body-worn camera programs, it is clear the legal and policy issues presented by their use are here to stay. Given this trend, there should be a consensus among stakeholders about the best way to use them.

The implementation of body-worn cameras has gained increased attention and use among law enforcement professionals, who use them for functions such as obtaining evidence during investigations, promoting officer safety, and improving law enforcement accountability and professionalism. Body-worn cameras may also promote transparency and improve relations between police and communities. This memorandum outlines the legal issues, potential benefits, and potential disadvantages of adopting police body-worn cameras and includes potential recommendations for implementing such programs.

II. Background

The use of technology for law enforcement surveillance and observation is not new. In the early 1990s, dashboard cameras emerged as a method for capturing real-time encounters between the police and the public.⁴ Despite early resistance, dashboard cameras gained widespread acceptance as research demonstrated positive effects on officer safety and accountability and a reduction in agency liability.⁵ Closed circuit surveillance systems have also become increasingly popular as both a method of crime prevention and as a tool for criminal investigations (such as in the Boston Marathon bombing).⁶ Moreover, the proliferation of smart phones has dramatically increased citizens' ability to film police officers while performing their duties.⁷

Law enforcement officials increasingly recognize the potential for video footage to assist with prosecuting crimes and fostering accountability and professionalism. The U.S. Department of Justice recently implemented a policy creating a presumption that statements made by individuals in federal custody, following arrest, but prior to their appearance in court, will be electronically recorded.⁸ And body-worn camera programs are already in place in several smaller

⁴ White, Michael D. *Police Officer Body-Worn Cameras: Assessing the Evidence* (Washington, DC: Office of Community Oriented Policing Services, 2014), 11.

⁵ White at 11; Hayes, Jonathan; Ericson, Lars. *A Primer on Body-Worn Cameras for Law Enforcement* (U.S. Dep't of Justice, Office of Justice Programs, National Institute of Justice, 2012), 3.

⁶ White at 12. *See also* Ramirez, Eugene. *A Report on Body Worn Cameras* (Manning & Kass, Ellrod, Ramirez, Trester LLP), 11.

⁷ White at 12.

⁸ *See* Press Release 14-548, Attorney General Holder Announces Significant Policy Shift Concerning Electronic Recording of Statements (May 22, 2014) available at: <http://www.justice.gov/opa/pr/attorney-general-holder->

police departments across the country, including Rialto, California and Mesa, Arizona. Larger jurisdictions such as Los Angeles and New York City are also beginning to test body-worn cameras.

The technology itself is widely available and relatively easy to use. There are a number of body-worn camera manufacturers, including Panasonic, VIEVU, TASER International, WatchGuard, and Wolfcom Enterprises.⁹ The technology includes several components that vary across manufacturers.¹⁰ For example, TASER International's AXON system includes a small camera worn by the officer on a shirt lapel, hat, or sunglasses that captures what the officer sees, as well as a device that records the video, a battery pack that lasts typically from 12-14 hours, and an on/off switch for recording.¹¹ The AXON system comes with a cloud-based data storage service allowing the officer to place the camera in a dock at the end of the shift after which the footage is uploaded to the cloud.¹² The VIEVU system is a self-contained, pager-sized device that officers wear on their torso, and also includes a docking station for downloading video footage.¹³

III. Constitutional Values and Legal Issues at Stake

Police body-worn cameras present novel legal questions. Proponents of body-worn cameras suggest they will protect due process and equal protection values while promoting police accountability. However, any new surveillance technology and recording devices implicates significant privacy concerns. Agencies must carefully tailor body-worn camera programs to retain the benefits while limiting any infringement on privacy rights.

a. Privacy and anonymity

The use of body-worn cameras by law enforcement has the potential to impact the privacy and anonymity of others. Victims may hope traumatic events can remain private due to the sensitive nature of their experiences. Video and sounds of bystanders may be captured in the recordings. These concerns implicate values long venerated by American society and modern concepts of privacy.¹⁴

[announces-significant-policy-shift-concerning-electronic-recording](#) (accessed Jan. 14, 2015) (Attorney General Holder stated that the new policy “creates a presumption that statements made by individuals in federal custody, after they have been arrested but before their initial appearance, will be electronically recorded” and “also encourages agents and prosecutors to consider electronic recording in investigative or other circumstances not covered by the presumption”).

⁹ See Hayes at 15 (depicting chart of available body-worn cameras).

¹⁰ See Ramirez at 10 (depicting one commonly-used body-worn camera).

¹¹ White at 12. See also AXON flex on-officer video, TASER.COM, available at: <http://www.taser.com/products/on-officer-video/axon-flex-on-officer-video> (accessed Jan. 14, 2015).

¹² White at 12. See also AXON flex on-officer video, TASER.COM, available at: <http://www.taser.com/products/on-officer-video/axon-flex-on-officer-video> (accessed Jan. 14, 2015).

¹³ White at 12. See also VIEVU Products, Choose the VIEVU Camera for you!, VIEVU.COM, available at: <http://www.viewu.com/viewu-products/hardware/> (accessed Jan. 14, 2015).

¹⁴ See Solove, Daniel J. *Conceptualizing Privacy*, 90 CAL. L. REV. 1087, 1101-02 (2002).

In addition to the broader privacy values at stake, some state laws also protect privacy in ways that could interfere with the use of body-worn cameras. Several state statutes require the consent of both parties before the recording of a conversation. These so-called “two-party consent” statutes could prevent the use of police body-worn cameras in many circumstances,¹⁵ unless stakeholders work with legislatures to add exceptions for their use. Moreover, while some two-party consent laws do recognize a law enforcement exception, body-worn cameras present novel issues and departments in these states must be careful to ensure regular use of body-worn cameras satisfies this type of exception.

As noted below, privacy concerns may be addressed in part by the manner in which the program is implemented. For example, recordings may be limited to identifiable law enforcement objectives. Safeguards can be used concerning the storage of the recordings. Access to the recordings can be limited to law enforcement purposes.

b. Government accountability and procedural safeguards

Citizens expect that they will be treated fairly by law enforcement and the criminal justice system. Citizens also have the right to know what their government is doing. Government accountability and public confidence in law enforcement remains essential.¹⁶ Evidence gathered by police officers may become public through the criminal justice process.

c. Equal Protection and anti-discrimination

American society abhors discrimination because it degrades its victims and reinforces class structures. Some advocates of police body-worn cameras stress the benefit of a more complete record of police interaction with the public—particularly minority communities—both to deter allegations of abuse and to improve police relations.¹⁷

IV. Potential Advantages of Body-Worn Cameras

Advocates of body-worn cameras tout several advantages of adopting them: (1) furthering law enforcement and community objectives by helping gather evidence for an investigation; (2) improving police accountability and professionalism; (3) improving citizen

¹⁵ See Section VI for further discussion of this issue.

¹⁶ See Speech: *Assistant Attorney General Leslie R. Caldwell Speaks at Cybercrime 2020 Symposium* (Dec. 4, 2014) (observing “a growing public distrust of law enforcement surveillance and high-tech investigative techniques” that “can hamper investigations” which may be based on “misconceptions about the technical abilities of the law enforcement tools and the manners in which they are used”), *available at*: <http://www.justice.gov/opa/speech/assistant-attorney-general-leslie-r-caldwell-speaks-cybercrime-2020-symposium> (accessed Jan. 16, 2015).

¹⁷ See Press Release: *A Unified Statement of Action to Promote Reform and Stop Police Abuse*, LAWYERSCOMMITTEE.ORG, Aug. 18, 2014 (joint statement by Lawyers’ Committee for Civil Rights Under Law, A. Phillip Randolph Institute, Advancement Project, ACLU, Hip Hop Caucus, Leadership Conference on Civil and Human Rights, National Action Network, NAACP, NAACP Legal Defense Fund, National Coalition on Black Civic Participation, Black Women’s Roundtable, National Bar Association, National Urban League, and Rainbow Push Coalition), *available at*: http://www.lawyerscommittee.org/newsroom/press_releases?id=0494 (accessed Jan. 16, 2015).

behavior; (4) increasing opportunities for police training; (5) expediting resolution of complaints against police; and (6) promoting transparency and trust in police departments.

a. Furthering law enforcement and community objectives in gathering and preserving evidence for investigation

Body-worn cameras provide another method to obtain evidence and information during an investigation and may supplement other forms of evidence-gathering such as photographs, forensics, and written reports. Among other unique attributes, body-worn cameras may provide for the recording of information in real time and statements by individuals. Video footage of law enforcement activities could assist in ensuring more comprehensive evidence collection, preserving law enforcement and judicial resources, documenting uses of force, and reducing assaults on officers.

While there is scant empirical evidence from the United States regarding the impact of body-worn cameras on arrest and prosecution practices, it stands to reason that the use of body-worn cameras will result in obtaining more evidence during criminal prosecutions.¹⁸ This is especially so where victims may feel sensitive about pressing charges, such as in domestic violence cases, which are difficult to prosecute. Body-worn cameras can record the victim's statement (with permission), showing injuries and providing more reliable evidence.¹⁹ Some prosecutors have begun encouraging police departments to use body-worn cameras for these purposes.²⁰ For example, Daytona Beach's chief of police has stated that body-worn cameras have changed how domestic violence cases are handled: "Oftentimes we know that the suspect is repeatedly abusing the victim, but either the victim refuses to press charges, or there is simply not enough evidence to go to trial."²¹ With the victim's consent, body-worn cameras can gather this evidence and officers may even capture the assault itself on video if they arrive while the incident is ongoing.

Body-worn cameras may also include access to material evidence that can aid the accused during a criminal prosecution. *Brady v. Maryland* requires turning over exculpatory material and prohibits the destruction of such material.²² Thus, to ensure more comprehensive evidence collection for both parties and to ensure judicious use of law enforcement resources, law enforcement agencies should enforce a strong presumption in favor of preserving such material.

On the other hand, there are situations where the best course of action is not to record. If body-worn cameras are to advance law enforcement interests, policies must be broad enough to capture encounters most likely to be needed as evidence in prosecution, yet sufficiently narrow

¹⁸ In-car camera systems have existed for years, and evidence on their use may be extrapolated to body-worn cameras. The International Association of Chiefs of Police collaborated with prosecutors across the country to assess the effects of video footage on prosecution. Hayes at 3. Prosecutors reported the presence of video evidence greatly enhanced the likelihood of convictions and increased guilty pleas. *Id.*

²² 373 U.S. 83 (1963).

to allow for effective community policing, including sensitive interactions between police and public.²³ Discretion may sometimes be necessary in sensitive situations, such as involving interviews of victims or confidential informants who would not otherwise come forward if they are recorded.²⁴ An overly-broad recording policy could also inhibit the ability of police officers to build relationships and effectively engage their communities. Reconciling these tensions must guide what serves as an appropriate definition of “law enforcement purpose.” In sum, a “law enforcement purpose” is essentially that which aims to address a potential threat to public safety of finite duration. The use of body-worn cameras must be connected to such an objective.

b. Improved accountability and officer behavior

Historically, there has been little evidence of encounters between police officers and the public aside from the testimony of the parties involved. Encounters between the police and public sometimes result in violence, complaints against police officers, or both. The ability to record these encounters holds great potential for the reduction of unnecessary uses of force, complaints against police, drains on agency resources, and strained relations between police departments and their communities.

There is some evidence that use of body-worn cameras may limit the unnecessary use of force.²⁵ In 2012, the Rialto, California Police Department assigned cameras randomly to officers across 988 shifts. Rialto is a mid-sized police department with, at the time of the study, 115 sworn officers and 42 non-sworn personnel serving 100,000 residents.²⁶ The study demonstrated a 59 percent reduction in officer use of force incidents during the trial.²⁷ The control group (i.e. shifts without cameras) experienced twice as many use-of-force incidents compared to shifts with cameras.²⁸ The study also showed an 88 percent reduction in citizen complaints compared to the year before the camera program.²⁹

The Mesa, Arizona Police Department has also been studying the effects of body-worn cameras. Officer attitudes toward the use of such equipment are positive, with 77 percent of officers believing that cameras cause officers to behave more professionally.³⁰ The Mesa police force also evaluated officer behavior by examining trends in citizen complaints. The first part of the study compared 50 officers who wore cameras to 50 non-camera-wearing officers.³¹ Those who wore cameras generated eight complaints; those without were the subject of 23

²³ See PERF Report at 40.

²⁴ See PERF Report at 12.

²⁵ See generally, Ariel, Barak; Farrar, William A.; Sutherland, Alex. *The Effect of Police Body-Worn Cameras on Use of Force and Citizens' Complaints Against the Police: A Randomized Controlled Trial* (New York: J. Quant. Criminal, 2014).

²⁶ Farrar, Tony. *Self-awareness to being watched and socially-desirable behavior: A field experiment on the effect of body-worn cameras on police use-of-force* (Police Foundation, 2013), at 5 (“Police Foundation Report”), available at: <http://www.policefoundation.org/content/body-worn-camera> (accessed Jan. 14, 2015).

²⁷ PERF Report at 5; Ramirez at 7.

²⁸ PERF Report at 5; Ramirez at 7.

²⁹ PERF Report at 5; Ramirez at 7.

³⁰ White at 21.

³¹ White at 21.

complaints.³² This study also tracked complaint trends before and after camera users began wearing cameras. In the year before the camera project began, these officers were subject to 30 complaints; during the study, the frequency of citizen complaints dropped by roughly half.³³ It is important to note that the causal factors of these trends are unclear. These studies do not answer whether cameras lead to improved citizen behavior, improved police behavior, or a mixture of both.³⁴ Available research cannot distinguish between these effects; therefore, more research is needed.³⁵

c. Improved citizen behavior

The use of police body-worn cameras could conceivably reduce frivolous complaints against police. Unfortunately, there is insufficient evidence to assess this factor outside of anecdotal reports in the media and preliminary results from a few evaluations.³⁶ However, there is a rich body of evidence showing that people tend to embrace commonly-accepted social norms when they are aware they are being watched.³⁷

d. Increased opportunities for police training

Many agencies use cameras to identify and correct problems with police training, often using cameras as a tool to evaluate new officers and identify where training is needed.³⁸ They can also be useful in evaluating and taking action against officers with a history of complaints.³⁹ For example, the Miami Police Department has been using body-worn cameras as part of its training academy since 2012. Miami Police Major Ian Moffitt stated that “we can record a situation, a scenario in training, and then go back and look at it and show the student, the recruit, the officer what they did good, what they did bad, and [what they can] improve on[.]”⁴⁰ Cameras can help departments under consent decrees with the DOJ Civil Rights Division and other agencies demonstrate compliance.⁴¹ But the effectiveness of cameras on police training remains mostly untested.⁴²

e. Expediting resolution of citizen complaints against police

There is evidence that body-worn cameras help resolve citizen complaints against police officers.⁴³ However, no research has tested the technology’s impact on lawsuits against police.⁴⁴

³² White at 21.

³³ White at 21.

³⁴ White at 6; Ariel, Farrar, and Sutherland 2014 at 19 (“Just Another Hawthorne Effect?”).

³⁵ See White at 6. See generally, Ariel, Farrar, and Sutherland 2014 at 21-23 (“Research Limitations”).

³⁶ White at 22.

³⁷ Police Foundation Report at 2.

³⁸ PERF Report at 7.

³⁹ PERF Report at 8; White at 7.

⁴⁰ White at 25.

⁴¹ PERF Report at 8.

⁴² White at 7.

⁴³ White at 7.

⁴⁴ White at 7.

Police departments devote considerable resources to resolving citizen complaints and lawsuits.⁴⁵ However, complaints against police officers are often stymied by the fact that there are not witnesses and the complaint simply pits the officer's word against the citizen's.⁴⁶ Video evidence changes this dynamic. Citizens may be less likely to file frivolous complaints knowing that video evidence may refute their claims. Likewise, in the case of wrongdoing by police, the officers in question may be less likely to challenge the case. Rialto's chief of police has noted in interviews that access to video has expedited the resolution of complaints.⁴⁷

f. Promotes transparency and legitimacy of police actions

Transparency is an important benefit of body-worn cameras. It can demonstrate to the community that officers act in a fair and just manner. In her recent ruling on New York's stop-and-frisk program, Judge Scheindlin wrote that "recordings should . . . alleviate some of the mistrust that has developed between the police and the black and Hispanic communities, based on the belief that stops and frisks are overwhelmingly and unjustifiably directed at members of these communities."⁴⁸ However, this claim has not been sufficiently tested. There have been virtually no studies on citizens' views of this new technology.⁴⁹ Thus the nature of citizen support for body-worn cameras remains untested, as do its effects on the perceived legitimacy of police actions.⁵⁰

V. Potential Disadvantages of Body-Worn Cameras

More widespread use of surveillance technology presents several concerns: (1) without proper safeguards, body-worn cameras could violate citizens' rights; (2) officers may feel they cannot do their job effectively if camera use is not confined appropriately; (3) implementing body-worn camera programs takes up agency resources; (4) body cameras will not solve all law enforcement problems.

a. Citizens' concerns

Without proper safeguards, some concerns have been raised that body-worn cameras could be used for broad government surveillance and monitoring. Moreover, body cameras face outward, monitoring anyone within an officer's field of vision, potentially without the individualized basis for suspicion. Expanded government surveillance, without appropriate safeguards, could chill free speech and infringe on privacy rights.⁵¹ Videos could also be publicly released, potentially violating the privacy of the individuals recorded.⁵² If implemented, the use

⁴⁵ White at 23.

⁴⁶ White at 23.

⁴⁷ White at 24.

⁴⁸ *Floyd v. City of New York*, 959 F. Supp. 2d 668, 685 (S.D.N.Y. 2013).

⁴⁹ White at 6.

⁵⁰ White at 20.

⁵¹ Buttar, Shahid. *Police Violence? Body Cams Are No Solution*. TRUTH-OUT.ORG. Jan. 6, 2015, <http://truth-out.org/opinion/item/28357-police-violence-body-cams-are-no-solution>.

⁵² Ramirez at 15.

of police body-worn cameras should be carefully regulated to avoid infringing on First and Fourth Amendment rights.

Moreover, body-worn cameras can capture in real time the traumatic experiences of crime victims, citizens experiencing medical trauma, and those being detained or arrested.⁵³ Recording these events may exacerbate citizens' trauma. The technology thus has the potential to undermine trust in casual encounters associated with community policing.⁵⁴ Citizens, including witnesses, victims, and confidential informants, may be less likely to offer information to police knowing they are being recorded.⁵⁵

b. Officers' concerns

Law enforcement personnel would find it problematic to have every minute of an officer's day recorded, especially as officers build professional relationships with each other and with the communities they police.⁵⁶ The added requirement that cameras be turned on in certain situations also exposes police officers to additional liability if an incident occurs while the camera is turned off, raising questions about why the officer did not activate it. Some police unions even maintain that the use of cameras represent a change in working conditions that must be negotiated during contract talks.⁵⁷ In addition, there may even be situations where only a partial recording of an encounter exists—whether accidentally or purposefully—which will raise additional questions about evidentiary weight and the officer's conduct. It will therefore be critical to establish when cameras should be turned off and on, consistent with law enforcement objectives.

c. Logistical and resource requirements

Officers who wear cameras need to be trained in their use, including from when to record to proper maintenance and access. Departments should develop clear administrative policies. And of course cameras cost money: each camera costs between \$800 to \$1,000.⁵⁸ Relevant footage must also be stored. When footage is used in court, there will be expenses associated with reviewing and redacting footage. Additionally, in jurisdictions with broad public-disclosure laws – which are of course critical to promoting government and law enforcement transparency and accountability – an open records request could prove costly.⁵⁹ Such requirements may consume department resources.

⁵³ White at 7.

⁵⁴ PERF Report at 1.

⁵⁵ White at 27; PERF Report at 12.

⁵⁶ White at 8.

⁵⁷ White at 8.

⁵⁸ White at 9.

⁵⁹ See Jennifer Sullivan and Steve Miletich, *Costly public-records requests may threaten SPD plan for body cameras*, THE SEATTLE TIMES, Nov. 19, 2014, http://seattletimes.com/html/localnews/2025060346_spdcamerasxml.html.

VI. Implementation Questions

If body-worn camera programs are implemented, agencies must craft policies that further law enforcement objectives and capture the benefits of the technology without exposing the agency and the public to the potential harms. Lawmakers and agencies must decide numerous important questions, including when encounters should be recorded, how programs should be implemented in “two-party consent” states, when the public should be allowed access to the footage, how long footage will be stored, and what role written policies will play. Additionally, it will be critical to draw the line between what should be mandated at the federal and state level and to what extent police departments should be given the freedom to develop their own procedures.

a. When should encounters be recorded?

Possibilities range from requiring officers to record their entire shift, all interactions with the public, or only certain interactions relevant to law enforcement activities and investigations. Any decision on implementation should be clearly defined in a written policy. The Police Executive Research Forum (“PERF”) surveyed police departments across the country on the use of body-worn cameras. Most of the departments using body-worn cameras require officers to activate cameras when responding to law enforcement-related calls for service, meaning calls for service, traffic stops, arrests, searches, interrogations, and pursuits.⁶⁰

Officers may need to have some discretion to not record certain situations, such as when the citizen objects to a recording during a sensitive conversation. PERF advocates this approach to protect community privacy rights, such as when talking with crime victims, everyday interactions with community members, and witnesses concerned with retaliation if known to be cooperating with police.⁶¹ If officers have discretion on when to record interviews with witnesses, it will give witnesses the incentive to come forward. Many departments, including in Rialto, California; Mesa, Arizona; and Fort Collins, Colorado give officers discretion whether to record in investigating sensitive crimes such as rape and abuse.⁶² Many departments will also want exceptions for when activation is unsafe or impractical.⁶³

Finally, policymakers and agency leaders will also need to decide what happens if a use of force occurs when a camera should have been recording but the footage is missing. They will need to clearly define what penalties should be in place for such cases.

b. How should programs be implemented in “two-party consent” states?

⁶⁰ PERF Report at 13.

⁶¹ PERF Report at 12.

⁶² PERF Report at 13.

⁶³ PERF Report at 40.

In some states, the consent of both parties to a *private* conversation is required before a recording may take place.⁶⁴ Police may need to work with their legislatures in “two-party consent” states that do not already have law enforcement exceptions to have police cameras waived from the law’s requirements. Otherwise, officers must obtain consent before recording if the other party has a reasonable expectation of privacy in the conversation. In Pennsylvania, for example, the state legislature enacted a law in February 2014 waiving the two-party consent requirement for police body cameras.⁶⁵ Regardless, it may be sensible for police to inform citizens they are being recorded even if the law does not require it (as in the majority of states, which require only the consent of one party).⁶⁶

c. What access to footage should be permitted?

Records made and created during an investigation may become available to others during the course of the criminal justice process. Crime victims and ordinary citizens generally will not want their images broadcast in the media. Citizens may also be sensitive to recording when officers are inside their homes as such recordings could become subject to state open records laws.⁶⁷

Agencies must also consider how the release of videos interacts with state open records laws. Many law enforcement agencies take the position that so long as the officer has a right to be in the home, the encounter may be recorded.⁶⁸ But in many states, unless a record is part of an ongoing investigation, it will be subject to open records requests, subjecting many private recordings to public inspection.⁶⁹

Moreover, video footage will necessarily be used in investigations and criminal proceedings. Body-worn camera footage will be treated similarly to other analogous types of evidence, such as photographs. The public availability of evidence in criminal proceedings changes depending upon the stage of the proceeding. If evidence is collected during an investigation but no charges are filed, it may eventually be subject to disclosure through open records laws.⁷⁰ If evidence is collected during an investigation and charges are filed, the following guidelines generally apply: (a) during the discovery phase, evidence is available only to the government and the defendant. Constitutional and statutory standards govern such

⁶⁴ See, e.g., Fla. Stat. § 934.03 (Florida law prohibits recording where reasonable expectation of privacy exists); Wash. Rev. Code § 9.73.030 (requiring consent of all parties but “consent” may be obtained by announcing the recording to all parties); see also Washington Attorney General Opinion 2014 No. 8 (Nov. 24, 2014) (reviewing privacy issues under Washington law), available at: <http://www.atg.wa.gov/AGOOpinions/Opinion.aspx?section=archive&id=32439#.VLgdiyXOWUk> (accessed Jan. 16, 2015).

⁶⁵ Doyle, Michael. *A possible Ferguson solution: Cameras on cops*. MCCLATCHYDC.COM. Nov. 26, 2014, available at: <http://www.mcclatchydc.com/2014/11/26/248308/a-possible-ferguson-solution-cameras.html> (accessed Jan. 14, 2015),

⁶⁶ PERF Report at 14.

⁶⁷ PERF Report at 15.

⁶⁸ PERF Report at 15.

⁶⁹ PERF Report at 15.

⁷⁰ See Stanley, Jay. *Police Body-Mounted Cameras: With Right Policies in Place, a Win for All* (ACLU, Oct. 2013) (“ACLU Report”), 5; PERF Report at 17.

availability;⁷¹ (b) if evidence is used during court proceedings, the First and Sixth Amendments may provide the public a qualified right to access these records.⁷²

d. How long should videos be stored?

Departments spend significant resources responding to open records requests. Given the large amount of data body-worn cameras will produce, departments could be inundated with too many open records requests for their resources to handle, given the time necessary to review and redact information before release.⁷³ Because data storage incurs significant costs, the length of storage time dramatically affects personnel hours and direct costs associated with the storage device.⁷⁴

e. What should be the role of written policies?

Body-worn camera programs will not be effective without clear written policies that are consistently enforced. Of the 63 agencies across the country that reported using body-worn cameras in one study, nearly one-third did not have written policies governing the practice.⁷⁵ Many reported a lack of guidance on what the policies should include.⁷⁶ It is important for policymakers to answer the implementation questions in written policies to ensure the consequences of body-worn camera programs are predictable and perceived as legitimate by all stakeholders.

V. Conclusion

Advocates of police body-worn cameras emphasize potential to promote law enforcement functions. Cameras can create an instant record of information obtained during an investigation. Body-worn cameras can also promote due process and equal protection values by providing a record of police encounters with citizens.

On the other hand, more widespread adoption of video recording technology potentially threatens the privacy of others captured in the footage. Without proper safeguards, body-worn cameras could be used for broad government surveillance. Written policies are essential to the implementation and appropriate use of body-worn cameras consistent with law enforcement objectives. Implementing body-worn camera programs requires careful balancing of the costs and benefits, as well as continuous engagement with both law enforcement and the public.

In the coming months, the Committee on Policing Reforms will release a final report regarding the use of body-worn cameras and guidelines for preserving civil liberties while enhancing the relationship between communities and law enforcement.

⁷¹ See, e.g., FED. R. CRIM. P. 16 (federal criminal discovery standards).

⁷² See generally, Reagan, Robert T. *Sealing Court Records and Proceedings: A Pocket Guide* (Washington, DC: Federal Judicial Center, 2010), 2-5.

⁷³ White at 33-34.

⁷⁴ White at 32-33.

⁷⁵ PERF Report at 2.

⁷⁶ PERF Report at 2.

President's Task Force on 21st Century Policing

Testimony of

David A. Harris

Distinguished Faculty Scholar and Professor of Law

University of Pittsburgh School of Law

Police Body Cameras: No Panacea, but Significant Promise for Better Policing

January 28, 2015

Summary: Police body cameras will not fix every aspect of the relationship between police departments and the communities they serve. But this technology can have a significant impact on police/community relations, and on police legitimacy. The best evidence available shows that 1) body cameras have a “civilizing effect” on both sides of the camera; 2) they create a much better record of police/citizen encounters than we currently get; 3) the cameras help officers collect evidence and help to fend off bogus complaints against police; and 4) cameras will create valuable training opportunities. **Used correctly, and within an adequate framework of rules and policies, body cameras will help to ensure police accountability and officer safety, and will help build a better and stronger relationship between the police and the communities they serve.**

In the immediate aftermath of the death of Michael Brown in Ferguson, Missouri, at the hands of a police officer, members of the public asked, “Where’s the video?” As we know, no video existed. But the public’s reaction said a lot: we expect to see video recordings now.

A body camera system may not have changed the outcome of the tragic encounter between Officer Wilson and Michael Brown. But with these devices already deployed in some places, and with testing that has already taken place in the United States and in Britain, we can say with some certainty that body camera systems have the potential to improve police work in significant ways. No new technology will cure all that ails the relationships between our police forces and the communities they serve, particularly communities of color. The mistrust that exists will not disappear through any one new innovation. Nevertheless, if used according to an adequate framework of rules, police body cameras promise to help police departments make significant progress: toward less fraught interactions with citizens, toward less use of force, toward greater accountability for misconduct when it occurs, and toward greater officer safety and better evidence gathering. The adoption of body cameras will prove worth the investment.

What We Know About What Police Body Cameras Can Do

Body cameras were first used in the U.K. in the middle of the last decade.¹ Pilot studies in Plymouth, first small and then larger in scale, built a base of knowledge and experience with these devices. The U.K. Home Office published “Guidance for the Police Use of Body Worn Video Devices”² in 2007, which listed a number of positive outcomes when officers wore the cameras.

- 1) Officers could record evidence of crime in real time, with far more accuracy than ever, leaving much less doubt about what had happened.
- 2) Creating reports and records took less time using the recordings, which in turn put officers back on patrol sooner and resulted in more rapid resolution of court cases.
- 3) When people saw that officers wore cameras, public order offenses decreased.
- 4) Body camera records became especially helpful in domestic violence cases.
- 5) The recordings made finely-detailed records for investigations of critical incidents, especially police shootings.

As American police departments began to try body cameras in recent years, their findings squared with those in the U.K. studies. While more studies of the use of body cameras in American police departments are needed,³ all that have been done discovered positive effects,⁴ as the U.K. studies did.

Most notably, the police department of Rialto, California participated in a year-long study⁵ in which officers were split into groups with and without body cameras; this allowed a direct comparison of officers on the same shifts with the same assignments, half of whom had body cameras and half of whom did not. The study produced striking results. During the period of the study, officers with body cameras had 88 percent fewer complaints filed against them than officers without the cameras. Officers wearing cameras used force 60 percent less than officers without them. Rialto Police Chief William Farrar explained this “civilizing effect”⁶ of body cameras: “When you put a camera on a police officer, they tend to behave a little better, follow the rules a little better. And if a citizen knows the officer is wearing a camera, chances are the citizen will behave a little better.”⁷

Two other studies, in Mesa, Arizona,⁸ and Phoenix, Arizona,⁹ also showed significant drops in citizen complaints.

It is impossible to know if other departments will attain the results that Rialto did on these two critical dimensions. But even if body cameras elsewhere produce declines in complaints and use of force only half as large as seen in Rialto, this would still make body cameras worthwhile.

Critical Issues to Address in Order for Body Cameras to Serve the Police and the Public

As with any promising technology in police work, innovations must be put to work within a framework of rules that guarantees the use of the technology that will serve the best interests of the police and the public. Several critical issues emerge: recording requirements, privacy, and data retention and use.

When must officers record? Predictably, opinions vary on the question of whether and in what circumstances officers wearing body cameras should record. On the one hand, many in law enforcement believe that officers themselves should have complete discretion to decide whether and when to record. On the other hand, community advocates sometimes argue that police officers should record everything: turn the camera on at the start of a shift, and off at the end.

Neither of these opposing positions is satisfactory. If police record only at their discretion, some officers will record very little or only when doing so will help them, and the cameras will do little to hold officers accountable to the public. But if officers must record every minute of their shifts, the price in privacy becomes too high.

The best policies will break body camera usage requirements into three groups: **must record, may record, and never record**. Officers will find this three-category system understandable, and it will give them the flexibility they need.

The **must record** category would require officers to record:

- when responding to radio calls for service, a crime in progress, emergency responses to critical incidents, or high-priority assignments;
- traffic and pedestrian stops and any vehicle or pedestrian investigation, including stops and frisks;
- vehicle and foot pursuits;
- conducting arrests or issuing citations;
- searches of persons or property, including consent searches, vehicle searches, searches incident to arrest, execution of search or arrest warrants, full in-custody searches, and inventories of seized money or other high-value items;
- consensual encounters that are investigative in nature;
- any incident which creates reasonable suspicion that crime is afoot;
- contacts with citizens that are, or may become, confrontational;
- high-risk situations (e.g., barricade situations, active shooter situations)
- traffic crash scenes;
- situations involving the use of force;
- transportation of prisoners or citizens in police vehicles;
- administration of *Miranda* warnings; and
- interrogations.

The **may record** category would give officers discretion, allowing them to choose whether or not to record:

- interviews with crime victims, witnesses, or informants, unless the subject of the interview objects to recording;
- people wishing to give the police information about crime or suspicious activity; and
- spontaneous conversations with members of the public, when these conversations have no connection to crime.

The **must not record** category would prohibit recording:

- in residences, without the express permission of a person living there (except that no permission would be needed during ongoing pursuits of suspects into homes);
- any situation in which a reasonable expectation of privacy would arise, such as a restroom, locker room, or other private areas;
- strip searches;
- nudity or the exposure of private areas of the body;
- confidential informants and undercover police officers;
- patients in hospital rooms or other treatment areas;
- during services in religious institutions;
- intentional recording of conversations of fellow employees without their knowledge during routine, non-enforcement activities;
- surreptitious recording of citizens and department employees;
- gruesome images not necessary for an ongoing investigation; and
- personal activities or conversation not related to work.

Overall, police policies should require that officers to follow these defined categories, and when in doubt, they should record. Once officers activate the body camera, it must remain on until the completion of the event or leaving the scene, or when a supervising officer orders recording to end.

Enforce recording requirements. Department policies should require that, in any future dispute about what happened in a particular encounter with a citizen, a failure to record when the policy requires it will result in a presumption that the citizen’s version of events is correct. This presumption will hold unless there is a verified reason to believe mechanical failure of the device occurred, or unless the situation would not allow activation of the camera without risks to safety.

Protection of privacy looms large. Police officers should use body cameras to the greatest extent that rules and policy allow, but should also respect personal privacy while doing so. Many of the “must not record” rules serve that goal.

Privacy also encompasses limits on access to and uses of recordings. Access to recordings should extend only to those involved in any case or investigation flowing from the incident recorded, as well as the officers involved in any incident and their supervisors. Others not involved should not have any ability to view the recordings. No officer should ever post any recording to the Internet or give it to the media without express permission from a supervisor holding at least the rank of lieutenant.

Data retention and use requirements must matter. Police departments must have retention policies for the video data that cameras collect. The data should be purged after a specified period that tracks the usage and retention policies police have for all records. Any recorded incident that will or is likely to result in criminal charges, a criminal investigation, an internal investigation or a disciplinary proceeding should be marked electronically as such, and

retained for the longer of a period of two to three years, or until proceedings run their course. Police officers must never alter recordings in any way, and should be absolutely prohibited from using recordings or department equipment for their own, non-police purposes.

Recommendations

Given the promise of these devices to protect the police and the public, and the potential that cameras have for insuring accountability for police misconduct, body cameras can help law enforcement bridge the gap in trust that exists too often between police departments and the communities they serve, particularly communities of color. Governments at all levels should therefore support and fund deployment of body cameras. Any investment in and deployment of body cameras for police agencies should include the following policy requirements, as detailed above.

- 1) **Require creation and implementation of policies that set out rules for when police officers should record encounters with citizens.** A three-tiered system, listing situations in which officers **must record, may record, and may not record**, will ensure that officers record most, though not all, of their encounters with citizens. This will make officers and members of the public safer, and will build officer accountability for most police conduct into the system.
- 2) Police policies should include provisions that **failure to record** when required by policy **will result in a presumption against the officer** in any future proceeding on a citizen complaint or other internal disciplinary proceedings. This presumption should not apply when there is a confirmed assertion of a mechanical or other failure of the technology, or when activating the equipment would endanger officer or public safety.
- 3) Policies must **protect privacy**, by prohibiting recording in homes (unless consent is given), the recording of nudity or other exposure of private areas, and the recording of people, including officers, in situations in which individuals would have a reasonable expectation of privacy.
- 4) Police officers should **receive training** in the use of body worn cameras **before the department deploys them**, and that training must be based on, and include, a thorough and complete explanation of the department's policies on the devices.
- 5) **Careful research and study** should be part of any department's deployment of body worn cameras. Rollout of the technology should take place gradually and deliberately, in order to learn as many lessons as possible along the way and to minimize unforeseen consequences. The data generated and the lessons learned in this process should guide and shape further policy changes, training, and use.

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- ¹ David A. Harris, Picture This: Body-Worn Video Devices (Head Cams) as Tools for Ensuring Fourth Amendment Compliance by Police, 43 Texas Tech. L. Rev. 357, 360-362 (2010).
- ² Police & Crime Standards Directorate, Home Office of the U.K., Guidance for the Police Use of Body-Worn Video Devices (July 2007), <http://library.college.police.uk/docs/homeoffice/guidance-body-worn-devices.pdf>.
- ³ Michael D. White, Police Officer Body-Worn Cameras: Assessing the Evidence, Office of Justice Programs, U.S. Department of Justice (2014), <https://ojpdiagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf>
- ⁴ Police Executive Research Forum, Implementing a Body-Worn Camera Program, Office of Community Oriented Policing Services, U.S. Department of Justice (2014), <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>.
- ⁵ William Farrar and Barak Ariel, Self-Awareness to Being Watched and Socially Desirable Behavior: A Field Experiment on the Effect of Body-Worn Cameras on Police Use of Force, Police Foundation (2013), <http://www.policefoundation.org/sites/g/files/g798246/f/201303/The%20Effect%20of%20Body-Worn%20Cameras%20on%20Police%20Use-of-Force.pdf>.
- ⁶ Michael D. White, Police Officer Body-Worn Cameras: Assessing the Evidence, Office of Justice Programs, U.S. Department of Justice (2014), at p. 6 (“Body-worn cameras have a civilizing effect, resulting in improved behavior among police officers and citizens.”)
- ⁷ *Id.* at p. 11.
- ⁸ Lee Rankin, Program Evaluation & Recommendations: On-Officer Body Camera System, Mesa, Arizona (2013), http://issuu.com/leerankin6/docs/final_axon_flex_evaluation_12-3-13 (study showed
- ⁹ Megan Cassidy, Phoenix Police: Body Cameras Beneficial but Costly, Arizona Republic, Jan. 22, 2015, <http://www.azcentral.com/story/news/local/phoenix/2015/01/21/phoenix-police-body-cameras-beneficial-costly/22142475/> (complaints against officers wearing body cameras decreased 23 percent, while complaints against officers without body cameras increased 11 percent).



January 30, 2015

President's Task Force on 21st Century Policing
Office of Community Oriented Policing Services
U.S. Department of Justice
145 N Street, N.E. 11th Floor
Washington, DC 20530
Comment@taskforceonpolicing.us

Submitted via e-mail

Dear Members of the Task Force:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, we appreciate this opportunity to submit “written comments including proposed recommendations” related to body-worn cameras.ⁱ The Leadership Conference provides a powerful unified voice for the various constituencies of the coalition: persons of color, women, children, individuals with disabilities, gays and lesbians, older Americans, labor unions, major religious groups, civil libertarians, and human rights organizations. As discussed below, we believe that thoughtful policies, developed in public with the input of civil rights advocates and the local community, are essential to ensuring that police operated cameras enhance, rather than threaten, civil rights.

Mobile video cameras are an increasingly ubiquitous tool with the potential to help protect civil rights and build trust between police and the communities they serve. Video footage that documents law enforcement interactions with the public — whether gathered through body-worn cameras, weapon-mounted cameras, dashboard cameras, or citizen video of police activities — can have a valuable role to play in the present and future of policing. By documenting what happens, these cameras can become a new mechanism of police accountability, and can provide an additional source of evidence for administrative and court proceedings.

At the same time, the arrival of new video equipment does not guarantee that a police agency will better protect the civil rights of the community it serves. Department policy will play a critical role in determining whether and how video footage may be used to hold police accountable. This new technology could also be used to intensify disproportionate surveillance and disproportionate enforcement in heavily policed communities of color. Without the right safeguards, there is a real risk that these new devices could become instruments of injustice.

Officers

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American Federation of Teachers
Dennis Williams
International Union, UAW

Policy and Enforcement

Committee Chair

Michael Lieberman

Anti-Defamation League

President & CEO

Wade J. Henderson
Executive Vice President & COO
Karen McGill Lawson

The Police Executive Research Forum (PERF), working together with the Department of Justice Office of Community Oriented Policing Services (COPS Office), recently prepared a report of best practices for implementing body-worn camera programs. That report found that when developing policies for body-worn cameras, police agencies should seek input from “community groups, other local stakeholders and the general public.”ⁱⁱⁱ The PERF report further concluded that the resulting policies should be made “available to the public, preferably by posting the policies on the agency web site.”ⁱⁱⁱ And because these technologies are so new, “[p]olice agencies should adopt an incremental approach to implementing a body-worn camera program. This means testing the cameras in pilot programs and engaging officers and the community during implementation.”^{iv} We strongly agree with each of these recommendations.

These three principles — community input into the policies governing body-worn cameras, public disclosure of what those policies are, and an incremental, pilot-first approach — are points of agreement among civil rights groups, police executives, and experts who have studied the issue. They are a minimum baseline, and compliance with them should be mandatory for any police agency seeking federal funds for the purchase or operation of body-worn cameras. The same shared baseline should likewise apply to federal support for gun-mounted cameras and any other new video technologies that officers use in the course of their duties.

The following policies are vital to ensuring that new police-operated cameras will enhance civil rights, and should be recommended by the Task Force:

1. Balanced rules should clearly specify when the cameras will and will not record, and should appropriately allow members of the public to decline to be recorded.

- Officers should be required to record all interactions with members of the public (i.e. anyone other than police personnel) while on duty, unless a specific and well defined exception applies. This requirement implies that an officer on foot patrol, for example, would generally be recording throughout the patrol.
- We agree with the Model Policy of the International Association of Chiefs of Police (IACP) that in “locations where individuals have a reasonable expectation of privacy, such as a residence, they [should have the option to] decline to be recorded unless the recording is being made pursuant to an arrest or search of the residence or the individuals.”^v
- Further, we agree with the PERF recommendations that “officers should be required to obtain consent prior to recording interviews with crime victims.”^{vi}
- For situations involving “crime witnesses and members of the community who may wish to report or discuss criminal activity in their neighborhood,”^{vii} and for other conversations in public places, we believe that policies should create reasonable opportunities for officers and subjects to jointly agree not to record their conversation. Rather than relying solely on an officer’s attestation that a subject asked not to be recorded, policies should require the

officer to document the subject's request that recording cease, whether by recording the subject's request, obtaining the subject's signature on a standard form, or by another method. If multiple subjects are involved, then all subjects must consent in order for the camera to be turned off.

2. There should be a presumption against the collection or use of facial or other biometric data in conjunction with police-operated video, whether in live feeds or recorded footage. Technology will soon make it easy for every person who comes within view of a body-worn camera to be automatically identified by their face, gait, or other personal characteristics. Biometric evaluation of footage must be strictly limited to narrow, well-defined uses, and subject to judicial authorization.

3. Members of the public should know when the camera is recording. Officers must make clear to members of the public that they are being recorded. Camera systems must include a clear and automatic signal such as a well-labelled recording light to indicate that recording is underway. Officers should also "be required to inform subjects when they are being recorded unless doing so would be unsafe, impractical, or impossible," as recommended in the PERF report,^{viii} and should be similarly required to notify members of the public when recording ends.

4. Retention of footage should be limited. Scheduled, automatic deletion of most footage is vital to prevent these cameras from becoming tools of injustice. Footage should generally be retained as long as it might become relevant to a timely-filed citizen complaint; evidentiary video of crimes, arrests, citations, searches, uses of force and confrontations should be retained in accordance with the general rules for such evidence.

5. Police access to footage should be logged, and should be limited to preserve the independent evidentiary value of officer recollections of events. Officers should not see police-operated camera footage before filing their reports, because such pre-report viewing effectively eliminates the officer's *independent* recollection of the event as a source of evidence. Footage of an event will always present a partial, not complete, perspective of how events unfolded, and can at times create a misleading impression; in such situations, pre-report viewing could create a counter-productive incentive for the officer to conform his or her report to what the video appears to show, rather than to what he or she actually remembers.^{ix}

6. Footage must be made available to promote accountability, with appropriate privacy safeguards for public access. Raw footage should be available for internal and external investigations of misconduct and available to criminal defendants. An appropriate redaction process for private information should be developed so that redacted footage can be made available for non-commercial public interest purposes to the community and the media, subject to appropriate protections for witnesses and victims.

7. Police agencies must secure footage and must not allow access except in accordance with their publicly announced policy. Limits on an agency's use of footage would lose their meaning if additional justice agencies, vendors, or other third parties could access the footage without being bound to the same policies and judicial safeguards that apply to the agency itself. Agencies should be free to contract with vendors to assist in the management of footage, where the vendor acts on behalf of the

police agency and is subject to the same restrictions. Agencies and vendors should also consult with security experts to ensure that footage is not vulnerable to unauthorized access.

8. Police agencies should collect and publish statistics regarding their experiences with body-worn cameras. Timely, systematic review and assessment is vital to understanding the impact of these devices. As the PERF report recommends, police agency statistics should include how often footage from the cameras is used in internal affairs matters and how often it is used in criminal prosecutions.^x

9. Officers must be thoroughly trained on how to use body-worn cameras, and must be disciplined if they violate agency policy. We agree with the PERF recommendations that all “agency personnel who may use or otherwise be involved with body-worn cameras” should be fully trained *before* they are equipped with the cameras.^{xi} Training should be periodic and ongoing.

10. Training protocols for personnel who will review or use footage — including police executives, supervisors, and prosecutors — should incorporate best practices drawn from research findings on racial bias in the interpretation of video evidence. Video evidence may seem to speak for itself, but research has found substantial differences in how different viewers interpret the same footage,^{xii} underlining the continued importance of independent sources of evidence such as officer recollections and witness statements.

With these important protections in place, we are optimistic that police operated cameras can become a valuable part of 21st century policing. We stand ready to work with you to ensure that the voices of the civil and human rights community are heard in this important, ongoing national conversation. If you have any questions about these comments, please contact Corrine Yu, Managing Policy Director, or Sakira Cook, Counsel, at 202-466-3311.

Sincerely,



Wade Henderson
President & CEO



Nancy Zirkin
Executive Vice President

ⁱ COPS Office, *Listening Session: Technology and Social Media*, <http://www.cops.usdoj.gov/Default.asp?Item=2768> (last visited Jan. 25, 2015).

ⁱⁱ Lindsay Miller, et. al., Police Executive Research Forum, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* 37 (2014).

ⁱⁱⁱ *Id.* at 38.

^{iv} *Id.* at 51.

^v VII International Association of Chiefs of Police, *Body-Worn Cameras Model Policy* 1 (2014).

^{vi} Miller, *supra* note 2, at 41.

^{vii} *Id.*

^{viii} *Id.* at 40.

^{ix} The PERF report ultimately favored allowing officers to review video before filing reports, but noted that some police executives “said that the truth — and the officer’s credibility — are better served if an officer is not permitted to review footage of an incident prior to making a statement.” *Id.* at 30. We agree with this observation.

^x Miller, *supra* note 2, at 48.

^{xi} *Id.* at 47.

^{xii} See, e.g., Dan M. Kahan *et al.*, Who Are You Going to Believe? *Scott v. Harris* and the Perils of Cognitive Illiberalism, 122 Harv. L. Rev. 837 (2009). *Scott* involved dashcam video footage of a high-speed police chase in which an officer deliberately rear-ended the plaintiff, who became a quadriplegic in the resulting accident and sued under 42 USC § 1983, alleging that the officer had used excessive force (*Scott v. Harris*, 550 U.S. 372 (2007)). The officer claimed that his actions had been justified because the plaintiff had been driving so recklessly during the chase as to endanger others’ lives, but the plaintiff, whose driving was captured on video, denied that his driving had been so reckless. The Supreme Court held that the officer should have prevailed on summary judgment because the plaintiff’s “version of events is so utterly discredited by the [video footage] that no reasonable jury could have believed him,” *id.* at 380, and the courts below “should have viewed the facts in the light depicted by the videotape.” *Id.* at 381. In response to Justice Steven’s dissent (which differently interpreted the video footage, and agreed with the courts below that the plaintiff’s argument was strong enough to survive summary judgment), the majority wrote that “we are happy to allow the video to speak for itself.” *Id.* at 378, n. 5. Kahan and colleagues accepted this invitation, showing the video to “a diverse sample of 1350 Americans.” Kahan *et al.*, 122 Harv. L. Rev. at 838. They found that interpretations were actually widely varied: “African Americans, low-income workers, and residents of the Northeast ... tended to more pro-plaintiff views of the [video] than did the Court,” *id.* at 841. “By asserting that the view of the facts these people came away with was one no ‘reasonable juror’ could have formed, the *Scott* majority ... denied jurors of this identity a chance to persuade those of another identity to see things a different way,” *id.* at 904.

The need for more research on police technology

Cynthia Lum and Christopher Koper

George Mason University

Center for Evidence-Based Crime Policy

Testimony for the President's Task Force on 21st Century Policing

Topic: Technology and policing

Technology has become a major force in law enforcement, and has been one of the primary targets of public expenditures for the police. Police have moved from foot patrol using call boxes to motorized patrol employing radios and in-car mobile computer technologies. Computer aided dispatch systems have allowed police to be directly connected with the communities they serve, increasing their ability to respond quickly to crime. Other recent advances have included automatic license plate readers, portable fingerprint identifiers, body-worn cameras, and surveillance and sensory technologies that can hear gun shots and pick up and process unusual movements. Even crime analysis has evolved from the early days of tallying counts for uniform crime reporting to today's tools that "predict" where and when crime will happen next.

These changes have been significant, and are often assumed to hold great potential for enhancing police work. But is this the case? Has technology actually made police more effective in their two very important functions: reducing, preventing, and detecting crime; and establishing and sustaining trust and confidence with citizens? Given the current state of research on technology in policing, the answer is unclear. We know generally that technology has at least made many policing processes faster, easier and more efficient. Indeed, most technology studies focus on how technologies operate. However, there are few studies which have examined the impact of technology on other police outputs such as police behavior, crime control effectiveness or relationships with citizens. Further, deeper scrutiny of police agencies and their technologies reveal a complicated organizational sociology and culture that can limit technology's impact in crime prevention or community relations or cause unintended results.

Given the rapid diffusion (and also high cost) of some technologies in policing today, the impact and also the unintended consequences of technology in policing are important to study. Recently, there has been a push for rapid adoption of certain technologies with very little evidence of their effectiveness or collateral effects. Lum et al. (2011) for example, documented the rapid diffusion of license plate readers, even prior to any knowledge about their outcome effectiveness (most studies had only examined their efficiencies). More recently, the shooting of Michael Brown by a police officer in Ferguson, Missouri and the choking death of Erik Gardner by a police officer in New York City have prompted numerous groups and politicians to call for body worn cameras to be worn by the police to increase their accountability. These are just two of many contemporary examples of a feeling of urgency to adopt new technologies to save policing, to increase accountability, improve police effectiveness and make police faster, stronger, and smarter. Whether technology delivers in these ways, however, is yet to be empirically examined.

For example, in our recent study of technology for the National Institute of Justice we found that technology's effects are complex and contradictory; technological advances do not always produce straightforward improvements in communication, cooperation, productivity, job satisfaction, or officers' effectiveness in reducing crime and serving citizens. Desired effects from technology, such as improving clearance rates and reducing crime, may take considerable time to materialize (if they do at all) as agencies adapt to new technologies and refine their uses over time. Some of these challenges stem from implementation and functionality problems with new technology, which can have negative and potentially long-term ramifications for the acceptance, uses, and impacts of that technology. Further, while technology can enhance many aspects of police functioning and performance, it can detract from others (for instance, the reporting requirements of new IT and mobile computing systems may reduce the time that officers spend interacting with citizens or doing other proactive work).

Perhaps more fundamentally, police may fail to make strategically optimal uses of technology for reducing crime or achieving other aims such as improving their legitimacy with the community. One of our key findings is that because many officers tend to frame policing in terms of reactive response to calls for service, reactive arrest to crimes, and adherence to standard operating procedures, they emphasize the use of technology to achieve these goals. To illustrate, officers in our study sites were much more likely to use IT to guide and assist them with traditional enforcement-oriented activities (e.g., locating persons of interest and checking the call history of a location) than for more strategic, proactive tasks (e.g., identifying hot spots to patrol between calls or doing preventive problem solving). They were also much more likely to find their job satisfying when they used technology in these traditional ways.

This is not to say that technological advancement in policing is undesirable and will not bring improvement. However, technological changes may not bring about easy and substantial improvements in police performance without significant planning and effort, and without infrastructure and norms that will help agencies maximize the benefits of technology. Strategizing about technology application is thus essential and should involve careful consideration of the specific ways in which new and existing technologies can be deployed and used at all levels of the organization to meet goals for improving efficiency, effectiveness, and agency management.

To reap the full potential benefits of technological innovations, police must also arguably address traditional and long-standing philosophical and cultural norms about the role of law enforcement. Most notably, training about proactive and evidence-based strategies—and how technology can be used in support of those strategies—is needed. How, for example, can officers use their agency's information systems and crime analysis to guide their patrol activities between calls for service, identify and address problems at hot spot locations, and monitor high-risk people in their areas of responsibility? At the same time, how can managers use these technologies to encourage such work by their subordinates?

Developing an infrastructure in policing for maximizing technology's potential will also require both police and researchers to make a commitment to a strong research and development agenda regarding technology. Police can facilitate this process, for starters, by making greater efforts to systematically track the ways that new technologies are used and the outcomes of those uses. Researchers can assist practitioners by collaborating on evaluation studies that carefully assess the theories behind technology adoption (i.e., how and why is a particular technology expected to improve police effectiveness), the ways in which technology is used in police agencies, the variety of organizational and community impacts that technology may produce, and the cost efficiency of technology. In addition, research is needed to clarify what organizational strategies with respect to training, implementation, management, and evaluation are most effective for achieving desired outcomes with technology and avoiding potentially negative unintended consequences.

In all these ways, greater attention to technology implementation and evaluation by police and researchers can help police agencies optimize technology decisions and more fully realize the potential benefits of technology for policing.

From: Martinez, Travis [mailto:tmartinez@redlandspolice.org]
Sent: Friday, January 23, 2015 8:34 PM
To: Laurie Robinson
Cc: Rosenberger, Jennifer (COPS); Spence, Deborah (COPS)
Subject: Re: President's Task Force on 21st Century Policing

You are very welcome. This strategy has truly been a game changer when it comes to building trust within the community. A diversified community must know that the police will take the effort to address crime in all communities. We do not hesitate to deploy these devices wherever various crime trends pop up. In order for the program to be effective, we must partner with the community and all of our partners have thoroughly enjoyed working with us as it turns the "hunted" into the "hunter." With this type of strategy, we all work together as a team. This is the building block for trust between the community and its local police department. If I can be of any assistance, please do not hesitate to contact me.

Lt. Travis Martinez
[\(909\)557-6583](tel:9095576583)

Sent from my iPad

On Jan 23, 2015, at 8:52 AM, Laurie Robinson <laurieorobinson@gmail.com> wrote:

Dear Lt. Martinez,

Thank you -- so much -- for being in touch about the efforts that you and others in the Redlands, CA Police Department have made to successfully further community policing in your jurisdiction.

This information will be helpful to the Policing Task Force as we are undertaking our work -- so we very much appreciate your having taken the time to be in touch with us and provide such a detailed explanation of your strategy and how it is implemented. I'm particularly impressed with the fact that you have data on the results from your having implemented the GPS tracking devices.

With great appreciation,

Laurie Robinson
Task Force Co-Chair

On Thu, Jan 22, 2015 at 10:55 AM, Martinez, Travis <tmartinez@redlandspolice.org> wrote:
As a current police lieutenant who served under retired Chief James Bueermann of the Redlands Police Department, I have been following the President's Task Force on 21st Century Policing with interest. I understand one of the main objectives of the task force is to build trust between local police departments and the community while keeping crime rates down. As described below, the Redlands Police Department has developed an affordable and very effective policing strategy that accomplishes that specific goal.

For the last four years, the Redlands Police Department has engaged in a community policing program that has proven to build community trust while at the same time reducing crime rates in our community. The program entails using specialized GPS tracking technology to solve crime trends. Basically, when a crime trend pops up, we partner with community members to deploy small GPS tracking devices that have the capability of being hidden in items that are being targeted by thieves. In essence, we are creating a 24 hour a day, 7 days a week electronic surveillance of their property without having to incur the high costs associated with traditional police surveillances.

When the “bait” property is moved, the GPS device activates and immediately sends alerts to the Redlands Police Department Communications Center and to select officers’ cell phones. The dispatchers can then use the Internet to pull up a map depicting the speed and direction of travel of the device. The Community Policing Bureau has used the devices to make 148 apprehensions for various crimes including armed robbery, vehicle burglary, bike theft, laptop theft, oxycontin theft, larceny, metal theft, credit card skimming, and copper theft.

Just like any other police department, the Redlands Police Department strives to reduce all crimes in the community while maintaining a strong sense of public trust. When the fiscal crisis hit in 2010-2011, the Department was forced to reduce staffing levels by 26.5%, going from 98 officers to 72 officers. Unfortunately, the criminals continued victimizing the community especially when it came to property crime. With staffing levels reduced to the bare bones, discretionary proactive policing time was basically non-existent. Meanwhile, vehicles were being broken into at the local LA Fitness parking lot on an almost daily basis. Our Citizen Volunteers would conduct extra patrols, but their presence in the parking lot was limited to about 15 minutes out of a 24 hour day. Under then Chief James Bueermann’s direction, we began deploying the specialized GPS device in a laptop that was placed in a locked vehicle in the parking lot and made apprehensions the very first day. In essence, we found a way to provide constant surveillance of an area for only \$1.65 a day the first year and \$.55 a day every year after.

After experiencing success at LA Fitness, community policing officers began deploying the devices to address a variety of crimes. The devices have not only enhanced our community policing program, but they have also improved our police legitimacy. A good example of the device’s impacts on the community is illustrated in the case involving several thefts from the local cemetery. A group of mothers that had banded together to create memorials at the gravesites of children were frustrated that somebody was stealing memorial items left at the sites. Despite measures enacted by cemetery staff, the thefts continued. When the Community Policing Bureau heard about the thefts, officers engaged the help of one of the mothers. Since the GPS devices have the ability to be hibernated until a certain time, officers gave a device to the mother who in turn sewed it into a pink Hello Kitty purse. The mother then left the purse at the gravesite memorial. Within a few days, the device activated and patrol officers were able to apprehend two females for stealing numerous items from the cemetery. Officers were able to return several stolen items back to the rightful owners who were not only surprised by the fact they saw the stolen items again but were profoundly grateful and pleased that their local police department was willing to address minor crimes. By simply taking a few minutes to program the

GPS device and explain the concept to the mother, the police were able to create many “raving fans” in the community. Examples such as this abound at our department.

In a time where many police departments simply refer victims of misdemeanor crimes to on-line reporting, the Redlands Police Department has discovered a strategy that partners the police and the community to catch criminals in the act. I know many police departments across the nation have begun to adopt a similar policing strategy. Since the Department first began deploying the devices in 2011, Redlands has experienced a decrease in the vehicle burglary crime rate each year despite criminals being released early from prison due to realignment. If your goal is to build public trust between police and the community while at the same time reducing crime, I would strongly encourage you to consider promoting the concept of local law enforcement using high tech GPS tracking devices to solve crime trends. This concept definitely has the potential of creating a national paradigm shift as to how law enforcement partners with the community to solve property thefts, burglaries, and robberies. The COPS Office and the Police Chief Magazine have both published articles that I have written on the Redlands Police Department’s GPS tracker program. I included several links to the articles below. I have also taught POST classes on the subject in several states including the recent FBI-LEEDA Conference in Philadelphia. I know you are on a tight time schedule to make recommendations to the President so I feel as if I am obligated to make sure you have this information. I look forward to any opportunity of working with you to create new strategies of building community trust and reducing crime. If any questions arise, I can be reached at [\(909\)557-6583](tel:9095576583) or tmartinez@redlandspolice.org.

Articles

http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display&article_id=3227&issue_id=12014

http://cops.usdoj.gov/html/dispatch/02-2014/while_youre_away.asp

http://cops.usdoj.gov/html/dispatch/10-2014/gps_and_credit_card_skimming.asp

http://cops.usdoj.gov/html/dispatch/09-2014/using_gps_technology_to_address_theft.asp

http://cops.usdoj.gov/html/dispatch/11-2014/vehicle_burglary.asp

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