



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.

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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.

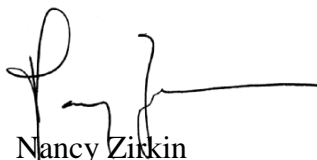
10. Training protocols for personnel who will review or use footage — including police executives, supervisors, and prosecutors — should incorporate best practices drawn from research findings on racial bias in the interpretation of video evidence. Video evidence may seem to speak for itself, but research 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.