

Senate Judiciary Committee, Crime and Terrorism Subcommittee hearing on Body Cameras

Subject: Police Body Cameras

Participants: Senator Lindsey Graham (R-SC)

Witnesses: Sen. Tim Scott, R-S.C.; Peter Weir, District Attorney in the First Judicial District of the State of Colorado; Lindsay Miller, Senior Research Forum in the Police Executive Research Forum; Wade Henderson, president and CEO of The Leadership Conference on Civil and Human Rights; Jarrod Bruder, executive director of the South Carolina Sheriff's Association

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WHITEHOUSE: And I'm delighted that we're doing this, and I appreciate very much that our Chairman is providing this forum for his junior senator, always a good tradition in the Senate to deal with, begin to address the question of how well body cameras work. I'd ask unanimous consent that my statement in that regard be entered into the record. I think that this is a very important subcommittee and I hope we have more hearings in the weeks and months ahead. I've been particularly grateful to work with the Chairman on the Gray and White House Bill, improving the criminal enforcement in the cyber arena. And I hope that we'll be able to pin down a hearing date to begin to get that bill through a hearing, ready in time, so that when we address cyber on the floor, we've alleviated any criticism that our bill didn't get a hearing.

GRAHAM: Right.

WHITEHOUSE: And I also look forward to what I hope will be a lively hearing on what I consider to be a pretty egregious separation of powers, violation by the administration. And so, we're looking to schedule at least those two other hearings. They're good topics and I hope we can make this an active subcommittee. I think it may be the most important subcommittee of the judiciary committee.

(CROSSTALK)

GRAHAM: Thank you very much and we'll do both hearings. Senator Grassley, would you like to make a comment?

GRASSLEY: Yeah, thank you very much. I want to thank you for holding this hearing. I appreciate Senator Scott, his strong interest in the subject. And as chairman of the full committee, I fully support Senator Scott's request for a committee to look into this matter.

Recent interactions between police and the public have increased the consideration of body cameras to record an officer's work. So it's a good idea to explore the experience of state and local governments that they have -- that have employed body cameras. Certainly, the potential exists for body cameras to enhance public trust of police. And they may provide evidence to show the public how well law enforcement handles very trying situations. They must also show whether police training is working well. And it's possible that their existence might cause police

officers to change how they perform certain aspects of their job.

Now, body cameras themselves are relatively inexpensive. But costs associated with their use seem to be considerable. Many practical questions regarding their use need to be thought through. These include determining when cameras would and would not be operating, how privacy of people's homes and crime victims would be maintained, how footage is to be retained, and a chain of custody preserved, and public access to the tapes.

The justice department has also funded some pilot programs and research to determine the best practices for operations of police body cameras. Before we decide what if any federal legislative responses are appropriate, we should obtain a good sense of the issues that have risen in state and local use of body cameras. We should also know what are the competing approaches have been more effective and further shared values. The last thing that we would want to do is to create an incentive or even mandate actions that would cost state and local government large sums of money and not reflect the accumulated wisdom that derides from existing state and local practice.

So, Mr. Chairman, I thank you once again for holding this hearing and I look forward to the testimony witnesses, which I'm going to have to read because I have another assignment I have to go to. But I appreciate that, having the courtesy of what I've just said.

GRAHAM: Thank you, Mr. Chairman. John, would you like to say anything?

CORNBYN: Thank you, Mr. Chairman. I'd like to express my gratitude to Senator Grassley as chairman of the full committee. But to you as chairman of the subcommittee for starting the conversation here on a topic that I know is very near and dear to Senator Scott's heart. We all recognize that body cameras are not a panacea and won't solve all the problems, but may be a piece of the answer, and one building block where we can begin to rebuild the public's confidence in law enforcement, which is absolutely critical to maintaining security and safety in our communities. But it's also important.

Mr. Chairman, I know you agree because you're a co-sponsor of this bill that would create a commission to study our criminal justice system writ large. Once we get through doing the things we can do to help improve our criminal justice system, things like passing the Corrections Act that Senator Whitehouse and I are the chief cosponsors of to help act on the lessons of prison reform that have played out in our states. I hope we can continue this conversation in a way that lets us revisit what works, and correct and eliminate what doesn't work, with a goal toward maintaining and rebuilding the public's trust and law enforcement, which is absolutely critical in our communities. I want to just commend Senator Scott for his leadership in this effort and thank him for being here today.

GRAHAM: Senator Franklin.

FRANKEN: Very quickly, I just have a classified briefing at 4:00. I'm going to stay here until -- you know, so maybe I'll get to my questions, maybe I won't. I have discussed this very briefly with Senator Scott. There are so many questions here I assume that we will get to. And thank

you, Mr. Chairman, for calling this hearing about what activities, what practices should be on camera and which ones shouldn't, how we develop the best protocols, how we use the experience of communities and states and studies, to figure out when is the camera on and when is it off. And so I'm looking forward to hearing from Senator Scott, and I thank you for calling this hearing.

GRAHAM: Thanks, Senator Franken. Senator Scott, thank you very much for coming and I do appreciate your leadership on this. You've been very hands on when it comes to trying to deal with this issue. So please.

SCOTT: Thank you, sir.

GRAHAM: Have a seat.

SCOTT: Thank you, Mr. Chairman, and Ranking Member. Thank you all for participating in the hearing today. I want to thank Senator Grassley for agreeing to hold this hearing today, a very important issue. Very timely response from you, Mr. Chairman, as well as Senator Grassley.

I'd say if a picture is worth a thousand words then a video is worth a thousand pictures and unfold lives. It is certainly time for a national conversation about body cameras and policies affecting communities in distress. Whether we are talking about Ferguson, Baltimore, Ohio, New York City, Oklahoma, or my hometown North Charleston, South Carolina, one thing is certain. Long-term solutions are very important. They're critical.

In addition to body cameras, I'll continue to work on things like my opportunity agenda that I believe will breathe new hope, new opportunities into distressed communities, things that have impacted my life having grown up myself in a single-parent household and poverty in North Charleston. I'll tell you the foundation for changing some of the outcomes starts with education. Long-term education will provide a path, an avenue out. Think about work skills for those adult learners, apprenticeship programs where you can earn and learn at the same time as well as entrepreneurship programs.

I'm here today because I believe strongly that another important piece of the puzzle in rebuilding trust between law enforcement and the community truly is body-worn cameras worn by officers. I say one piece because there is no silver bullet. There is no panacea, but rather, many pieces to this puzzle. We're here today to listen and to learn from experts on how these cameras can be helpful and at the same time for us to understand the concerns like data retention, disclosure issues, including FOIA, costs and training. When do you use the cameras? I look forward to the discussion as well as the hard work ahead.

The good news is that according to at least one study, public complaints against officers wearing cameras fall by 90 percent, use of force -- use of force drops by as much as 60 percent. That's moving in the right direction. Tasking the federal government to support body cameras through resources should not be confused with federalizing local policing, which I would object to, nor is it an attempt to mandate the use of body cameras. Rather, it's an attempt to keep law enforcement officers and our communities safer.

Let me close with the heart felt desires of Mrs. Judy Scott whose son was killed in North Charleston, Walter Scott. She was not looking for revenge. As a matter of fact, on the first day, she said I forgive the officer. She did not speak about the need for justice in her initial comments. She allowed the system to work that out. What Ms. Judy Scott simply said to me was this. I want to make sure -- I really want to make sure that mothers do not have to bury their sons. Thank you, Mr. Chairman.

GRAHAM: Thank you very much, Senator Scott. Thank you. Our second panel. Come forward, please. Al, do you want to ask? OK. He can take my turn, if he needs to.

(OFF-MIKE)

GRAHAM: Thank you, all, could you please stand and raise your right hand? Do you solemnly swear the testimony before this committee is the truth, the whole truth, and nothing but the truth so help you God?

Our panel consists of Mr. Peter Weir who is the district attorney for the First Judicial District, State of Colorado from Golden, Colorado, Lindsay Miler, Senior Research Associate Police Executive Research Forum, Washington, D.C., Wade Henderson, President and CEO of the Leadership Conference on Civil Rights And Human Rights, Washington, D.C., and Jarrod Brudler, Executive Director of South Carolina Sheriff's Association from Columbia, South Carolina. Welcome to you all, and we'll start with Ms. Miler and just move across the panel.

MILLER: Good afternoon, and thank you, Chairman Graham and members of the committee for the opportunity to speak today about the issue of body-worn cameras. My name is Lindsay Miler and I'm a senior research associate with the Police Executive Research Forum, which is an independent, nonprofit research organization that focuses on critical issues and policing.

Our work on body cameras began in 2013 when we partnered with the U.S. Department of Justice's Office of Community-Oriented Policing Services to research the use of body cameras and police agencies. Last September, PERF and the COPS office released a publication that examines the benefits of body cameras and considerations for implementation. The report also provides a set of 33 comprehensive policy recommendations that reflect promising practices and lessons learned.

So today, I'm just going to touch briefly on a few of our key findings and recommendations and my submitted written testimony provides additional details on these topics. So first and foremost, we cautioned that the decision to implement a body camera program should not be entered into lightly. Agencies must thoughtfully examine all of the issues that cameras raise and develop careful written policies to govern their use.

We also found that when implementing a camera program and developing policies, it is critical that agencies engage with community organizations, line officers and unions, local policy makers and elected officials, prosecutors and other stakeholders. Making it a collaborative process can help strengthen the legitimacy of a program and make implementation run more smoothly.

We also caution again that while body cameras can be a useful tool, they aren't a cure all. We need to view them as just one tool and remember that they aren't a substitute for good policies, good training, and good community policing programs. So when it comes to the benefits of body cameras, we found that cameras have been useful for several things. Strengthening police accountability and agency transparency, improving the behavior of people on both sides of the camera. As Senator Scott said, reducing and resolving officer use of force incidents and complaints against officers, identifying and correcting problems within the agency, both at the individual level and throughout the entire agency, strengthening officer performance by using the footage for training and monitoring, and improving evidence documentation for investigations and prosecutions.

We also looked at some of the considerations that agencies must take into account when implementing cameras. These include privacy considerations, especially when it comes to filming victims and witnesses, the impact that cameras have on relationships between police and members of the community, how to address concerns with officers and unions may have about wearing cameras, managing the expectations that body cameras create, especially among courts, oversight bodies, and members of the public, and finally, how to manage the significant ongoing financial costs of a body worn camera program.

So turning to our actual policy recommendations, I am just going to cover a couple. One of the most important questions that an agency will answer is when to require officers to turn their cameras on and off. Our report recommended that with limited exceptions, they should be required to activate their cameras when responding to all calls for service and during all law enforcement related encounters and activities that occur while the officer is on duty. We also recommend that officers should be required to obtain consent prior to recording interviews with crime victims. And they should have limited discretion to keep their cameras off during conversations with witnesses and members of the community who wish to provide information of a crime about a crime, but who don't want to speak on camera. And this addresses some of the significant privacy concerns that come with videotaping crime victims and witnesses.

One of the biggest issues that is emerging that's facing police agencies is when to release the video footage to the public and the media. This is a very difficult issue and there really are no easy answers. Our report generally recommended a fairly broad disclosure policy to promote agency transparency and accountability. However, agencies must always balance the need of transparency with the very real privacy and evidentiary concerns that come with releasing footage to the public. We always want to make sure videos of people in their most vulnerable don't end up on YouTube.

So again, these are just a couple of our 33 recommendations, which also cover data storage and management, training and evaluation. We also provide useful strategies for how police leaders can engage officers, policy makers and the public. And again, when implementing crime plate (ph), body cameras can provide real benefits, both for police and the community. However, it is critical that agencies slow down, think about all of these issues, and take an incremental approach to camera deployment.

And above all, police agencies must remember that the ultimate purpose of body cameras is to help officers protect and serve the people within their communities. So I thank you again for the opportunity to speak today and I welcome any questions you might have.

BRUDER: Chairman Graham, distinguished members of the committee, my name is Jarrod Bruder and I am the Executive Director of the South Carolina Sheriff's Association. It is truly an honor to appear before you today. I come to testify on behalf of the 46 sheriffs of South Carolina.

I'd like to begin by applauding the subcommittee for taking the time to study the positive and negative effects of implementing body-worn cameras before enacting legislation. As you will hear throughout my testimony, embracing new technology for the purposes of increasing transparency, officer accountability, and officer safety can produce tremendous benefits, but it can also generate serious, unintended consequences.

For more than five years now, law enforcement agencies throughout South Carolina have been experimenting with the use of body-worn cameras. To date, approximately 15 percent of our sheriff's offices have implemented a body worn camera program. These agencies found this technology provides a significant benefit to their department and individual officers. Not only do these cameras provide valuable training opportunities, but they also help to resolve officer-involved conflict conflicts. Additionally, these agencies have experienced significant reductions in complaints on officers.

Simply put, everyone, including the officer and the person interacting with the officer tends to behave better when they know they are being filmed. In the end, body-worn cameras produced a more accountable and professional police force for these agencies. In my experience, the primary issue preventing law enforcement agencies from fully embracing the use of body-worn cameras is the exorbitant cost. I'm sure every sheriff and police chief would love to have an agency more accountable and more professional, they must weigh the cost of the technology against the potential benefits.

Unfortunately, the cost is often too much for an agency to absorb. This technology is extremely unique and that the initial phase of the camera -- of implementing the cameras is arguably the cheapest phase of implementation. The greatest cost can be found in the storage or the retention of data. At a time when many law enforcement agencies in South Carolina are struggling to find sufficient funds to protect the officers and the public, a legislative mandate to implement body-worn cameras seems like a nightmare to many. Thankfully, pending legislation in South Carolina will create a statewide trust that will fund the initial and ongoing costs associated with body-worn cameras. This provision along with several others has resulted in our support of our legislation.

Another issue preventing law enforcement agencies from fully embracing this technology is the protection of privacy. While transparency and openness are welcome concepts for some, those notions are not always conducive to producing successful police work. Often times, our best tips come from criminal informants, witnesses or victims who wish to remain anonymous. There's a great fear in the law enforcement community that the proliferation of body-worn cameras will further divide our communities and have a chilling effect on the exchange of information

between our officers and the communities they serve.

In my humble opinion, these cameras are not intended to be the source of embarrassment or humiliation. Law enforcement officers often encounter citizens that are at their lowest moments in life. Data from these cameras should be used as evidence to enhance our pursuit of justice, not to humiliate or entertain our neighbors. When this data is viewed as evidence, rather than as a public document, it ensures that a single moment of indiscretion does not provide a lifetime of embarrassment. It also ensures that one's guilt or innocence is determined in a court of law, not a court of public opinion.

As the use of body-worn cameras increases, it is important for community leaders to manage the expectations of the public. It should be understood that every police action will not be caught on camera. Critical incidents can happen in a blink of an eye. There will be times when it's neither possible nor feasible to have body worn camera footage. The absence of video should not automatically equate to an innocent suspect or a guilty officer, rather data from body-worn cameras should simply assist in the overall quest for justice.

In conclusion, I would like to answer the question that brought us here today. Yes, when used properly, technology and more specifically, body-worn cameras can increase protection for law enforcement officers and the public. We should be careful though not to put too much trust in this technology. Body-worn cameras can aid in transparency, but they will not mend community relations alone, neither -- neither will they address the root causes that have led to so many tragic incidents. Technology, no matter how far in advances, will never accomplish what can be gained when people take the time to sit down, talk, listen, and attempt to understand a different perspective.

It is often said that public safety is a core function of government. While I certainly believe that is true, there are far too many law enforcement agencies in this country that are barely making ends meet. Law enforcement agencies are in desperate need for diversity training, use of force training, and de-escalation training. Advance training, not just basic training is critical in our efforts to provide public safety. If we truly want to increase protection for law enforcement officers and the public, then we need to provide our law enforcement agencies with the fund necessary to attract, recruit, and retain the best and brightest officers. Those officers should be psychologically tested and equipped with the best training available to ensure they serve and protect our communities we quality, fairness, and justice.

With that, I thank you the opportunity to speak and will gladly take any questions.

WEIR: Good afternoon, Chairman Graham, Ranking Member Whitehouse and members of the subcommittee. My name is Peter Weir. I'm an elected district attorney from the First Judicial District in Colorado. That's located in Golden, Colorado, just west of Denver. I also am privileged to be speaking on behalf of the National District Attorney's Association. We appreciate very much the opportunity to lend our voice to this important topic.

I'd like to suggest that any discussion of body-worn cameras is also a discussion of the foundation of our criminal justice system, and that foundation is one of trust, its trust in the

fairness of the system, trust in the men and women who work in the system. And ultimately, trust that justice will be done.

When we talk of data that is generated by body-worn cameras, we need to keep in mind that data is actually evidence. We are talking about the generation of evidence. There are many, many uses for the recordings generated by body-worn cameras. And as already been alluded to and as it goes to the issue of trust, accountability and transparency are critical functions of that. However, you cannot lose sight of the fact that there are many, many considerations to take into account when we start dealing with the collection, retention, distribution and processing of evidence, which is what is generated by the body-worn cameras.

Clearly, from a prosecutor's perspective, this evidence can be very, very important. When you present a case to a jury, certainly, they would benefit from being able to see the place and the circumstances immediately after the commission of a crime. Jurors would benefit from being able to evaluate credibility and demeanor of the witnesses that are recorded contemporaneously with the crime. And when we start talking about officer-involved shootings, body cameras can play a role in determining whether or not the officer acted within the scope of his authority or whether that officer may have violated his oath and acted outside justifiable, legal grounds.

So clearly, the prosecution community supports the use of body-worn cameras and appropriate circumstances with appropriate safeguards and appropriate procedures involved in the use of the body-worn cameras. As has been mentioned already, there are some areas of concern that are shared by prosecutors. And I need to stress it's critically important as we go down this path that the prosecution community be part of the dialogue in creating policies and procedures, not just at the federal level, but also the state and local level to be able to engage with local law enforcement authorities to identify the issues that may be very unique to each jurisdiction.

In this discussion, one size does not fit all. We're talking about judicial districts, law enforcement agencies, sheriff departments of various sizes, and what may work in one local may also not work in other locals. The question that is critical for prosecutors is exactly what is being recorded, what is the extent of the recording, and perhaps another way to put it, when should you not record? It would be easy to say just record everything, any time the officer is on the street, the camera is on. But is this really the process we want? But certainly, it results in extraordinary costs associated with this, the cost of not necessarily the camera itself, but the cost of appropriate storage, archiving and cataloging so that evidence can be used in an appropriate manner.

Prosecutors are also concerned with respect to the storage and retrieval of that evidence. We have obligations to present this evidence to defense attorneys. We must be able to know which portion of a recording pertains to a specific case and be able to district that to the defense bar. That leads us to the question of, what's our broader responsibility to the public.

Many states have open records laws or critical justice records acts that mandate that much of this information must be disclosed. Where is the right line between collecting this important evidence, and what, in fact, we will be distributing to the public at large. As has been testified to, these cameras are not a panacea because they show different perspectives. We are very optimistic of the possibility of body-worn cameras, and used appropriately, we feel it can be an

important tool for both law enforcement and prosecutors. Thank you, Mr. Chairman.

HENDERSON: Good afternoon, Chairman Graham, Ranking Member Whitehouse and members of the subcommittee. I'm Wade Henderson, President and CEO of the Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations charged with the promotion and protection of the rights of all persons in the United States. I'm also at the Joseph L. Rauh, Jr. Professor of Public Interest Law, at the David A. Clarke School of Law at the University of the District of Columbia. Thank you for bringing us together today.

Over the last year, we've seen a growing movement to address policing practices that have a disproportionate impact on low-income communities, communities of color and African-Americans in particular. These practices like discriminatory profiling, excessive use of force, and both explicit and implicit racial bias and law enforcement have framed the national debate around police reform and prompted a national conversation on the use of technology, specifically body-worn cameras as one possible means to enhance accountability and transparency and policing.

Americans across the nation have been transfixed by a series of video clips recorded by concerned citizens that capture tragic encounters between the police and the people they serve. Not since the brutal images of the Bloody Sunday marchers being savagely beaten in Selma, Alabama, were broadcast across the nation 50 years ago have we seen video make such a profound impact on our nation's public discourse. Prior to these broadcasts, the Voting Rights Act did not exist. Those images inspired the nation to write and pass the Voting Rights Act five months later.

Today's citizen recorded videos have inspired the nation once again. When one hears Eric Garner's plea that he can't breathe or sees Walter Scott shot from behind, it's hard not to be moved. Chairman Graham, you spoke for millions and certainly for me when you described the video of Walter Scott's killing in North Charleston as, "horrific and difficult to watch."

There is a temptation to create a false prevalence between these citizen-recorded videos and body-worn cameras operated by law enforcement. I urge the committee not to give into this temptation because body-worn cameras won't be operated by concerned citizens and won't be recording officers. They will, instead, be directed at members of the community. That's why last Friday, the leadership conference joined with a broad coalition of civil rights, privacy and media rights organizations to release shared civil rights principles for use of cameras by law enforcement. These principles, which I'd like to introduce into the record today, recognize that cameras are just a tool, not a substitute for broader reforms of policing practices. They point out that, "Without carefully crafted policy safeguards in place, there is a real risk that these new devices could become instruments of injustice, rather than tools for accountability."

That's why it's so important that when cameras are deployed, it's with a set of clear and narrowly defined purposes, and that policies governing their use are developed in concert with public stakeholders. These cameras should be tools of accountability for police encounters, not a face or body scanner for everyone who walks by on the street. Facial recognition and other biometric technologies must be carefully limited. If those technologies are used together with body

cameras, it will actually intensify, start disparities in surveillance and more heavily policed communities of color.

Early experiences and pilot programs suggest that without strong rules, officers won't necessarily record when they should. For that reason, it's vitally important that departments impose stringent discipline on officers who fail to record encounters that are supposed to be on camera. Finally, our principles call for a prohibition on officers viewing footage until after their reports are filed. Footage can be misleading or incomplete. That's why other sources of evidence, including the officer's own independent recollection of an incident must be preserved allowing officers to preview footage provides an opportunity to conform reports to what the video appears to show rather than what the officer recollects.

Moreover, there is a risk that the officer's report at the video may seem to confirm each other independently when they really aren't independent at all. The leadership conference urges federal, state, and local governments as well as individual police departments to consider our principles as they develop and implement body-worn camera policies and programs. Without the appropriate safeguards, we are at risk of compounding the very problems in policing that we are seeking to fix. Thank you for your consideration. I look forward to your questions.

GRAHAM: Thank you, Mr. Henderson. We'll accept your principles without objection to make it part of the record. Senator Franken, would you like to go first?

FRANKEN: Well, thank you. I -- this is just -- I feel like we're in the infancy of this technology. And as now Ranking Member on Privacy, Technology and the Law Subcommittee, I can see, you know, Mr. Henderson raised facial recognition and the use of that possibility. We know that technology is here. And this raises so many issues. One of the issues I talked about with Senator Scott before this hearing just a little while ago was -- because we heard testimony about the cost of this from Sheriff Bruder, and in these studies, Ms. Miler, is there any indication of the benefits in terms of cost -- in terms of money? In other words, I would imagine that reducing by 80 percent, 90 percent, the negative sort of interactions that there may be an actual financial benefit from that.

MILLER: You know, that's what we heard from the police executives that we worked with. They said there is drop in complaints, the drop of lawsuits have really helped them on the back end save money. There hasn't been a lot of -- haven't been a lot of studies, cost-benefit analysis yet into the technology. My organization PERF is actually starting one now. So we're going to be working on that over the next year to kind of look at that, to see what are the cost savings in terms of lawsuits and investigations, and you know do those help outweigh some of these significant costs. Anecdotally, we hear absolutely that they're with it 100 percent even though the costs are very steep.

FRANKEN: OK. So there are benefits, but there is also cost. I mean, there are dollar benefits versus other benefits?

MILLER: Sure, yep.

MILLER: The dollar benefits may not equal the cost -- the dollar costs. This is -- some of the issues that are being raised are when does the officer turn it on? When does he turn it off? I think all of us can serve in our minds, see 60 minutes stories of a miscarriage of justice because of editing of footage. I mean, that's not very hard to do. So then the question is what kinds of protocols are put in place to guarantee that doesn't happen? And I imagine that that's been thought through. Does anybody have any response to that in terms of how do we avoid the 60-Minutes story or the 20-20 story or the Dateline story that we all have in our head three years from now or 20 years from now, someone who has been in prison for 20 years for something they didn't do because of a misuse of this?

HENDERSON: Senator Franken, it's a terrific question. Let me first thank the Chairman, the Ranking Member, and the entire subcommittee for convening this hearing. Because you have, by doing so, put the issue squarely on the public table. And we appreciate that.

To avoid the problem you've identified, let's begin with the need to develop these policies in public, there should be transparency and there should be involvement of various sectors of the public. Obviously, the law enforcement professionals, certainly those who are professional advocates in this area, but clearly, the public at large, scientists and others and guidelines have to be developed with an eye toward the subsequent use of this information in various cases.

Secondly, these cameras are really -- they offer protection both to good officers and to the public they serve. Officers who are, in fact, inclined to do what they should be doing that and by the way, that is the vast majority of officers who are currently on the beat. We lift them and salute the work that they are committed to do. But unfortunately, not every officer follows appropriate protocols. The existence of these cameras we hope will have a prophylactic impact, an influence on officers who would be inclined not to follow existing protocols or present protocols.

Third, it will require law enforcement to, in fact, revisit the protocols they currently have, so that they can ensure the officers receive appropriate training on the use and appropriate involvement of these cameras. All of these steps, we feel, can contribute to a wise investment. This should be not undertaken lightly. The expense is obviously considerable. But when you balance the impact on the public they serve, the money that would be saved in litigation costs that result from unfortunate incidents of bad policing of the balance of the cost will probably work out in favor of the purchase of cameras.

FRANKEN: Well, thank you, and I know that all of you have same kind of questions I wanted to be asked. I just want to -- Mr. Weir talked about storage, archiving, retrieving and disclosure, essentially as all policies and before storage, I guess, is what do you shoot and when? Those are all -- and Mr. Henderson, you talked about a carefully crafted policy. So I think those are all things we need to be keeping in mind as we go through this technology and this new world.

CORNYN: Well, thank you for your thoughtful testimony. And perhaps one of the most refreshing things I've heard is that how unsimple this is.

(LAUGHTER)

CORNYN: This is a little bit more complicated than I think meets the eye. Because some of the suggestion is all you need to do is put cameras on officers and you are good to go. That clearly doesn't appear to be the case. I have a particular question about victims. There is something called the crime -- Federal Crime Victims Rights Act. One of the rights guaranteed is the right to be reasonably protected from the accused. One of the others is the right to be treated with fairness and respect for victims' dignity and privacy. So I'd be interested. Ms. Miller, maybe we can go down the line and I'd like to get your comment on how do we -- how we might be able to make sure that we protect the victims of crime.

MILLER: Yes, thank you for the question. Our report, we recommend that officers be required to obtain consent prior to filming conversations with crime victims, so that puts the -- you know, it gives the crime victim the dignity and the privacy to be able to determine whether he or she wants to be filmed. And then on the back end, of course, there's the issue of public disclosure, which is another privacy issue when it comes to victims and you know we recommend agencies really consider the privacy -- as I said in my testimony, you don't want to see people at the most vulnerable show up on YouTube. You know, careful reviewing, making sure that the footage isn't disclosed if it's evidentiary, if it contains interviews with victims and then careful redactions if it had to be disclosed.

GRAHAM: Mr. Bruder.

BRUDER: In South Carolina, we're currently working through state legislation to implement body-worn cameras. One of the moves we've done there is to basically make body-worn camera footage exempt or not even subject to the Freedom of Information Act considered not a public document. In doing that, we make sure that the individual victims of those crimes, they're not -- their identity is not shared. Their incident is not shared. Those types of things can only be achieved through the discovery process in court. And that's one of the biggest concerns there as well, making sure people were not victimized for long-term periods based on that.

GRAHAM: Mr. Weir.

WEIR: Senator, thank you. Thank you for the attention on victims. I think this is something that is very important in this discussion. The victims certainly have the right to be protected and have the privacy rights associated with that. Any policies that have to be crafted have to be done thoughtfully and in some detail. There may be circumstances, frankly, when recording of a victim would be appropriate, thinking of the domestic violence victim that is recanting. But there are also circumstances where it'll be absolutely inappropriate, victim of a sex assault or child victim subject to abuse.

I think the clarity of the policies within an agency becomes critical at that point because what you're left with in a courtroom setting is video for a number of purposes. And then it is remarkable in its absence when perhaps the most important individual in a proceeding is not on video, and being able to explain that to a jury and perhaps having an appropriate jury instructions to explain that to a jury I think would be very, very important.

GRAHAM: Mr. Henderson.

HENDERSON: Senator, we agree completely that there has to be clear operational policy for recording retention and access to film. We certainly believe that the rights of individual victims should be protected and that there are clear incidents where the rights of privacy of the individual would preclude a release -- a casual release of this information. However, in incidents involving the police use of force, there should be access to that information as quickly as possible. It should be shared broadly with the public. And those policies that govern the retention and access to information should be strictly enforced. So that when officers fail to record incidents that should be recorded, there should be consequences for that.

Now, obviously, there has to be adequate training, there has to be reinforcement, and there has to be a sense that these officers are, in fact, being helped as much by the existence of these cameras as the public they serve, and when those things work in conjunction with one another, we think they produce positive results.

CORNYN: Mr. Henderson, if I could follow up -- as I was telling Senator Scott -- as we were talking about the officer being responsible for turning the camera off and on and being trained to turn it on at the right time, I could see how that itself will be controversial. Because what did the officer record? What did the officer choose not to record? And so, as we said earlier, this is not, perhaps, quite as simple as.

(CROSSTALK)

HENDERSON: You're right, senator, but, again, if the department provides clear operational guidelines for the recording, retention and access to that film, then the officer is not left having to decide for him or herself what incidents require a recording and what don't. He'll have that clear, bright line that we hope will encourage him to do the right thing or her to do the right thing. That's why it's so important that these guidelines be developed with public review, that they'd be disclosed openly, that the transparency and debate in the public sphere serves the interest of the officer as well as the public.

CORNYN: Thank you, Mr. Chairman.

GRAHAM: Thank you.

WHITEHOUSE: Thank you, Chairman. This is a very interesting hearing and I appreciate all of the witnesses. I will echo what my friend Senator Cornyn had said. The unsimpleness of this is perhaps the most significant thing that we have heard.

As Sheriff Bruder probably knows better than the rest of the panel, police officers see people at their worst. They see people at times of real emotional agony. They see them with horrific, physical injuries, and a video record of a great deal of that would be hugely intrusive to those individuals, hugely in demand by our 24/7 news media if-it-bleeds-it-leads culture. And I think you can expect some intense conflict over this availability.

You can go into people's homes if you're a police officer. If your cameras are running in

somebody's home, does that person have a right to not have what's in their home seen? If the person is a celebrity, if they are public officials, a sports hero or something like that. I think this is really important to solve the problem of police's use of force. But we want to make sure we don't open a whole new array of problems. Sheriff Bruder, you said the 46 different sheriffs in your home state?

BRUDER: Yes, sir.

WHITEHOUSE: In Rhode Island, we've got 39 cities and towns, and most have their own police departments. How many of your sheriffs have what you consider a sophisticated I.T. department?

BRUDER: A handful. Obviously, a lot of them have to comply with the requirements from the FBI, so they've got some I.T. advanced I.T. stuff there, but only a handful have the ability to go back and do those things.

WHITEHOUSE: We have police departments that have been hit by crypto locker and shutdown. I think police departments are very often targeted by hackers nowadays, whether it is cryptolocker, locker, or other devices, so the question of the hackability of all of this, when you consider what the Rupert Murdoch folks did over in England hacking into telephones, how easy would it be to pay somebody to hack into these and get some of that very, very personal footage out. I don't know how -- I appreciate your desire, Mr. Henderson, that there be a clear, bright line but at this point I don't see a clear, bright line. If you're a police officer who has to make an on-off decision about when you turn it on, do you know when you're going to be using force in advance? Probably not. Does that mean that any encounter, you should turn it on sort of just in case, then maybe erase it after? This is really complicated. Where are the best policies out there right now? Are there a couple that we could look at where you think people have really got this right in the public records law, in terms of something that a patrol officer who already has 5,000 other things to remember can implement it in a sensible way, and in a way that is protective of the myriad of privacy rights that surround this. Ms. Miler.

MILLER: Well, I think that...

(CROSSTALK)

WHITEHOUSE: Thank you for your organization's great work.

MILLER: Well, thank you. I appreciate that. Thank you for the question. You know, when we did our research, we looked at a lot of different policies and spoke to a lot of agencies from across the country because I think this technology is so new that I couldn't even really point to one policy that was a model at this point. I think that you know for one thing, every state law is different when it comes to disclosure and evidence, so they're all going to be a little different. But what we did was we gathered all of those policies. We spoke with all of the people who have experience in this, law enforcement officials and civil rights groups and unions and different folks, and we kind of came up with what we found were at that phase -- some of the best practices and best policies.

And so, when it comes to turning the cameras on and off, the policy we saw the most and that we thought was probably the best was to do it during all calls for service. So when you get a call on the radio, when an officer gets a call on the radio, and goes to that call, they turn it on from the minute they get that call and it goes until the end of that incident. Then also during all...

WHITEHOUSE: An officer comes to somebody's house responding to a call, the person who made the call says I don't want you to come in with your camera on. This is my house. I don't know what you're going to do with all that footage. What's the officer's choice then?

MILLER: Well, it depends on the jurisdiction. We would recommend that the officer continue recording unless this is a victim who is saying that they don't want their face on the camera. But at that point, we say continue recording because most of the agencies we worked with said as long as the officer has a legal right to be in the home, which he would as responding to a call for service, then that's when they should be recording, because you don't want some incident to occur they be and not have the footage of that incident, so there is an accountability piece as well as the privacy piece.

WHITEHOUSE: That's kind of the back side of the Supreme Court decisions we're dealing with now with police surveillance where the Supreme Court has taken a look at things that police always have done, but said now with their hyper-enabled by technology, it is actually a new question. So my time is up, but this is a really interesting hearing. I appreciate the Chairman holding it.

MILLER: Thank you.

GRAHAM: Thank you. Senator Coons. Well, wouldn't do it. Klobuchar, would you -- you all decide among yourselves.

(OFF-MIKE)

GRAHAM: No.

COONS: Thank you, Chairman Graham and Senator Klobuchar, and Senator Scott for calling this hearing, Ranking Member Whitehouse. This is an important time and important issue. The American public as we all know is searching for answers on how to effectively heal the divisions we've seen that played out between law enforcement and the communities they serve.

Last week was national police week and we honored 273 officers killed in the line of duty, a stark reminder that policing is a dangerous profession and it is our duty as elected officials to provide state and local police with the support and equipment, the training, and the resources they need to come home to their loved ones and families at the end of each day on the job. In recent week and months, we have also seen disturbing footage taken from a number of scenes in New York and Missouri and Ohio, South Carolina and in Maryland, and in each of these instances, the actions taken by law enforcement and the ensuing public response has highlighted the deep divisions that still exist in many places between law enforcement and the communities

they protect.

So it is also our duty as elected officials to try and help bridge those divides and I welcome today's hearing as an opportunity to learn and work constructively on what is the best way forward for finding common ground. Like many of my colleagues, I believe body-wearing cameras have tremendous potential if implemented correctly and thoughtfully to increase accountability, to settle conflicting witness accounts, to contribute to officer safety and to transparency and to heal some of these deep divides. But there are very important concerns that you as witnesses have raised so far today. And I think meeting those concerns will be absolutely essential to ensuring that cameras become properly deployed tools of accountability rather than means of furthering division.

So I have a couple of simple questions and I would appreciate you answering them, in turn, if you wouldn't mind, to just continue this conversation. When designing and implementing rules for the use of body-worn cameras, who should be at the table? And how can communities ensure that the rules around use of cameras and access to video foot animal are properly followed once in place. If you would please, Ms. Miller.

MILLER: Thank you for the question. The first part, we recommend that police agencies engage with pretty much any stakeholder that's going to be affected by the camera, so community organizations, line officers, unions, prosecutors, local policymakers, courts. All of these people need to be included at the table when it comes to policy development and engaged and their voices heard.

When it comes to the second part of your question and kind of the accountability portion, we recommend that agencies share their policies online on their websites with the public, that they share their retention schedules for data with the public. And we recommend that they regularly collect statistical information about the usage of cameras and make that public as well, so that the public can see how the cameras are being used, you know, what's being released, things like that. So those are kind of our two recommendations.

COONS: Thank you. Mr. Bruder.

BRUDER: And again, in South Carolina, we are looking at implementing statewide legislation to have body-worn cameras. The legislature has kind of sent that task over to the Law Enforcement Training Council which is made up of various law enforcement agency heads from across the state. I know that they have already had plans to include many of the groups Ms. Miler has mentioned, as well as our criminal defense attorneys, their associations, those types of folks, to make sure everybody has input on the implementation and development of those policies. I echo Ms. Miler's comments on the accountability that that's probably the best way to go about doing that.

COONS: Thank you. Mr. Weir.

WEIR: Thank you, Senator, and thank you for the question. I think it is critical once again to keep in mind that we're not just looking at the front end of this process. The accountability and

transparency associated with video recording is very, very important. For the back end of this is what are we going to do with it? This in fact is evidence that is being collected, and how that evidence is stored, managed, and appropriately disclosed to defense counsel, and perhaps disclosed to the public, but perhaps under some circumstances not disclosed to the public to respect privacy interests. All those are very important considerations. Many of these decisions I believe can be -- should be addressed at the local level, something that the community itself needs to be engaged in.

When we start talking about building and developing trust between law enforcement and the community, this is something that should happen well before we are rolling out body cameras. The community has got to be engaged and those relationships have got to be formed by all -- by all partners. But we can't lose sight of the fact that at the end of the day, the collection of this data fundamentally is for evidentiary purposes, and how can we best preserve that evidence.

COONS: Thank you, Mr. Weir. Mr. Henderson.

HENDERSON: Senator Coons, thank you for the question. I agree with the remarks of my colleagues. All affected stakeholders should be invited to the table, and there should be a public debate on these issues. That includes elected officials. That includes members of law enforcement. It certainly includes legal advisors, people who may serve, former prosecutors, defense bar should be encouraged to come. Civic organizations, as well as recognized non-governmental organizations, that have roles to play evaluating the implementation of this. Human rights groups like Amnesty International Law, Human Rights First, might be included in the debate. Now having said that, again, body-worn cameras are only one tool, so they cannot accomplish systemic reforms. And so if, for example, we do not have a policy addressing a ban on racial profiling, for example, and that continues to be a factor in law enforcement in a particular community, it will defeat the purpose of the body-worn camera, if that purpose is to help reiterate law enforcement and the community together and their approach to law enforcement.

COONS: I really appreciate all your answers. Again, I'm grateful to the Chairman for calling this. As the co-chair of the Senate Law Enforcement Caucus and someone that worked closely with law enforcement in my previous county role, I will tell you that those are thoughtful and thorough answers, and it is my hope that some of the different organizations you represent will work together to help develop some model guidelines and some model policies. It should be locally driven, but not every community is going to have the resources, time and effort. I think body-worn cameras are misperceived as an easy solution to very complex and deep-seeded problems. They can be a constructive tool, but we need to do hard work first to make sure that the parameters and challenges are understood and I'm grateful for your testimony today. Thank you, Mr. Chairman.

(UNKNOWN): Mr. Chairman, before we turn to Senator Klobuchar, can I ask unanimous consent that the statement of our remarking member, Senator Leahy, be added to the record of this proceeding.

GRAHAM: Without objection.

(UNKNOWN): Thank you.

KLOBUCHAR: Thank you very much, Mr. Chairman and Senator Whitehouse. Thank you all for being here. This is an issue that is near and dear to my heart. As many of you know, I used to be a prosecutor and actually, Minnesota was one of the first states in the country that videotaped interrogations, both in squad cars, and custody, anything that was in custody. And when I was -- it came about because of defense efforts actually to prevent -- to prevent any kinds of questions about bad activities, but also to protect civil rights. But I made the argument, and our police pretty much agreed, that it also protected them. It made for a better process. It allowed people to see videotape of someone when they were being questioned, so the jurors could judge for themselves what they thought. We had a few cases where we had people that would say things that were somewhat incriminating on the videotape. The jurors were able to see. And mostly, it made sure Miranda rights were read and that the process was fair.

And so I guess I'd start with that. I think it's come now in more jurisdictions obviously and our police have grown to accept it. And they did accept it, actually, pretty quickly when it started there. Of course, there are other issues with regard to body cameras and privacy that we've pointed out that are different than just interrogating one person. But I want to start with the -- with this concept of the interrogations. I guess I'll start with you, Mr. Weir and Mr. Bruder. I realize that not every jurisdiction has this mandatory recording of interrogations and how would you compare body cameras to other types of interrogations? What are some of the issues that you don't have with the interrogations that you have with the body cameras?

WEIR: Thank you, Senator, for the question. As you know, there are other recording devices that are more widespread right now such as dashboard cameras used by law enforcement in stops. Those have been proven to be very effective law enforcement tools for many of the reasons that you articulated. Oftentimes, it shows the officer acting in absolute conformity with the best practices that you would expect from police and sheriff's officers and state troopers. It is also great evidence of what actually happens on scene.

KLOBUCHAR: It's also a good training thing, actually, I think for officers and they're able to watch each other and see what's good and what's bad and make sure it's really -- it is a very good way I think for people to learn when they are able to watch each other. But continue on.

WEIR: I would certainly agree with that, Senator. I would also agree that we are all about trying to improve our process. And from a law enforcement and prosecutor perspective, our goal is to pursue the truth. Our goal is to achieve justice and we don't hide from the facts. And if in fact the video recording helps establish those facts, then it is a tool that should be used.

With respect to the taping and videotaping of interactions and conversations with witnesses and defendants, that is a good practice. In my jurisdiction, we do that as often as we possibly can. However, it is not mandated, and I would be very reluctant to advocating mandating that, given the fact that once again, the pursuit of truth, the pursuit of justice, there may be legitimate evidence that results from the conversations between law enforcement and an individual that could be lost. That subverts our pursuit of truth and justice. So I think under the right

circumstances, it should be encouraged and it is used extensively. But I certainly would not be in favor of any kind of a mandate.

KLOBUCHAR: Well, I think in our state, it was a Supreme Court decision called the Scales decision. But I will tell you, our police have grown, for the most part, to like it.

WEIR: Yeah.

KLOBUCHAR: And we have not had issues about being able to get convictions or anything like that because of this practice. Sometimes, they have to explain why they pursued a certain number of questions or why they did it a certain way, that is true. But I think overall, we've found it to be beneficial. Mr. Bruder.

BRUDER: Thank you for the question. I would echo Mr. Weir's comments that it's best practice and probably advisable to go ahead and try to get those interrogations on film when possible, but it is not mandated in South Carolina. To kind of transition to a different point that you were making, and something that was a great fear of ours, and we were trying to support this legislation, we, too, have dash cameras in our cars and we've seen a tremendous problem where somebody's foot can be -- can go off the scene of the video, then the case is being dismissed because you don't see everything that's happened on video.

What we don't want to happen is for that to be taking place with dash -- or with body cameras. We don't want to get to the point where body camera footage is the end all, be all of evidence.

KLOBUCHAR: I understand. We used to call it the CSI effect with juries because we would have a case that Mr. Henderson knows what I'm talking about, where there would be no possibility of DNA but a defense lawyer would say, well, there's no DNA. And people are used to seeing this on TV, so your points are well-taken. Although, I think -- you know, you have to explain to juries why something went bad that is not necessary to have that for a case. But I think that's a good point.

Anyway, I thought that when I came in, Senator Whitehouse was asking some questions about just the pilots, Ms. Miller. We have one going on in Duluth and in Burnsville, Minnesota. Maybe you want to look at what they're doing there in Minneapolis with what they're doing, but I do think those pilot programs are one good way to figure out what's working best and to get it, allow states to develop some of these privacy policies that are going to have to be in place to make this work. I don't know if you wanted to add to that, Mr. Henderson.

HENDERSON: Senator, thank you. No. I think pilot studies can be very useful in providing information to be considered by a wider audience before a major investment is made in the purchase of these cameras. Having said that, I hope that states and localities will not use that delay as a basis of not going forward, particularly now that the Department of Justice is making available grant funds to support some states in moving in this area. I think that should be encouraged. We support the administration's approach.

KLOBUCHAR: And that's why I led with this interrogation issue, because at first, it was

something that our officers were concerned about and I think they grew to think it was actually a pretty good policy over time. And this one, I will admit, has much more complications in terms of some of the issues that were raised with privacy and what you do with these tapes and that you protect people's privacy, as opposed to just interrogating someone in a squad car or in a room. And so, that's why it is more complicated and we have to consider that as we move forward. But I want to thank all of you for being so thoughtful today. Thank you.

GRAHAM: Senator Scott.

SCOTT: Thank you, Mr. Chairman. Thank you, once again, for holding this hearing. I have met with more than a dozen groups over the last couple of weeks and would love to turn the information over to the committee and submit it for the record.

(OFF-MIKE)

SCOTT: Thank you, sir. Ms. Miler, do you know how many jurisdictions around the country are currently running some type of a pilot program and/or have adopted the policy of body-worn cameras approximately?

MILLER: That's a great question. It's one I get asked a lot and it is one I don't know the answer to. I don't think anyone knows the exact number.

SCOTT: Yeah.

MILLER: The most recent estimate I've heard was between 3,500 and 4,000 agencies...

SCOTT: Yes.

MILLER: Across the country, but again, that's just an estimate. I think it's not even the most recent, and I don't think it is necessarily current. So that's something that I think people are working on trying to figure that out.

SCOTT: The reason why -- I mean, the number is not nearly as important as the level of activity around the country. I think four or five years from now looking back, this will be a foregone conclusion that we find ourselves with the vast majority of officers wearing body-worn cameras. I do think it is important for us to point out the fact that the American laboratory is currently at work, looking for best practices and the best policies. We can look around the country and we'll find the weaving together of the best practices and policies around the country.

I do think it is important to perhaps re-emphasize the necessity of local development of the policies, policing as a local effort and not a federal effort, nor should we find ourselves trying to figure out how to federalize local policing. I think it is also important for us -- Mr. Weir, I'd love to hear your thoughts on the mandates. I am in the opinion that we should not mandate from the federal government, what local law enforcement should do for body cameras, but we certainly should encourage it and we can. I think Ms. Miler's discussed previously create a framework for folks to work within. Thoughts.

WEIR: Thank you, Senator. I agree and I would expect that most of my colleagues in prosecution community would also agree. There certainly is a place to delineate best practices and there certainly is a place to try to articulate the kinds of issues that need to be addressed, and perhaps even suggest proposed solutions to some of those issues. But fundamentally, this really is a local issue, and it varies significantly from one locale to another, based upon resources, officers' training, and the kind of requirements that are needed to effectively prosecute.

The resources are a huge issue, not just with respect to the money involved with the data storage, but the personnel associated with that as far as being able to accurately document what data you have on hand, and then from a prosecutor's perspective, to be able to draw down that information and be able to identify which portion of recordings go with which case and how is it going to be used. Although you are generating significant evidence, you also generate significant work. If you have nine different cameras on in a single incident, that exponentially increases the amount of review that you may have, some of which may be extraordinarily relevant to the issue, but some of it may not. But that still translates into personnel and manpower costs.

So I think it is very, very important that it be done on a local basis, perhaps with guidance from federal level or state level. And also, as we've been discussing, I think input with respect to involved stakeholders from the community would also be an important component.

SCOTT: Thank you. Mr. Bruder and Mr. Henderson, we've heard a lot about privacy issues, where you use cameras or not. I think one of the questions I have has to do with privacy issues in the public spaces, with the number of cameras that are now available called iPhone or whatever your Samsung -- I don't want to get in trouble with anybody, but whatever your phone choice is and/or your cameras at the grocery stores or you're walking down the street. If you're in my neighborhood, you're on camera because I have them all around my house as well.

So the truth is if there is a new conversation and perhaps new considerations that need to be absorbed as it relates to privacy issues and public spaces, and I'm not sure if you've thought this through yet, Mr. Henderson. And for sheriff, since you are a man that can arrest me in South Carolina, I want to make sure I give you as much time as necessary on that issue of privacy. That was my best joke.

HENDERSON: Senator Scott, I'm sorry. I'll be very brief. I think you've identified a new, but very complex challenge that faces 21st Century society. I mean, after all, our Congress has just gone through a debate over the collection of data by the National Security Agency, what kind of information can be gathered in various forms. There obviously are new sensitivities, heightened sensitivities, about privacy in our society. And that should be the case.

So I think we have to move with care and thoughtfulness. I think that new policies have to be developed to meet new challenges and how we both access this information, how we retain and store it, who has access to it, these are all very relevant questions that should be discussed before an investment is made of substantial cost, rather than after. So I'm glad you've identified the issue. And I don't feel that we have given adequate attention to the complexity of the privacy challenges that face the country.

SCOTT: I know my time is up. Mr. Chairman, thank you very much.

GRAHAM: Thank you, Senator Scott. Senator Blumenthal.

BLUMENTHAL: Thanks, Mr. Chairman.

GRAHAM: Mr. Bruder, would you like to make a comment?

BRUDER: One of the things -- that exact conversation happened on the South Carolina Senate Judiciary Committee and they have the exact same conversations there. Ultimately, it came down to a matter of what was subject to the Freedom of Information Act and what was not. Again, it came down to a resource issue and the fact that we've got very small police departments that would ultimately have to create a FOIA department to keep this data that's coming in and out and all the requests.

So essentially, the decision was made not to make it a public document, but to be able to give a copy of that data to a small amount of people. They obviously could do with it what they wanted to after that. So that was our way of kind of narrowing it down so the public still does have input, still does have knowledge, and of course, the agency head -- law enforcement agency head, can still release it if it benefits the public as well.

SCOTT: Thank you very much.

GRAHAM: Thank you, Senator Scott. Senator Blumenthal.

BLUMENTHAL: Thanks, Mr. Chairman. Thanks for holding this hearing and thanks to Senator Scott for the bill that he has introduced and the initiative that he's taken, and thanks to all of you for being here today. I'm a strong supporter of body-worn cameras by police. In fact, I have supported the full appropriation for existing programs that would fund them. And I think they will make a very substantial contribution to the credibility and effectiveness of law enforcement. At the same time, I respect Mr. Henderson's point and I think you've all made it in different words that a lot of care and thoughtfulness needs to go into this new policy.

A lot of people are pretty simplistic in their view of it. You have a camera, so of course, it will record everything. No problem. And there will be no questions. Well, in fact there are questions about privacy. There are questions about chain of custody, who has access to the results of these body-worn cameras, where are the results stored. If so, by a third party, the chain of custody issues is multiplied. And what are the standards. Existing federal programs do not fund standards and policy guidelines.

And I think there is a role for the federal government to play, as you've just said, Mr. Weir. In fact, not only is there a role, there is a necessity for the federal government to try to set some evidentiary standards and criteria for admissibility here. And I might just say, one of the toughest cases I ever had to try involved the use of video in a drug prosecution where the video failed for a short period of time. And the defense was that the critical, in effect, exculpatory support for the

defendant occurred during that period when the video failed and tried to create reasonable doubt because of that malfunction.

So we're not done with this topic simply by requiring cameras to be worn by police. There are significant issues to be overcome. I think you've all highlighted them. And I might just ask all of you, not just for the number, but could you point us in the direction of programs that are working and working well, so that perhaps we have models for what should be done by other cities, and in fact, maybe other states, if you know of any.

MILLER: Thank you again for the question. You know, we worked with several agencies that I think are doing a lot of things right. And even though their policies may differ and we may not agree with every single policy they have, I think that they are very thoughtful about what they're doing. I think Oakland, California was one of the initial adopters of body cameras. They've had them since 2009, 2010. So I've worked with their chief quite a bit. Places like Daytona Beach, Florida, Greensboro, North Carolina, Mesa, Arizona, they have all put a lot of thought. Rialto, California, which is where one of the studies was done. These places have all done a lot of work and I think those are all agencies that have really done a good job of considering all of these issues and are still engaged in trying to you know reform their policies and they learn new things.

BLUMENTHAL: Mr. Bruder.

BRUDER: Thank you for the question. Obviously, it is very new technology, so there's only a few in South Carolina that I've done. We probably have 22 agencies out of the 316 in South Carolina that have actually implemented body-worn cameras. I can think of a couple at the top of my head that are doing it very well. The Spartanburg County Sheriff's Office has been doing this for coming up on a year and they seem to be having great success with it. Also, looked at Charleston Police Department -- Charleston Police Department has taken the route that we've all discussed in bringing everybody to the table to formulate their policies. I believe they've been approved by the ACLU and a number of other groups. So a lot of other agencies are kind of looking to Charleston in their policies as a model that they can follow and implement similar ways in their own communities.

WEIR: Senator, in Colorado, 28 percent of the law enforcement agencies are using body cameras in one form or another. The greatest success stories that I hear coming from the very, very small departments. When I say small, these are departments with less than 10 sworn officers. So I think that helps focus some of these issues and also perhaps reduces some of the complexities associated with this.

Of that 28 percent in Colorado, there's only one department in excess of 50 officers that have used body cameras. And that's been on a pilot basis. So I think in Colorado, it's still an open question, although the response from the agencies -- the smaller agencies, has been very positive.

BLUMENTHAL: Mr. Henderson.

HENDERSON: That's a great question. It deserves a thoughtful response. I prefer to submit my answer in writing.

BLUMENTHAL: Great.

HENDERSON: I'd like to consult with the task force that helped to produce our civil rights principles. I think they have surveyed some of the programs currently in place and I'd like to get their advice before I respond.

BLUMENTHAL: I would welcome that response and any other written responses after this hearing from any of you on any of these topics. I might just say, with all the questions that may be raised, body-worn cameras are going to be a fact of life for better, not for worse. Better that the images should come from cameras worn by police than cameras held by bystanders. And we know that the images from those bystander-held cameras are going to be a fact of life, whether we like it or not. Better that they should be held or worn by police officers who are sworn to tell the truth and enforce the law and seek justice.

So I'm a strong advocate and simply raise these questions because I think they are inevitable and you, as professionals, would want them answered. Thank you, Mr. Chairman.

GRAHAM: Senator Durbin.

DURBIN: Thank you, Mr. Chairman. Thank you for coming before us today to discuss this issue. Mr. Henderson, I'm kind of stuck on this one point here that Mr. Bruder raised. South Carolina has deemed data recorded by a body-worn camera not to be a public document, thus the data is not subject to Freedom of Information Act disclosure. He goes on to say in his testimony, doing so will ensure that a single moment of indiscretion does not provide a lifetime of embarrassment, ensures that one's guilt or innocence is determined in a court of law and not a court of public opinion.

In your testimony, you noted the fact that footage from body-worn cameras can be a valuable source of evidence to help protect both officers and the public. Public needs access to that information, if it's going to protect them, does it not?

HENDERSON: Well, Senator Durbin, thank you for the question. The answer is yes, I do think the public needs access to that information. Now, I would say in every instance where there has been a use of force by the police department in a particular encounter with the public, that information should be made available and accessible and relatively quickly in the aftermath of a particular incident. Heretofore, we have not had adequate data about the use of force, or for that matter, death in custody. It was not until the Senate this year adopted a provision requiring the collection of data of individuals who died in the custody of law enforcement that we're beginning to get that information.

So I am concerned about unilateral declarations that exclude access of this information to the general public without having first a clear discussion of what that approach has been taken and whether it conforms with existing exemptions of the Freedom of Information Act. I think in many instances, the judgment and understandably done in the desire to protect individuals from permanent embarrassment over incidents that are relatively minor in nature. That is a legitimate

concern, but that should not override the public's need or access to information that is involved particularly where by use of force by police officers has taken place.

DURBIN: Mr. Bruder, what you're saying you don't want this to be a fishing expedition. That's the way I read your testimony. How do you respond to this balance, protecting police officers and protecting public while saying the police can hold that information from that body cam and it does not have to be disclosed? Mr. Henderson suggests that if there is use of force, that ought to create the exception. What do you think?

BRUDER: I agree with Mr. Henderson's concerns. And that is a fine line that we've been trying to walk in South Carolina to allow access that the public can see and have confidence in what the law enforcement agencies have been doing, but also to protect ourselves and protect the victims and other people on the video from excessive or abusive FOIA requests.

The bill in South Carolina still allows the public to get that information, whether that is through the individual who is on the camera can request a copy of that and he can obviously do what he would like to do with that data then, or the agency head can still release that information, if he felt like it was in the best interests of the public to go ahead and do that. We've seen that time and time again where questionable uses of force have been used and we've gone back and gone ahead and have gone ahead released the video.

One of the questions that was brought up earlier was about tampering with the video or doing those types of things. This is a topic that came up when we considered our release of information, not only does FOIA prohibit us from releasing certain things, but there are also certain things in South Carolina law that prohibit us from releasing victim identifying characteristics or juveniles and those types of things. For us to do that, we'd have to go back and redact. Obviously, it is easy to redact a document or piece of paper. We got a black sharpie that we can go out and do those things. But how do you redact a video? And then furthermore, once you get into court will the question be raised, OK, it's obvious you've redacted to some degree. How do we know that what we're watching here in court today is the actual true event of what took place that day? Those are all questions that we're still trying to figure out as this new technology moves forward.

DURBIN: Well, we're all trying to learn. And I think the march of science challenges us constantly. It wasn't that many years ago DNA didn't mean anything to anybody. Now, it has ended up resulting in much better -- I think more complete efforts to find the truth and justice. And video evidence is the same. The march of science is going to give us access to information in real time with some degree of certainty that we never had before. Thank you very much. Thanks, Mr. Chairman.

GRAHAM: I'll wrap it up here. You all have been very informative. I've learned a lot. So number one, Ms. Miler, in the dash cam recording history, has that worked pretty well as far as dash cams?

MILLER: Yeah. I mean I think there's been a lot of success with dash cams. I think it is a good way for us to kind of look to body cameras and see what they can do. I do think there are a lot of

differences, so it is hard to -- we always advise agencies you know you can incorporate things from your dash cam policy but we wouldn't recommend relying on it.

GRAHAM: No, you have to go much further.

MILLER: Exactly, exactly, but I do think they can be instructive.

GRAHAM: Has any jurisdiction ever outlawed a dash cam after it came into being for any reason?

MILLER: No. I have talked to places that -- actually, there was one agency that I can remember that ended up -- not getting rid of their dash cams because of the expectations that the courts started having. It was kind of the CSI effect that was discussed earlier. They found that their officers' credibility was kind of being undermined.

GRAHAM: That's the point.

MILLER: Yeah, just one that I've ever talked to.

GRAHAM: Mr. Bruder, dash cams in South Carolina, are they pretty common?

BRUDER: They are common. They're mostly required by law but we're still having problem getting funding for that.

GRAHAM: Would you say 80 percent or 70 percent?

BRUDER: Probably 70 percent to 80 percent of patrol vehicles, not all law enforcement vehicles, but patrol vehicles that do traffic enforcement.

GRAHAM: How do they store the data or keep the data?

BRUDER: They have methods that they do that within the local agencies there. They can go back and they can either download that through a cloud means or they can go in and physically connect to a computer.

GRAHAM: How much more expensive would it be with the body cameras? Would it be exponentially more expensive?

BRUDER: Based on the sheer number of hours and the amount of video, it is going to be exponentially greater. Most of our agencies have been looking at these and trying to get different cost examples. A lot of them have come back with the number of \$100 per month per officer to store data.

GRAHAM: One hundred dollars per month, per officer.

BRUDER: Yes, sir.

GRAHAM: Ms. Miler, what's the estimate (ph) as to how much it would cost the nation if every agency, every law enforcement will have a body camera?

MILLER: To store the data?

(CROSSTALK)

GRAHAM: The whole package.

MILLER: I am terrible at math, so I hate to even try.

GRAHAM: OK.

MILLER: But I've talked to agencies that spend millions per year on...

GRAHAM: Can somebody try to find that answer for us?

MILLER: Yep, we can definitely look into that.

GRAHAM: Do you agree about \$100 per month per officer sounds right as far as storage?

MILLER: I heard that. I've heard \$800 per officer per year.

GRAHAM: OK.

MILLER: So it depends on the size of the agency, how many videos they're shooting, that sort of thing.

GRAHAM: Mr. Weir, you talked about look at this as an evidence device. Is that correct?

WEIR: Yes, sir.

GRAHAM: So chain of custody, all would be very important.

WEIR: Absolutely, Senator.

GRAHAM: Have you had a problem using dash camera evidence.

WEIR: We have not. In Colorado, the dash cameras are used routinely by the Colorado State Patrol. Then it is left up to the individual officers as to whether or not they also want to use dash cameras.

GRAHAM: From a prosecutor's point of view, this hasn't been a difficult tool to employ?

WEIR: Not with respect to dash cameras, Senator. Once again, the complexity...

(CROSSTALK)

GRAHAM: No, no. I got you. I just want to make sure that we used is good to go. Mr. Henderson, the only reason we're probably having this hearing is because of these private videos that have shocked everybody. You agree with that?

HENDERSON: I do.

GRAHAM: And in those cases, we're glad we have video evidence. I mean you've got the North Charleston case that's in litigation, so I'll be careful of what I say. But in that case only God knows what the story would have been.

HENDERSON: You're absolutely right. It's these private videos that have really motivated the public debate. As I said earlier, you deserve great credit for convening this conversation.

GRAHAM: On balance, if you could get the right protocols to protect privacy and make sure the officer is using the camera in an appropriate manner, do you think it's best for the nation to go down this road?

HENDERSON: Without question. I think it's absolutely essential.

GRAHAM: Does everybody agree with that? If you don't, speak up.

(UNKNOWN): Senator, I think going down...

GRAHAM: I'm not saying a federal mandate, but just for law enforcement in general.

WEIR: I think it can be an effective tool. But once again, we've got to be very careful, primarily on the back end.

GRAHAM: No, I got you. All the problems are real that you've identified. But is this something worth pursuing? Is the benefit greater than the cost, Mr. Weir?

WEIR: I think potentially, yes.

GRAHAM: OK. So that's common ground for everybody? The benefit is worth the cost if we can do it right? Does anybody know if the Capitol Hill police wear body cameras?

MILLER: I think they are looking into it. But I don't believe they do.

GRAHAM: It seems to me that if we were that concerned about it as members of Congress, we would like into that. So I intend to do that. Very much appreciate your testimony. One last question, let's say there is a grant program. Would you agree that having certain criteria that you've got to do certain things before you get the grant would make sense, Mr. Henderson?

HENDERSON: I think that is also absolutely essential.

GRAHAM: Mr. Bruder, would that be OK with you?

BRUDER: Yes, sir, absolutely. I'll take the opportunity just to point out that in the current grant funding, I'm not sure data retention is covered. And obviously, we pointed out today, that's the most expensive part.

GRAHAM: You wouldn't want to spend money on a program that wasn't sound. So having conditions on the grant makes sense.

BRUDER: Yes, sir.

GRAHAM: Does that make sense to you, Mr. Weir?

WEIR: It certainly does, Senator, yes.

GRAHAM: Ms. Miler?

MILLER: Yes, it does.

GRAHAM: So a block grant is probably not the way to go here. Have some conditions attached to it.

MILLER: Yes.

GRAHAM: OK. Thank you all very much. I've learned a lot. And the hearing will be adjourned. We'll leave the record open for one week for further questions and any information you want to provide for the committee. You've really done the country a great service. Thank you, all.

END