

**United States Senate
Committee on the Judiciary
Body Cameras: Can Technology Increase Protection for Law Enforcement
Officers and the Public?
Tuesday, May 19, 2015**

Chairman Graham, Distinguished Members of the Committee, my name is Jarrod Bruder and I am the Executive Director for the South Carolina Sheriffs' Association. It is truly an honor to appear before you today. I come to testify on behalf of the forty-six Sheriffs of South Carolina. I have also been asked to share my comments on behalf of the South Carolina Law Enforcement Officers' Association, the South Carolina Police Chiefs Association, the South Carolina Chapter of the Fraternal Order of Police, the South Carolina Attorney General, the South Carolina Law Enforcement Division, the South Carolina Department of Public Safety, the South Carolina Commission on Prosecution Coordination, and the South Carolina Crime Victims Council.

I would 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. As one lawmaker in South Carolina recently noted, "The difference between a young cop and an old cop is that the young cop runs to the fight while the old cop walks to the fight – all the while, he is assessing the situation before jumping in to action." South Carolina Speaker Pro Tempore, Representative Tommy Pope, who is a former law enforcement officer and former Solicitor, used those words to caution his colleagues to slow down and really evaluate the concept before passing legislation that would require all law enforcement agencies in South Carolina to implement body-worn cameras. I would simply ask you to consider those words as the debate over body-worn cameras proceeds.

PROS

For more than five years now, law enforcement agencies throughout the State of South Carolina have been experimenting with the use of body-worn cameras. Approximately 15% of the Sheriffs' Offices in South Carolina have implemented body-worn camera programs to date. For the most part, those agencies have reported that body-worn cameras provide a significant benefit to their department and individual officers. Agencies who have allowed or implemented body-worn cameras have reported significant reductions in complaints on officers. They also credit the cameras with resolving officer-involved incidents. Simply put, everyone – including the officer and the person interacting with the officer – tends to behave better when they know they are being filmed. Body-worn cameras also provide command staffs with a wonderful opportunity to teach younger officers by pointing out tactical mistakes or concerns on film. Many agencies have been heralded for their transparency and willingness to embrace new technology in their pursuit of justice. In the end, body-worn cameras have produced a more accountable and more professional police force for these agencies. It is hard to dispute the effectiveness of body-worn cameras in this regard.

CONS

In my experience, the primary issue preventing law enforcement agencies from fully embracing the use of body-worn cameras is the exorbitant cost. While I am sure that every Sheriff and Chief in this country would love to have an agency that is more accountable and more professional, they must weigh the cost of this technology against the potential benefits. Unfortunately, the cost is often too much for an agency to absorb, even if they desire the benefits. Body-worn cameras are extremely unique in that the initial purchase of the cameras is arguably the cheapest phase of implementation. The greatest cost for this technology can be found in the storage or retention of data. For one Sheriff's Office in South Carolina, the fiscal impact to provide body-worn cameras for approximately 250 deputies was approximately \$600,000 for the initial purchase and implementation of the cameras and approximately \$600,000 each year thereafter in recurring expenses. At a time when many law enforcement agencies in South Carolina are struggling to find sufficient funds to outfit their officers with bullet-proof vests or purchase less lethal technology or other life saving methods, the idea of investing such tremendous amounts of money in body-worn cameras seems like a fairy-tale to many. Thankfully, the South Carolina General Assembly understands the tremendous cost that is associated with this new technology. Pending legislation in South Carolina will create a statewide trust that will fund the initial and ongoing costs associated with body-worn cameras. In fact, the use of body-worn cameras is only required if funding is provided in full. This provision, along with several others, has resulted in our support of body-worn camera legislation.

Likewise, I was encouraged to see the United States Department of Justice announce a new \$20 million pilot grant program that will fund the implementation of body-worn camera programs throughout the country. I would encourage this committee to build upon this program and enhance the funding for such grant programs. I would also encourage this committee to include prosecutors in your funding efforts. All body camera footage that is used as evidence will have to be reviewed by prosecutors. If they do not have the proper IT infrastructure and programs, law enforcement's efforts will ultimately be thwarted by the inability to successfully prosecute a case. Again, the potential benefits of body-worn cameras are great, but so is the cost.

Another issue preventing law enforcement agencies from fully embracing body-worn cameras is the notion of protecting one's privacy. While transparency and openness are welcomed concepts for some, those notions are not always conducive to producing successful police work. Anonymity is a tremendously valuable tool in the world of law enforcement. Often times, our best tips or leads come from criminal informants, witnesses, or victims who wish to remain anonymous. There is 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 officers and the communities they serve. Some are afraid that the concerned neighbor who would ordinarily point law enforcement officers in the direction of a potential law breaker will no longer do so out of a fear of being identified on the officer's body-worn camera.

For this reason, we strongly suggest that governing bodies, on the national, state, and local levels, provide their law enforcement agencies with the opportunity to determine their own policies and procedures when implementing a body-worn camera program. To put it bluntly, the decision of who should wear body-worn cameras and when they should activate or deactivate the camera

should remain a matter of policy and procedure, not law. It is absolutely critical that law enforcement officers retain the ability to turn a camera off when it is necessary to protect the identity of an informant, a witness, or a victim. It is also important to note that the technology behind body-worn cameras is advancing with each day that passes. As technology advances, so too will our policies and procedures. With that said, I again caution against setting such critical decision in law.

Furthermore, protecting one's privacy does not end with an officer's decision to activate or deactivate a camera. In my humble opinion, body-worn cameras are intended to increase officer accountability and trust in the communities they serve. These cameras are not intended to be a source of embarrassment or humiliation. Law enforcement officers often encounter citizens 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. To that end, I must commend the South Carolina General Assembly. In their efforts to enact body-worn camera legislation, they have deemed data recorded by a body-worn camera not to be a public document, thus the data is not subject to our Freedom of Information Act laws. Doing so will ensure 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.

MANAGING EXPECTATIONS

As the use of body-worn cameras increases, it is important for law enforcement, prosecutors, judges, and even governing bodies to manage the expectations of the public. Most agencies that have implemented body-worn cameras have done so for their uniformed patrol officers. These are the officers that are most likely to encounter use of force situations in their day to day activities, so it is only natural to want to document their actions more closely. With that being said, it should be understood that every police action will not be caught on camera. Critical incidents can happen in the blink of an eye. There will be times that it is neither possible, nor feasible, to have body-worn camera footage. The absence of video should not automatically equate to an innocent suspect and a guilty officer. Rather, data from body-worn cameras should simply be seen as an additional tool to assist in the overall quest for justice.

For all the good body-worn cameras can do, there are limitations to the technology and its effectiveness, just as we have seen on in-car video cameras. As sophisticated as the technology is, it will never capture an event recorded as well as the human eye, or being there in person, and may in fact distort the incident altogether. The field of view is necessarily limited, the depth perception is skewed and full context of the encounter is not possible. Low light and darkness only exacerbates these limitations. Subtle clues of attack or trouble, which police are trained to observe, will not be captured by body-worn cameras, and neither will the first flinch of a resisting subject, which can often escalate the situation. If you have never tried to handcuff an uncooperative or resisting suspect, you have no idea what that is like, and it is possible that none of your struggle will be picked up by a camera. So if anyone thinks this technology is the sole answer, they are sadly mistaken. The images will always be subjected to interpretation.

CONCLUSION

In conclusion, I would like to answer the question that has 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. While the Sheriffs of South Carolina fully recognize the benefits that can stem from the use of body-worn cameras, we do not want to lead anyone to believe that this use of technology will magically prevent situations, such as the one that led to the tragic loss of Mr. Walter Scott's life in North Charleston, South Carolina, from occurring. Body-worn cameras can aid in transparency, but they will not mend community relations alone. Technology, no matter how far it 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, I also believe that far too many law enforcement agencies in this country are barely making ends meet. A constant cry for smaller government has resulted in a government that provides less. Law enforcement agencies across this country are in desperate need for cultural diversity, use of force, and de-escalation training. Advanced training, not just basic training, is absolutely 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 funds 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 with equality, fairness, and justice.

With that, I again sincerely thank you for the opportunity to speak today. I will gladly answer any questions.

**Prepared Statement by Senator Chuck Grassley of Iowa
Chairman, Senate Judiciary Committee
Subcommittee on Crime and Terrorism Hearing on:
“Body Cameras: Can Technology Increase Protection for Law Enforcement Officers and
the Public?”
Tuesday, May 19, 2015**

Mr. Chairman, thank you for holding this hearing today on body cameras. And I appreciate that Senator Scott has taken a strong interest in this subject.

Recent interactions between police and the public have increased the consideration of body cameras to record an officer’s work. So it is a good idea to explore the experience of state and local governments 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 might also show whether police training is working well. And it is possible that their existence might cause police officers to change how they perform certain aspects of their jobs.

Body cameras are relatively inexpensive. But costs associated with their use are 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 of crime victims would be maintained; how footage is to be retained and chain of custody preserved; and what access the public may have to the tapes.

The Justice Department has also funded some pilot programs and research to determine the best practices for operation of police body cameras.

Before we decide what, if any, federal legislative response is appropriate, we should obtain a good sense of the issues that have arisen in state and local use of body cameras. We should also know which of the competing approaches have been more effective and further shared values. The last thing we would want to do is create incentives, or even mandate actions, that would cost state and local governments large sums of money and not reflect the accumulated wisdom that derives from state and local practice.

Mr. Chairman, I thank you once again for holding this hearing. I look forward to the testimony of the witnesses.



**Statement of Wade Henderson, President and CEO
The Leadership Conference on Civil and Human Rights**

**Hearing on “Body Cameras: Can Technology Increase Protection for Law Enforcement Officers
and the Public?”**

**Committee on the Judiciary
Subcommittee on Crime and Terrorism
United States Senate
May 19, 2015**

Chairman Graham, Ranking Member Whitehouse, and members of the Subcommittee: thank you for holding today’s hearing on “Body Cameras: Can Technology Increase Protection for Law Enforcement Officers and the Public?” On behalf of The Leadership Conference on Civil and Human Rights, I am pleased to testify today and provide this written statement for inclusion in the record.

The Leadership Conference on Civil and Human Rights is the nation’s oldest and most diverse coalition of civil and human rights organizations. Founded in 1950 by Arnold Aronson, A. Philip Randolph, and Roy Wilkins, The Leadership Conference seeks to further the goal of equality under law through legislative advocacy and public education. 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. This hearing is part of a crucial national conversation about the policing in our country. These are discussions the civil and human rights community is eager to have. 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.

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. The realities of “racial profiling,” excessive use of force, and implicit racial bias by 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 in policing.

As we noted in our comments to President Obama’s Task Force on 21st Century Policing, which are attached to this testimony, 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.

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 the use of body-worn cameras by law enforcement. These principles, which are attached to this testimony, speak both to the potential benefits of body cameras and to the significant risks the cameras may pose for civil rights. The cameras are just a tool, not a substitute for broader reforms of policing practices.

Rolled out with the right policies, these cameras may become a valuable tool for accountability. However, as our civil rights principles point out, “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.”

Our main focus today is on cameras worn and operated by law enforcement, but we must also acknowledge the vital role played by community members who choose to record the police. Americans across the nation have been transfixed by a series of video clips, recorded by bystanders, which capture tragic encounters between police and the people they serve. 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 an important lesson in the fact that bystanders, and not police, held the cameras that showed us those and other tragic events. Cameras point away from the people who operate them. Body-worn cameras will be trained on the members of the community, not officers themselves. And heavily policed communities of color, where there are more police, will be more heavily recorded.

If this technology becomes a multi-purpose surveillance tool, it will intensify the already stark disparities in how different communities are policed. That’s why we think it’s so important to carefully limit how the footage from police cameras will be used. These cameras should be a tool 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, officers will have far greater visibility into heavily policed communities—where cameras will be abundant—than into other communities where cameras will be rare.

Of course, rules about how footage will be used will only matter when we have the actual footage. 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. Early experiences in pilot programs suggest that without strong rules, officers won’t necessarily record when they should.

Finally, footage from a body-worn camera could be a valuable source of evidence to help protect both officers and the public. But any camera footage can be misleading. That’s why we believe other sources of evidence, including the officer’s own recollection of what happened during an incident, must be preserved. If an officer views the footage before filing his or her report, an opportunity will arise for the officer to conform the report to what the video appears to show, rather than what he or she remembers — even if the footage is misleading or incomplete. Moreover, there is a risk that the officer’s report and the



video may seem to confirm each other independently, when they really aren't independent at all. For these reasons, our principles call on departments to prohibit their officers from viewing body camera footage until after reports are filed.

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 we are seeking to fix. And as we continue this important national conversation, we must not forget that body worn cameras are not a substitute for broader reforms that can address issues of profiling, excessive use of force, and implicit and explicit racial bias.

Thank you for your consideration.

Attachments:

Comments to Task Force on 21st Century Policing on Body Worn Cameras (January 30, 2015)
Civil Rights Principles on Body Worn Cameras (May 2015)

Civil Rights Principles on Body Worn Cameras May 2015

Mobile cameras operated by law enforcement may play a valuable role in the present and future of policing. Whether they're worn by an officer or mounted on police equipment, cameras could help provide transparency into law enforcement practices, by providing first-hand evidence of public interactions.

But police-operated cameras are no substitute for broader reforms of policing practices. In fact, cameras could be used to intensify disproportionate surveillance and enforcement in heavily policed communities of color. 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.

To help ensure that police-operated cameras are used to enhance civil rights, departments must:

1. **Develop camera policies in public** with the input of civil rights advocates and the local community. Current policies must always be publicly available, and any policy changes must also be made in consultation with the community.
2. **Commit to a set of narrow and well-defined purposes** for which cameras and their footage may be used. In particular, facial recognition and other biometric technologies must be carefully limited: if they are used together with body cameras, officers will have far greater visibility into heavily policed communities—where cameras will be abundant—than into other communities where cameras will be rare. Such technologies could amplify existing disparities in law enforcement practices across communities.
3. **Specify clear operational policies for recording, retention, and access**, and enforce strict disciplinary protocols for policy violations. While some types of law enforcement interactions (*e.g.*, when attending to victims of domestic violence) may happen off-camera, the vast majority of interactions with the public—including all that involve the use of force—should be captured on video. Departments must also adopt systems to monitor and audit access to recorded footage, and secure footage against unauthorized access and tampering.
4. **Make footage available to promote accountability** with appropriate privacy safeguards in place. At a minimum: (1) footage that captures police use of force should be made available to the public and press upon request, and (2) upon request, footage should be made available in a timely manner to any filmed subject seeking to file a complaint, to criminal defendants, and to the next-of-kin of anyone whose death is related to the events captured on video. Departments must consider individual privacy concerns before making footage available to broad audiences.
5. **Preserve the independent evidentiary value of officer reports** by prohibiting officers from viewing footage before filing their reports. Footage of an event presents a partial—and sometimes misleading—perspective of how events unfolded. Pre-report viewing could cause an officer to

conform the report to what the video appears to show, rather than what the officer actually saw.

Signed by:

American Civil Liberties Union
Asian Americans Advancing Justice | AAJC
Asian Americans Advancing Justice | Asian Law Caucus
Asian Americans Advancing Justice | Los Angeles
Asian Americans Advancing Justice | Chicago
Center for Democracy and Technology
Center for Media Justice
ColorOfChange.org
Data & Society
Demand Progress
Demos
Dignity and Power Now
Electronic Frontier Foundation
Free Press
Hip Hop Caucus
The Lawyers' Committee for Civil Rights Under Law
The Leadership Conference on Civil and Human Rights
Martinez Street Women's Center
May First/People Link
Media Alliance
Media Literacy Project
Media Mobilizing Project
Million Hoodies Movement for Justice
NAACP
NAACP Legal Defense and Educational Fund, Inc.
National Association of Social Workers
National Council of La Raza
National Hispanic Media Coalition
National Urban League
New America's Open Technology Institute
Public Knowledge
Southwest Workers' Union
Urbana-Champaign Independent Media Center
Voices for Racial Justice
Working Narratives
Alvaro Bedoya, Executive Director, Center on Privacy and Technology at Georgetown Law*

* Affiliation for Identification Purposes Only



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.¹ The Leadership Conference provides a powerful unified voice for the various constituencies of the coalition: persons of color, women, children, individuals with disabilities, gays and lesbians, older Americans, labor unions, major religious groups, civil libertarians, and human rights organizations. As discussed below, we believe that thoughtful policies, developed in public with the input of civil rights advocates and the local community, are essential to ensuring that police operated cameras enhance, rather than threaten, civil rights.

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

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

Officers

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International Union, UAW

Policy and Enforcement

Committee Chair

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Anti-Defamation League

President & CEO

Wade J. Henderson

Executive Vice President & COO

Karen McGill Lawson

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

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

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

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

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

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

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

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

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

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

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

7. Police agencies must secure footage and must not allow access except in accordance with their publicly announced policy. Limits on an agency's use of its 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 Zikkin
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.

Statement of Lindsay Miller, J.D.
Senior Research Associate, Police Executive Research Forum
Before the U.S. Senate Judiciary Committee's Subcommittee on Crime and Terrorism
May 19, 2015

Thank you, Chairman Graham and Members of the Committee for the opportunity to testify today about the use of body-worn cameras by law enforcement agencies. My name is Lindsay Miller and I am a Senior Research Associate at the Police Executive Research Forum (PERF), an independent research organization based in Washington, D.C. that focuses on critical issues in policing. PERF strives to advance professionalism in policing and to improve the delivery of police services through the exercise of strong national leadership, public debate of police and criminal justice issues, and research and policy development.

PERF's executive director, Chuck Wexler, would have been here today but he is on previously-scheduled travel to the Middle East. I know that he truly regrets being unable to testify, as he has been an outspoken advocate for both the importance of body-worn cameras as well as their limitations.

During the past year, the incidents that have occurred in places like Ferguson, Missouri, Staten Island, New York, and Baltimore, Maryland have prompted a national conversation about the current state of policing in this country. Body-worn cameras have emerged as one of the focal points of this discussion, as many believe that this technology can help strengthen police accountability and improve interactions between officers and people in the communities they serve.

Body-worn cameras can certainly offer many benefits, but they also raise serious questions about privacy rights, police-community relationships, and the appropriate policies that should govern their use.

To address these questions and produce policy guidance to law enforcement agencies, in 2013 PERF, with support from the U.S. Department of Justice's Office of Community Oriented Policing Services (COPS Office), conducted research into the use of body-worn cameras by police agencies. This research included a survey of 250 police agencies, interviews with more than 40 police executives, a review of existing body-worn camera policies, and a national conference at which more than 200 police chiefs, sheriffs, federal justice representatives, and other experts shared their knowledge of and experiences with body-worn cameras.

Drawing from our research, PERF and the COPS Office developed [Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned](#), a publication that was released in September 2014.¹ The report describes our research findings, explores the issues

¹ Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum. 2014. *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Washington, DC: Office of Community Oriented Policing Services. Available online at http://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf

surrounding body-worn cameras, and provides specific policy recommendations based on promising practices and lessons learned.

First, I would like to share some of our overall findings with respect to body-worn cameras. **Above all, we believe that the decision to deploy body-worn cameras should not be entered into lightly.** Body-worn cameras can have a significant impact on public privacy, on how police officers relate to members of the community, on how evidence is collected and presented in court, and on police resources and operations. And once a police agency goes down the road of deploying cameras—and once the public comes to expect the availability of video records—it can be difficult to reconsider or slow down the process.

It is therefore critical that police agencies consider all of these larger policy issues when deciding whether to implement a body-worn camera program. **It is also important that each agency develop its own comprehensive written policy to govern body-worn camera usage, and that agencies engage with community organizations, line officers and unions, local policymakers, and other stakeholders when implementing their programs.** Incorporating input from these groups through a collaborative process will increase the legitimacy of a body-worn camera program and will make implementation go more smoothly. Agencies should also make their body-worn camera policies available to the public.

We would also caution that body-worn cameras, while a potentially useful tool, are not a panacea. Cameras cannot be a substitute for good policies, training, and community policing efforts.

Turning to the potential benefits of body-worn cameras, we found there is an overall perception that body-worn cameras can serve as a useful tool for police and for the community as a whole. For one, body-worn cameras can help strengthen police accountability and transparency. As recent events have shown, there is an increasing public demand for police agencies to be open about their operations. By providing a video record of incidents and encounters between officers and the public, body-worn cameras can help agencies demonstrate transparency and address the community's questions about controversial events.

We also heard from many police executives that body-worn cameras can help prevent unnecessary officer use of force and de-escalate confrontational encounters between officers and the public. As one police chief told PERF, “We actually encourage our officers to let people know that they are recording. Why? Because we think that it elevates behavior on both sides of the camera.”

Recent studies have offered evidence that supports this claim. For example, a 2012 study conducted in Rialto, California found a 60 percent reduction in officer use-of-force incidents and an 88 percent reduction in complaints against officers following camera

deployment.² A similar study conducted in Mesa, Arizona, found that officers who wore cameras experienced 75 percent fewer use-of-force complaints than officers without cameras.³

When questions do arise following an event or encounter, police executives told PERF that having a video record helps lead to a quicker resolution. In cases involving alleged officer misconduct, for example, supervisors, Internal Affairs units, civilian review boards, courts, and other oversight bodies are using body-worn camera footage to review and address the officer's actions. This quicker resolution can help save agencies time and money that they would otherwise spend investigating complaints and defending against lawsuits.

Another reported benefit of body-worn cameras is their use as a training tool to help improve officer performance. For example, agencies are using camera footage to provide scenario-based training, to evaluate the performance of new officers in the field, and to identify areas in which more training is needed. By using body-worn cameras in this way, agencies have the opportunity to raise standards of performance when it comes to tactics, communication, and customer service. This can help increase the perceived legitimacy of the police and the sense of procedural justice that communities have about their police departments.

Police executives also told PERF that body-worn cameras help them to identify and address internal weaknesses, both at the individual officer level and across the entire department. For example, some agencies have used body-worn cameras to detect patterns of racially-based policing and to develop new policies and training to address this problem. Police agencies facing Justice Department consent decrees or external investigations have found that implementing a body-worn camera program can help demonstrate that they are improving policies and practices and engaging in constitutional policing.

Finally, police executives report that body-worn cameras are helping officers to more accurately document evidence for investigations and court proceedings. For example, police are using cameras to record interrogations and arrests, to capture what officers witness at crime scenes, and to document statements made by crime victims and witnesses who are willing to speak on camera.

Having described the reported benefits of body-worn cameras, I will now turn to some of the policy questions regarding privacy, police-community relationships, and internal departmental affairs that must be carefully addressed if a police agency deploys this technology.

One of the most significant considerations is the impact that body-worn cameras have on the public's privacy rights. **When deploying body-worn cameras, police agencies must balance privacy considerations with the need for transparency of police operations and accurate documentation of events.** Unlike many of the public security cameras that we have become accustomed to, body-worn cameras can record both audio and video, capture close-up images of people's faces, and be used to record inside private homes and during sensitive

² William Farrar, "Operation Candid Camera: Rialto Police Department's Body-Worn Camera Experiment," *The Police Chief* 81 (2014): 20–25.

³ Harold Rankin, "End of Program Evaluation and Recommendations: On-Officer Body Camera System" (Mesa, AZ: Mesa Police Department, 2013).

situations that arise during police calls for service. There are also privacy concerns related to how camera videos are stored, how long videos are retained, who has access to the footage, and the circumstances under which police videos will or will not be released to the public or the news media.

Another issue to consider is the impact that body-worn cameras may have on everyday relationships between police officers and community members. The success of a police department depends in large part on how well it can build relationships of trust within the community. Some police executives told PERF they fear that community members may be reluctant to have casual conversations with officers on the beat if the officer is recording every word they say, which will undermine openness and trust. Additionally, some members of the community may be less likely to share sensitive information with officers about crime or other problems in their neighborhood if they know that they are being recorded. Later in this testimony, I will discuss our recommendations for how to deploy cameras in a way that preserves these important relationships.

Body-worn cameras can also have an impact on relationships and levels of trust within a police agency. Many police executives who have deployed body-worn cameras said that officers had initial concerns that supervisors would use the cameras to track and scrutinize their every move, thus signaling a lack of trust in the officers. Many of these concerns can be addressed by engaging officers and police unions in the decision-making process, making officers aware of how body-worn cameras can help them do their jobs, and using internal audit units (rather than direct supervisors) to randomly monitor officers' video footage for general compliance and performance.

Another consideration involves the expectations that body-worn cameras create among courts, arbitrators, civilian review boards, and the public. Many police executives said it is becoming increasingly common for people to expect that cameras will perfectly capture everything that occurs while an officer is on duty, but that this expectation can be unrealistic. **Again, we would caution that body cameras are not a panacea, and they cannot take the place of good policies, training, and community policing efforts.** We recommend that agencies conduct outreach to courts, oversight bodies, and the public in order to raise awareness about what body-worn cameras can and cannot achieve.

Finally, police agencies must also consider the significant financial and human resources costs that body-worn cameras present. In addition to the initial purchasing cost of the cameras, which can range from \$120 to \$2,000 per device, agencies must also pay for ongoing data storage, training, program management, and camera maintenance. Police executives told PERF that the cost of storing body-worn camera footage represents the bulk of program costs. Agencies must also be prepared to devote considerable time and resources to reviewing and redacting footage in order to respond to public disclosure requests for footage.

Drawing from our examination of these benefits and considerations, PERF developed a set of 33 policy recommendations to guide police agencies as they implement body-worn camera programs. These recommendations are based on the promising practices and lessons that emerged from our research. **Of course, every police agency is different, and what works in**

one department might not be feasible in another. Agencies should adapt these recommendations to fit their own needs, budget and staffing limitations, and state law requirements.

For the purpose of this testimony, I will highlight just a few of PERF's key policy recommendations and provide the rationale behind them. The complete list of our recommendations can be found in our publication.

Perhaps the most significant policy decision that agencies must make is determining when officers should be required to activate their cameras. **PERF recommends that, with limited exceptions, officers 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 officers is on duty.** This is the most common policy adopted by the police agencies that PERF consulted, and it means that activities such as traffic or pedestrian stops, pursuits, searches, arrests, interrogations, and other enforcement-related events should always be recorded. Though some experts advocate recording *all* encounters between an officer and the public, we believe this approach can undermine the important informal relationships that officers develop with people in the community. We recommend that officers not be required to record non-law enforcement-related encounters; for example, an informal conversation with a shop owner about a football game, or a friendly chat with an elderly resident about her grandchildren.

We also outline limited exceptions to our general recording recommendation. For example, **we recommend that officers should be required to obtain consent prior to recording interviews with crime victims, and that officers should have discretion to not record conversations with crime witnesses or members of the community who wish to discuss confidential information that might relate to criminal activity, but who are unwilling to speak on camera.** This policy helps address the significant concerns about privacy or fear of retaliation that come with recording crime victims and witnesses.

Our recommendations emphasize that any recording discretion given to officers should be guided, limited, and subject to accountability mechanisms. Officers should be required to document, on camera or in writing, their reasons for not recording a particular encounter or event. And when in doubt, officers should record.

PERF also recommends that officers should be required to inform subjects when they are being recorded unless doing so would be unsafe, impractical, or impossible. This recommendation is based on reports that officers and community members tend to behave better and de-escalate conflicts if everyone present knows that the encounter is being recorded. In the relatively small number of states with two-party consent laws, officers must also always obtain the consent of the person being recorded.

Another critical issue facing police agencies is how to protect the security and integrity of body-worn camera data. The police agencies that PERF consulted store videos on an in-house server (managed internally) or on an online cloud database (managed by a third-party vendor). PERF recommends that, regardless of the storage method, an agency's policies should include specific measures to prevent unauthorized access, data tampering, deleting, or copying of video

files. Common strategies include data storage systems with built-in audit trails, requirements that supervisors download footage of serious officer-involved incidents, and forensic reviews of questionable footage.

Policies should also specifically state the length of time that body-worn camera videos should be retained. If the video contains footage that may be used in an investigation or a trial, or that captures a confrontational encounter between an officer and the public, it should be deemed “evidentiary” and categorized according to the type of incident. Retention times for evidentiary videos are typically governed by state evidentiary laws and regulations. If the video does not contain evidence or if it captures a routine, non-confrontational encounter, it should be categorized as “non-evidentiary.” When setting retention times for non-evidentiary footage, agencies should take into account the need to preserve footage long enough to promote transparency and investigate complaints, data storage capacity, and departmental policies governing other types of electronic records. Most agencies PERF consulted retain non-evidentiary data for 60 to 90 days. Retention times should be made available to the public.

One of the most important questions that an agency will face is when to release body-worn camera footage externally to the public and news media. First and foremost, each agency’s policy must comply with the state’s public disclosure laws. **With that in mind, PERF generally recommends a broad disclosure policy to promote agency transparency and accountability. By choosing to deploy cameras, agencies are creating a reasonable expectation that members of the public and the news media will be able to review the actions of officers.** However, agencies must always balance transparency with the very real privacy and evidentiary considerations that come with releasing footage to the public. We also stress that policies should include specific measures for preventing unauthorized video access or release.

Training is another key component of any body-worn camera program. We recommend that rigorous, ongoing training should be required for all agency personnel who may use or otherwise be involved with body-worn cameras. This includes officers who wear cameras, supervisors whose officers wear cameras, records management personnel, training personnel, and Internal Affairs units. Training should include an overview of relevant laws, procedures for operating the equipment safely and effectively, scenario-based exercises, data management procedures, and how to present video evidence in court.

Finally, PERF recommends that agencies should collect statistical data concerning body-worn camera usage and regularly make this data available to the public. Agencies should conduct periodic reviews of their body-worn camera policies and practices to assess the program’s effectiveness, financial impact, legal compliance, and impact on the community.

In conclusion, we believe that when implemented correctly, body-worn cameras can help strengthen the policing profession. They can help promote police accountability and transparency, strengthen officer professionalism and performance, improve evidence collection, and provide a more accurate documentation of police activities. However, body-worn cameras raise difficult issues as a practical matter and at the policy level that agencies must thoughtfully examine.

PERF's recommendations provide guidance that is grounded in current research and in the lessons learned from police agencies that have adopted body-worn cameras. Because this technology is so new, our recommendations may evolve as the impact of body-worn cameras is more fully understood. Above all, agencies must always remember that the ultimate purpose of body-worn cameras is to help officers protect and serve the people in their communities.

Thank you again for the opportunity to testify today. I would be pleased to answer any questions that you might have about this important issue.

Senator Tim Scott
SJC Subcommittee Hearing on Police Body Cameras
Testimony

I want to thank both my senior Senator Chairman Graham, as well as Chairman Grassley for agreeing to hold a hearing today on this important issue.

Mr. Chairman –the past year has shown, in no uncertain terms, that there are problem spots across this country in interactions between law enforcement and minority and low-income communities. It is well past time for a national conversation about this and the policies affecting people that are growing up and living in communities like I did as a poor kid with a single mom in North Charleston, South Carolina.

Whether we are talking about Ferguson or Baltimore, Ohio or New York City, Tulsa Oklahoma or North Charleston South Carolina, working together to find meaningful, long-term solutions is absolutely critical. I have been working on many of these through my Opportunity Agenda, and will continue to do so, quite frankly, for the rest of my life – be it improving educational opportunity or emphasizing programs like apprenticeships to ensure the skills of the workforce match the needs of employers.

I am here today because I believe strongly that another important piece of that puzzle to help rebuild trust and construct brighter futures in many communities around the country is body-worn cameras. I say one piece, because I think we can all acknowledge there is no single solution, but rather many critical steps we must take to tackle poverty, criminal justice reform and instances of police brutality.

We are here today to listen and learn from experts as to how body-worn cameras will improve safety for both law enforcement officers and the public, as well as what challenges lie ahead for localities as they move forward with purchasing and using the cameras. We have some statistics available that we will hear more about today from another witness and that frankly are pretty amazing – one study shows that public complaints against officers wearing body cameras fell by almost 90% and that officers' use of force decreased by 60%. At a minimum, we owe it to our communities and law enforcement officers to consider this study and other evidence to explore the wisdom of widespread deployment of body-worn cameras.

I understand that there are multiple and complex questions surrounding the use of body cameras, including privacy concerns, data retention and disclosure issues, and the effects of recording on community relationships. It is essential that we explore these and other concerns today, and determine how we can best empower localities and states to utilize this technology and determine their rules for usage.

I am not proposing that we federalize local policing, or mandate the use of body-worn cameras, but rather that we find the best way possible to make technologies available to local departments looking for ways to keep both their officers and the public they serve safer. As

Senator Tim Scott
SJC Subcommittee Hearing on Police Body Cameras
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states and localities around the country implement body-worn camera programs, we should consider ways in which the federal government may add to the conversation.

I would ask that we all remember the words of Mrs. Judy Scott, who lost her son Walter last month in my hometown of North Charleston. I had the chance to speak with this amazing woman and her family multiple times since this tragedy, and when I asked what she wanted to see, she said something seemingly obvious, but which should be the driving force behind what we do on this matter. Mrs. Scott simply said "I just want for no more mothers to have to bury their sons."

I believe that body-worn cameras are an important step towards helping achieve that goal, and that's why I look forward to hearing today's testimony from our experts. I hope to see you again soon in this committee, as I will be introducing legislation using the information we gain today, as well as from weeks of meeting with groups and coalitions invested in this matter.

Thank you again Mr. Chairman.



Testimony of Peter A. Weir

District Attorney

First Judicial District, Golden, Colorado

Body-Worn Cameras by Police Officers—A Prosecutor’s Perspective

United States Senate Judiciary Committee

Subcommittee on Crime and Terrorism

Tuesday, May 19, 2015

Chairman Graham, Ranking Member Whitehouse, and members of the subcommittee, my name is Peter Weir. I am the elected district attorney for the First Judicial District of Colorado, located in Golden. My district comprises a suburban county of approximately 500,000 people and a much smaller mountain county. I am a member of the National District Attorneys Association which I am proud to represent today. Thank you for the opportunity to address you on this vitally important topic of body-worn cameras for police officers.

Trust in our law enforcement community and the criminal justice system is essential to an ordered democracy. Without it, confidence in the means of enforcing the criminal law dissolves, leaving all of us at risk. Any method of enhancing that trust, including advances in technology, serves to create an atmosphere of safety and security. Body-worn cameras constitute movement toward that goal.

Prosecutors are elected by the People to hold offenders accountable and protect the public safety of our communities. We work closely with our local law enforcement agencies, but act independently. Our only obligation is to seek justice, and in furtherance of that effort we use all tools at our command to search out the truth, wherever that leads. Prosecutors in America do not hesitate to file charges and take to trial anyone who violates our laws, including police officers. My office has prosecuted peace officers for violating the law, including cases of excessive force, sexual assaults while on duty, and interfering with ongoing investigations. Despite perceptions to the contrary, we have no reason to exonerate a police officer simply because we are both members of law enforcement.

Certainly the impetus for body worn cameras grows out of concerns about officer-involved shootings, but the cameras will provide solid evidence for all crimes investigated by the police. Because accurate and reliable evidence are the foundation for all prosecutions, the promise of body-worn cameras affords a tremendous opportunity for the resolution of cases without factual dispute. We welcome the advent of technological advances in this area just as we have embraced the use of DNA results which serve to both convict the guilty and exonerate the innocent.

Body cams can not only record the entire context of a police encounter, but are invaluable in assessing the demeanor of victims, witnesses, and suspects. For example, the drunk driver who is unable to exit his vehicle without falling down will be far less likely to convince a jury he was not drunk. Domestic violence victims can be recorded immediately after calling the police, allowing jurors to see the entire context of the report. We all know a picture is worth a thousand words of testimony, and a video is worth perhaps a thousand times more.

However, as with all new technologies, adjustments will need to be made to current law enforcement practices. The rollout of new technology fosters a level of confusion, apprehension, and concern. There are many ways to view implementation of body cams, but the concerns can be placed in at least five categories: costs, extent of recording, cataloging for use in criminal prosecution, release of video to the public, and the acceptance of limitations of body cams.

Costs for this technology are uncertain, but clearly significant. The cameras themselves do not come cheap, but the real costs lie in storage and accessibility for the recordings. Depending on a department's policy on when and what to record, an officer can be expected to generate hours of video on each shift. Multiply this by the number of officers who, of course, must cover their city every hour of every day, and it is easy to see how the amount of data, and its concomitant cost of storage, skyrockets. Police departments may need to devote a substantial portion of their budget to this effort.

Compounding that problem is the question of how long should video be saved. At what point do storage costs overwhelm budgets inhibiting the purchase of other law enforcement tools? And certainly, as with all technology, upgrades to both hardware and software will be necessary.

Perhaps the most difficult and pressing decision for law enforcement agencies is creation of policies on when not to record. Although for many the initial reaction is to write a policy with the single command of "record everything," the reality of such a policy gives

one pause. Privacy and other constitutional rights may prohibit the recording of every minute a police officer spends on shift.

Should every victim of every crime be compelled to agree to recording in order to make a complaint? Victims of sexual assault, especially child victims, may suffer from such a policy to the point where reporting of these offenses drops. If a department allows the officer to turn off the camera in accepting a reported sexual assault, what will that mean to a defendant who wants to examine the victim's demeanor at the time of the report?

Police officers regularly respond to places where people possess a reasonable expectation of privacy. For example, an officer walking through a hospital emergency room to contact a victim, witness, defendant, or medical professional would record many patients who might not like the world to know they sought medical care. It is this type of legal and practical tug-of-war between privacy and transparency police and prosecutors need to resolve when making the "when to record" decision.

As a prosecutor, I am subject to ethical and legal requirements to make police and other reports available to the defense in a timely manner. Failure to do so can result in serious consequences for the case and for the prosecutor personally. Every prosecutor's office has detailed policies and procedures to assure compliance with these obligations. The advent of digital cameras, computers, and voluminous record-keeping of things like cell phone calls and surveillance video have significantly increased our workload. Murder cases in my office routinely generate thousands of pages of reports and stacks of compact discs.

Additional hours of video recordings will create heavy demands on both police agencies and my staff. Recordings will have to be properly catalogued so they can accurately be placed with the proper case file. During a shift a police officer can expect to be involved with several different incidents. These are currently tracked by police report number. Officers will need to be diligent to assure every video is properly identified for cataloguing. Multiple defendants, multiple offenses, and crowd situations need to be dealt with to assure compliance with legal requirements while not infringing on privacy rights.

Inevitably recordings will be destroyed, lost, or technologically compromised presenting practical and legal problems.

The integration of police recordings into a prosecution can be a major concern. I work with 15 different police agencies in my jurisdiction. And while we work cooperatively, I do not control either their budgets or their policies. Some departments might choose to record all transactions, while others decide to be more limited. If there is not unanimity in selection of camera vendors and storage methods, my office will need to possess multiple means to get all required video into a form which comports with my ethical and legal responsibilities.

Release of information creates issues for release to criminal defendants, to the media and members of the public. Open records laws vary from state to state. As technology has improved we have applied these statutes to photos and video, but the flood of information contained in body cams presents an exponential increase in the application of these laws. Body cams will record information which those recorded may not want released. We have already referenced the sexual assault victim. For those who need to report a home burglary the officer will certainly want to document the layout of the home and the places where the victim suffered theft or damage. Should the public be allowed to access this video? People contacting the police often have to reveal their social security numbers or other personal information. Redaction of this information and irrelevant material will be time-consuming and labor-intensive.

Many police contacts have nothing to do with commission of crimes. Often it is a citizen assist of an inoperable vehicle, or standby while medical personnel attend to someone needing help. These need not be subject to release.

Finally, although body-worn cameras carry the potential to create conclusive records of police activity, they are not all-encompassing, nor are they a panacea. Cameras are worn on the chest, shoulder, or attached to glasses. Each perspective has benefits and limitations. For example, an officer who pulls his gun may need to place his hands exactly in front of the camera mounted on his chest. Even a camera on a pair of glasses cannot scan as the eyes do.

Cameras on the torso will not turn with the officer's head. They cannot completely record everything an officer experiences. These limitations are not reasons to delay or resist their use, but acceptance of camera limitations must be part of the discussion. Placing body cameras on police officers cannot completely resolve police-citizen tensions, but they can go a long way to reducing them. Departments using body cams have seen a reduction in citizen complaints of police misconduct. As with any tool, they give us access to more information, but they cannot completely replace human reporting.

Responses to many of these issues require resolution on a local level. Federal assistance is welcomed, but standardized solutions may not be applicable in every district nor possible to implement in every community. While all Americans have a vested interest in the implementation of tools to enhance confidence in the criminal justice system, each state and locality must evaluate their specific circumstances in deciding how to best incorporate this new technology into their community.

Thank you for the opportunity to discuss the potential, and challenges, of body-worn cameras. I welcome any questions.

**Statement of Senator Patrick Leahy (D-Vt.),
Ranking Member, Senate Judiciary Committee,
Hearing on “Body Cameras: Can Technology Increase Protection for Law Enforcement
Officers and the Public?”
May 19, 2015**

Americans across the country have been dismayed by recent police encounters that have resulted in the unnecessary loss of life. Communities well beyond Ferguson, Staten Island, North Charleston, and Baltimore are understandably grieving and angry. I share their grief, and we must now make progress on finding a path forward. While the facts surrounding each of these events are complex, we know in Vermont that effective policing requires the trust of the community. The relationship between many Americans and the police is in need of significant repair.

There is no single solution here. But the President’s Task Force on 21st Century Policing has provided us with a good start. Taken together, recommendations for increased citizen engagement and proven community policing initiatives, leadership training and oversight within the ranks, and responsible policing tactics, provide a roadmap for communities looking to heal.

The Task Force also provided guidance for the use of body-worn cameras, which record officers’ interactions with the public. We certainly should not have to depend on brave yet random passers-by to take video of potentially deadly interactions with police. Chance must never be a prerequisite for accountability. Body-worn cameras are a promising option—one that may provide both needed transparency for the public and protection for the vast majority of police officers who serve honorably. I was encouraged, for example, when U.S. Customs and Border Protection made a commitment to pilot the use of body-worn cameras as a result of their troubling reputation when it comes to use of force. I am disappointed that they have yet to implement that pilot and hope that the discussion here today will inspire a renewed commitment from them as well as our state and local partners to explore this promising tool.

Today’s hearing provides an opportunity to examine the effectiveness and feasibility of body-worn cameras, as well as the privacy concerns raised by their use. Several police departments that were early to embrace these cameras have seen real benefits: improved transparency and evidence gathering, and even reports of a reduction in use-of-force complaints.

However, these departments also point to new challenges. Body cameras raise unique privacy concerns—cameras follow officers into even the most private of locations, including bedrooms and hospital rooms, and capture images of innocent victims and bystanders. Some officers report that the cameras discourage already reluctant witnesses from cooperating, as they may fear the accused or others will see the video and retaliate. And almost all departments report extraordinary financial costs associated with data retention and responding to public records requests.

None of these challenges is insurmountable. For the cameras to be effective, however, the public will need meaningful access to the video, so this has to be done right. With appropriate

safeguards and expectations, body-worn cameras can play an important role in rebuilding trust in distressed communities. This hearing is an important step.

But cameras alone are not enough. Many communities suffer from decades-long mistrust of the criminal justice system. Often, misguided or discriminatory policies have contributed to the suspicion. We have seen this at a local level, like the city of Ferguson's alarming approach to policing as exposed by the Justice Department's Civil Rights Division. And we are not immune at a national level, like a Federal sentencing scheme that for decades punished crack cocaine offenders 100 times more severely than powder cocaine offenders. Unless unfair policies like these are exposed and corrected, mistrust will certainly continue.

There is now widespread agreement that mass incarceration, largely driven by mandatory minimum sentencing, similarly needs to be addressed. For too long, this injustice has drained vital resources from all other public safety priorities and left behind a disparate impact on minorities. I hope that in the coming weeks the Senate Judiciary Committee will turn its attention to the bipartisan effort to correct the unfair policies underlying our mass incarceration problem. Senator Paul and I are working to eliminate mandatory minimum sentences. I also support the work of Senators Durbin and Lee who are seeking to reduce mandatory minimum sentences for certain drug crimes. And Chairman Grassley is working with Senator Whitehouse and others to improve our juvenile justice system. We have an historic opportunity to restore the faith that Americans should have in the justice system. If we work together, I know we can make meaningful improvements so that our entire justice system lives up to its name.

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