



A REPORT ON BODY WORN CAMERAS

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BODY WORN CAMERAS

Technology is changing the role of law enforcement on a daily basis. The latest technology is having a profound impact on policies and procedures, on weapons systems, and even on how officers perform their daily duties. Yet, even with the latest technology available, the actions and tactics of law enforcement are constantly being criticized by the media and members of the public. Oftentimes juries return large verdicts against law enforcement agencies. However, a new law enforcement tool may actually reduce exposure to litigation and unwarranted citizens' complaints. A new paradigm for law enforcement should be one of accountability and transparency. One current way to assist law enforcement in being more accountable is by requiring officers to use a Body Worn Camera ("Body Cam" or "BWC"). The implementation of Body Cams is currently causing a worldwide debate across groups such as the Police Foundation, the International Association of Chiefs of Police, the Police Executive Research Forum and the American Civil Liberties Union.



This one aspect of law enforcement is poised to have huge ramifications for how law enforcement interacts with its citizenry. Both law enforcement and local communities stand to benefit from the deployment of BWCs.

There is no doubt that policies dealing with BWCs will become living and breathing documents that will evolve as the boundaries of this new technology are pushed.

News media are replete with stories, almost on a daily basis, regarding law enforcement agencies across the world that now require an officer to use a BWC. Once again, California leads the way in deploying this new technology to help combat crime and reduce the exposure to litigation.

The City of Rialto, located in the Inland Empire area of Southern California, was the first known police department to conduct a thorough study on the effects of using BWCs. The Rialto Study² is cited across the world in arguments that support law enforcement adopting the new technology. The Los Angeles Police Department, the Los Angeles County Sheriff's Department, and the Minneapolis Police Department, as many agencies, announced that they too will begin to test the BWCs as part of patrol operations.³



In August, 2013 Federal Judge Shira Scheindlin ruled that New York Police Department's stop-and-frisk program was unconstitutional, yet she recommended the possible use of BWCs on a limited basis.⁴

“While the logistical difficulties of using body-worn cameras will be greater in a larger police force, the potential for avoiding constitutional violations will be greater as well,” Scheindlin wrote.

Although the Second Circuit stayed Scheindlin's order,⁵ the trend to deploy BWCs continues to move forward and raises valid questions regarding the use of such equipment. Primary issues include:

- Who and what should be recorded?
- When do officers hit “record”?
- When do officers hit “stop”?
- Are there any exemptions to recording?
- How will video be stored?
- Who can access the video?
- When and how will videos be released to the public?
- What privacy issues are involved?

Law enforcement agencies around the world are now delving into using BWCs. The decision to implement the use of body cams is merely an extension of the use of dash-mounted video cameras and audio recorders, both of which have been in use for years. The use of BWCs

will prove to be of great value to those agencies who deploy the new technology. However, the decision to deploy BWCs is not without controversy.

In the expectation that many agencies will determine that the deployment of BWCs is the right thing to do, this article will review suggested policy language, citing to both a recent PERF Conference and a recently released ACLU study on the use of BWCs.

CALIFORNIA: THE TWO-PARTY CONSENT STATE

It is important to determine whether a particular state is a one-party consent state or a two-party consent state. For example, in a two-party consent state, such as the State of California, when a person records the audio of a conversation, all parties involved in the conversation must consent. Failure to gain consent from all parties involved in the conversation may be a crime.



For example, California Penal Code Section 632 makes it illegal for a person to record a confidential communication without the consent of all parties to that communication. However, California Penal Code section 633, has an express exemption for law enforcement. Section 633 clarifies the exception by emphasizing that Section 632 does not prohibit any police officer

from overhearing or recording any communication that they could lawfully overhear or record.

In other words, if an officer is legally allowed to be where they are, there is no state law that prohibits the officer from recording their interaction(s). This is supported by caselaw that explains a person has no expectation of privacy when they are engaged in an interaction with police (i.e., no expectation of privacy in the back of a police car, in jail, etc.). *See People v. Lucero*, 190 Cal. App. 3d 1065 (1987) (use of a hidden recording device in police car does not violate the Sixth Amendment and a criminal suspect in a police car does not have the reasonable expectation of privacy that is required to invoke constitutional protection).

What if an officer is inside someone's home? The answer should be the same. If the officer lawfully enters a home because of a warrant, consent, or exigent circumstances, then persons inside the home have no expectation of privacy. Therefore, no state law or

constitutional provision exists that prohibits audio recording. While there does not appear to be any case that specifically addresses Federal Constitutional privacy concerns with a camera worn by a police officer, the Ninth Circuit has held, "Video surveillance does not in itself violate a reasonable expectation of privacy. Videotaping of suspects in public places, such as banks, does not violate the Fourth Amendment; the police may record what they normally may view with the naked eye." *United States v. Taketa*, 923 F.2d 665 (9th Cir. 1991).

The cases where courts have found a constitutional violation when police videotape usually involve circumstances when an officer uses a hidden camera or a home is monitored 24 hours per day with surveillance equipment. *See United States v. Cuevas-Sanchez*, 821 F.2d 248, 251 (5th Cir. 1987) ("the installation of a surveillance camera on a power pole to videotape activities in a suspect's backyard constitutes a 'search' within the meaning of the Fourth Amendment" and "raises the spectre of the Orwellian state."). A person would not have the same expectation of privacy if in the presence of an officer, nor would a recording be as intrusive.

THE RIALTO STUDY

Although law enforcement has been recording citizens for years with audio recorders and dash-mounted video cameras, the use of Body Cams is relatively new for law enforcement. The first "true" study on the use of BWCs was conducted in Southern California by the City of Rialto Police Department. The research was conducted by Rialto's Police Chief Tony Farrar during his studies at Cambridge University in the United Kingdom. Farrar's findings are documented in his graduate thesis: *The Inescapable Panopticonic Gaze: The Effect of Body-Worn Cameras On Police Use-Of-Force*.



The study analyzed the use of Body Cams during the officers' shifts. Two study groups were created. The first group, named Experimental-Shifts, required each officer to wear a high definition Body Cam during his/her shift. The Body Camera recorded all of the officer's interactions with the public. The second group, named Control-Shifts, consisted of officers that were instructed not to use body cameras during their shifts. Integrity of assignment was

measured by the number of footage-hours against the assigned shifts as well as dip-sampling dates of footage and ascertaining that officers wore cameras as assigned.

Shifts were randomly allocated to treatment and control conditions, using the Cambridge Randomizer, on a weekly basis. As most law enforcement chief executives now know, the major findings of the Rialto Study are as follows:

- Use of BWCs reduced use-of-force incidents by **59 percent**
- Use of BWCs reduced citizens' complaints by **87.5 percent**

These results are now being used by law enforcement agencies across the world to support the use of BWCs. The background of the study is discussed more thoroughly below.

The Rialto Police Department is a mid-sized police department that has jurisdiction over 28.5 square miles and services a population of 100,000 residents. The department employs 115 sworn police officers and 42 non-sworn personnel who deal with approximately 3,000 property crimes and 500 violent crimes per year. In 2009-2011, the department dealt with 6 to 7 homicides per year, which is nearly 50 percent higher than the national rate.

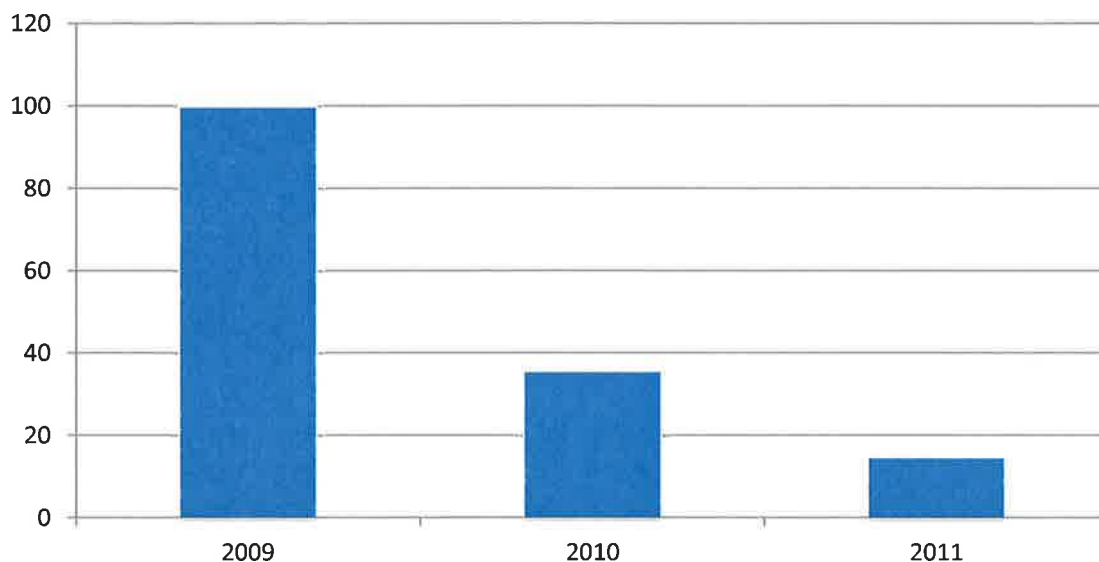
The City of Rialto collaborated with TASER International, Inc. to provide Rialto's front line officers with high definition Body Cams. The cameras captured video evidence from the officers' perspectives. The BWCs weighed 108 grams and were small enough to place on an officer's shirt pocket, hat, collar, shoulder, or a specially designed camera mounted to sunglasses manufactured by Oakley, Inc. The units were water resistant, the videos were in full color, and the battery life provided for 12 hours of recording— ideal for the shift patterns of the Rialto Police Department.

All data from the body cameras was collated using a web-based computerized video management system developed by EVIDENCE.com. The software tracked and inventoried all evidence captured by the body cams. The system automatically uploaded all of the officers' videos at the end of their shifts and a research team was granted full access to the data.

During the experimental period, a total of 25 incidents of police uses-of-force were recorded by Rialto Police Department, of which 17 occurred during control shifts and 8 during experimental shifts. These represent a mean rate of 0.78 and 0.33 incidents per 1,000 police

interactions with the public, respectively. Based on these figures, the model used by Rialto suggests a significant treatment effect on use-of-force. Shifts without cameras were twice as likely to experience incidents of use-of-force as shifts with cameras.

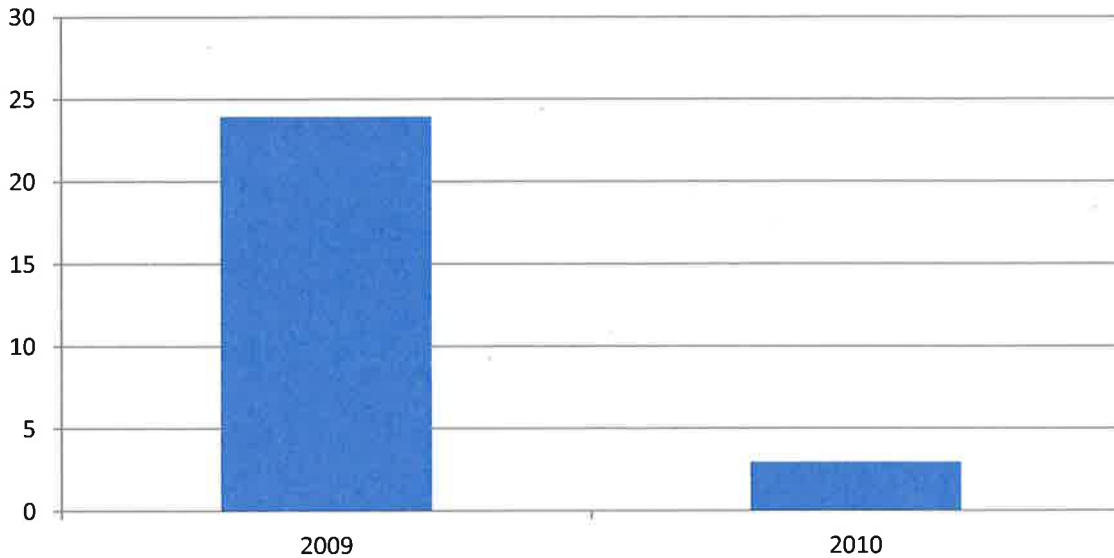
Use of Force Down 59%



The City also detected large before-and-after reductions in the prevalence of use-of-force incidents: A 64.28 percent reduction from 2009, 61.53 percent from 2010, and 58.33 percent from 2011. The City found that the rate of use-of-force incidents per 1,000 contacts was reduced by 2.5 times in comparison to 12 months prior to the experimental period. Rialto noticed a sizable reduction in the number of citizens' complaints against its officers as well.

The City documented an overall reduction in terms of citizens' complaints. One year prior to the study, citizens filed 24 complaints. During the study, citizens only filed 3 complaints. This broke down to 0.70 complaints per 1,000 interactions compared to .069 per 1,000 interactions. The raw year-to-year reductions suggests 91.66% fewer cases compared to 2009, 94.11 percent compared to 2010, and 89.28 percent compared to 2011. The outcome of the Rialto Study documents more than a 50 percent reduction in the total number of incidents of use-of-force compared to control conditions and over 60 percent compared to any of the three years prior to the study. The City also observed nearly 10 times as many citizens' complaints one year prior to the study compared to any of the three years prior to the experiment. Therefore, the Rialto Study provides law enforcement agencies with a methodology to substantially reduce any sort of force response.

Citizens' Complaints Down 87.5%

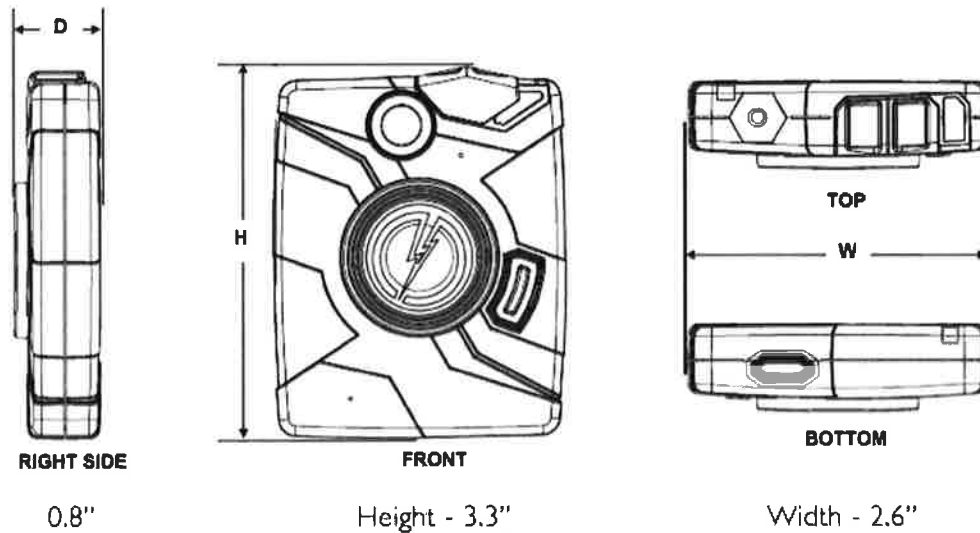


The Rialto Study concludes that "if one is not interested in the causal mechanism behind a 90 percent reduction in citizens' complaints and 59 percent reduction in any form of official use-of-force, this behavioral modification is of real practical significance to the police, especially given the cost-to-benefit ratios [citation omitted]. We therefore envisage that body-worn cameras will dramatically change police-public encounters."

The Rialto Study states that one impetus to conduct this study was to save money on litigation costs and the expenses associated with incidents involving use-of-force and citizens' complaints. Both justified and frivolous complaints against the police cost a great deal of money in terms of both jury verdicts and out-of-court settlements. The City of Rialto recognized that investigating these incidents was also resource-intensive, not to mention the social and moral costs involved in such use-of-force incidents.

The Rialto Study cited to various statistics to support its claim that the BWCs would reduce litigation costs. The study points to a report that the "UK Metropolitan Police have spent £9M in six years in compensation to settle 915 complaints over police actions (BBC, 11 May 2012) – or about £10,000 per complaint. In Minneapolis, complaints investigated by the Internal Affairs Division cost an average of \$6,278; in Berkeley, California, about \$8,571 per case; and Pittsburgh, Pennsylvania, roughly \$872 per case (Minneapolis Civilian Review Authority 1997; Walker, Archbold and Herbst 2002). Unadjusted for inflation, according to the study, these sums are still quite substantial, not the least being when they are substantiated and

suggest unnecessary or excessive use of police power. To these sums, one should also add oversight costs, which at least according to some estimates from nine jurisdictions (Finn 2001) amount to \$1,908 for each complaint (filed and investigated). Very crudely, and disregarding accounting mistakes, this suggests to us that the direct costs of citizens' complaints is roughly in the area of \$20,000 per complaint.”



Based upon the above statistics, the City believes it saved direct costs of 21 complaints (the difference between before and after the experiment), or about \$400,000. To put these figures in perspective, the total cost for Rialto Police Department to purchase the body cameras was a little over \$90,000. These direct costs included 70 complete video camera units and mounts (including spares), charging/ docking stations, the video management and data upload and tracking system, along with training for the trainers, technicians, and each officer. This suggests that the direct benefit to cost ratio is approximately \$4 saved for every \$1 spent on the cameras. Furthermore, if citizens' complaints are reliable proxies of use-of-force incidents, then a high number of complaints can also be a proxy of potential hazards to the already delicate relations between the police and the community served.

According to the Rialto Study, “there are hidden social and ethical costs to the inescapable panopticonic gaze itself. If BWCs become common, it means more electronic surveillance, more digitized tagging of individuals, and arguably more challenges to privacy rights. This was certainly the argument against CCTV, as there are clear ethical considerations to having a data storage policy that routinely collects data on citizens in the public domain [citations omitted].”

The Rialto Study makes sure to distinguish Closed Circuit Television (“CCTV”) from the use of BWCs. But the moral argument against CCTV is not in the same scope and magnitude when it comes to BWCs. CCTV surveillance captures the daily and routine behavior of citizens, whose consent is not obtained prior to the recording. This indeed can be a source of concern, even though the public safety benefits may overshadow the potential compromise of human rights. But police-public encounters are often involuntary, especially when considering that a substantial proportion of a police officer’s interactions are with suspects and/or offenders. By definition, a suspect’s rights are debilitated, insomuch as a suspect does not have the right not to be videotaped when under investigation in police stations. Likewise, victims and witnesses should expect that their conversations with police officers are official and recordable communications.

The Rialto Study recognized there are situations in which police interactions should not necessarily be videotaped (e.g. interactions with minors, sexually-based offenses, and informal conversations with officers). However, the Rialto Study recognized an overall benefit to recording police interactions with the public that justifies the perceived moral costs.

THE ACLU’S REPORT ON BODY WORN CAMERAS

The American Civil Liberties Union released its white paper on the use of BWCs in October 2013. In the report entitled *Police Body-Mounted Cameras: With Right Policies in Place, a Win For All*⁶, the ACLU takes the position that while it does not like the increased use of video cameras to keep tabs on citizens, it does recognize that such video cameras can result in the reduction of use-of-force incidents. Therefore, the cameras will assist in holding law enforcement more accountable to the community.

The ACLU and law enforcement both recognize that the use of BWCs have both positive and negative aspects. Therefore, the proper policies and training on the use of BWCs will have to be an important component in the deployment of the new technology. As stated by the ACLU, “[t]he challenge of on-officer cameras is the tension between their potential to invade privacy and their strong benefit in promoting police accountability. Overall, we think they can be a win-win—but only if they are deployed within a framework of strong policies to ensure they protect the public without becoming yet another system for routine surveillance of

the public, and maintain public confidence in the integrity of those privacy protections. Without such a framework, their accountability benefits would not exceed their privacy risks."

The ACLU lists several concerns over the use of BWCs including the Control of Recording. The ACLU is troubled by the ability of officers to determine what they record. "[P]olicies and technology must be designed to ensure that police cannot edit on the fly (i.e., choose which encounters to record with limitless discretion). If police are free to turn the cameras on and off as they please, the cameras' role in providing a check and balance against police power will shrink and they will no longer become a net benefit."

Police Body-Mounted Cameras: With Right Policies in Place, a Win For All

By Jay Stanley, ACLU Senior Policy Analyst
October, 2013

Introduction

When a New York judge found that the NYPD's stop and frisk tactics violated the constitutional rights of New Yorkers, one of the remedies he ordered was for the department to begin testing wearable police cameras, sparking debate and discussion of the technology there.

Body-worn officer recording systems (also called "body cams" or "cop cams") are small, pager-sized devices that clip on to an officer's uniform or sunglasses or are worn as a headset, and they record video of the officer's interactions with the public. We have heard reports of them being deployed in numerous cities, and one prominent manufacturer told NBC News they are being used by "hundreds of departments."

The ACLU has written about body cameras in the media several times over the years (and in [this report](#) on stop and frisk ruling), but the ACLU's views on this technology are a little more complex than what we've conveyed through quotes in a news story.

place them under officer control, which would create the danger that they could be manipulated by some officers, undermining their core purpose of detecting police misconduct."

Requiring an officer to keep the video on for the duration of the shift, however, is not practicable. The officers also have privacy issues, such as using the restroom facilities, being able to talk in their patrol car with their partner about station issues and their personal lives. There obviously has to be a balance struck.

Even the ACLU recognizes that there are problems with requiring the officers to keep the videos on the entire shift.

"The balance that needs to be struck is to ensure that officers can't manipulate the video record, while also ensuring that officers are not subjected to a relentless regime of surveillance without any opportunity for shelter from constant monitoring."

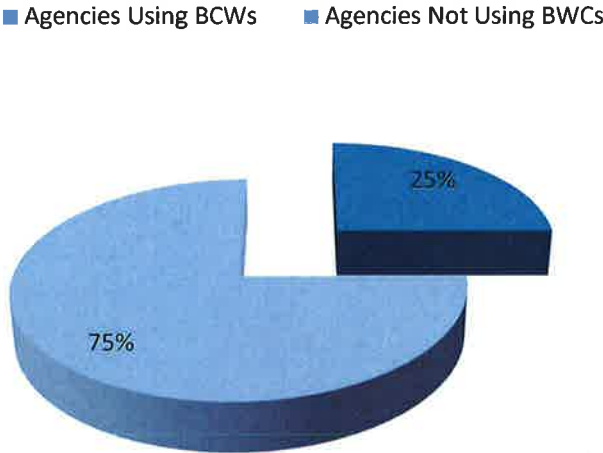
The ACLU opines that officers should have the videos recording continuously for the duration of an officer's shift. Such a policy, in their opinion, would ensure that an officer would not avoid recording an event that could be troubling for an officer. "If the cameras do not record continuously, that would



POLICE EXECUTIVE RESEARCH FORUM'S STUDY

In 2013, the Police Executive Research Forum ("PERF") conducted a survey among departments regarding the use of BWCs. The purpose of the survey was to measure police department usage of body cameras across the country and identify the major issues associated with such use. Out of the 500 agencies that received survey invitations, only 254 agencies responded—a 50 percent response rate. The survey provided the following results:

Use of Body Worn Cameras



Of the 254 responding agencies, 75 percent do not currently use BWCs. Of the 254 responding agencies, only 63 agencies (25 percent) currently use body-worn cameras. Nearly one-third of agencies that use BWCs do not possess written policies.

Not surprisingly, according to the survey results, the primary reason why departments obtain body

cameras for agency personnel is: "to provide accurate documentation of encounters."

PERF intends to develop a model policy regarding the use of BWCs. During the PERF Conference on the use of such cameras, held on Sept 11, 2013, in Washington D.C., both the positive and negative aspects of the BWCs were discussed.

It is interesting to note that there were police departments represented from around the world at the PERF Conference. Many agencies present were already using BWCs. Based on some questions asked, it was apparent that many agencies did not have tailored policies and many did not have any policies at all to regulate the use of BWCs. Some of the agencies seemed to have a policy of "Record Everything, All The Time". Law Enforcement Agencies, therefore, have a unique opportunity to develop cutting-edge policies that can be the model for other agencies.

The most obvious benefit from wearing BWCs is that law enforcement will be seen as being more transparent and holding itself out as more accountable. The use of BWCs will also assist in exonerating officers who are targets of citizens' complaints and, hopefully, will reduce the number of lawsuits against a department.

The use of BWCs will assist law enforcement managers with identifying and correcting systemic problems or individual officer issues. Supervisors, who view the videos as part of their duties, will be able to use the videos as a teaching tool to train officers on proper strategies and techniques.

Many agencies are touting the use of BWCs for making them more efficient in crime solving. The video will be able to capture valuable evidence for investigations and trials. The video footage will also provide more accurate documentation of scenes, interviews, and encounters between police and citizens.

While there are certainly benefits to be achieved from the use of BWCs, there are issues that need to be addressed by a department before deploying its officers equipped with such cameras. For example, a department has to ensure that its officers "buy in" to the program, which means discussions must be held with the police union before BWCs are instituted. Otherwise, needless litigation and a "Big Brother" mentality will become issues.

The challenge will be to avoid the appearance of routinely second guessing actions of personnel, or "head-hunting" of particular officers by supervisors/management. The video itself will not tell the "whole story" of what took place, just a snippet of what occurred. There must still be an investigation as to what the officer believed and what other facts surround an incident. Wholesale reliance on a video will not do justice to anyone without a full investigation.

The issue of officer buy-in was recently reported in an article in the Las Vegas Sun, regarding Las Vegas Metro Police Department buying and deploying BWCs.⁷ "Four hundred Metro Police officers soon will add an extra gadget to their ensemble: on-body cameras, a long-discussed endeavor department leaders call the wave of the future. A pilot program based in two area commands, one in the northeast valley and another in West Las Vegas, will launch by February, department officials said. The initiative, however, comes with a compromise meant to appease the police union: It's a voluntary program, except for officers

hired after July 11. They will be required to wear the cameras. ‘I don't want to go to court,’ Sheriff Doug Gillespie said, explaining the rationale behind the compromise.”

Of course, the biggest issue to be addressed before body cameras are deployed is one of privacy. The issue is twofold:

- Should citizens have an expectation of privacy?
- Should officers have an expectation of privacy?

THE ACLU & PRIVACY RIGHTS

The ACLU is particularly concerned over privacy rights. They fear that the use of body cameras may result in instances of entirely innocent behavior (on the part of both officers and the public) being recorded, with significant privacy implications. In particular, the most troubling aspect of recording will occur when camera-equipped officers are inside people's homes, whenever police enter — including in instances of consensual entry (e.g., responding to a burglary call, voluntarily participating in an investigation) and such things as domestic violence calls.



Civil rights groups are concerned that videos from BWCs, like videos from currently used dash-mounted cameras, may be publicly released for no important public reason, and instead serve only to embarrass individuals. Obviously, the public has seen recent examples of this, including DUI stops of celebrities and ordinary individuals whose troubled and/or intoxicated behavior have been widely circulated and now immortalized online. Civil rights groups believe the potential for embarrassing and titillating releases of video is significantly increased by the use of BWCs.

Department Body Worn Camera policies, therefore, become vital to ensure that any deployment of the cameras be accompanied by strong privacy policies so that the benefits of the technology are not outweighed by any invasions of privacy.

ACLU RECOMMENDATIONS

The ACLU advocates that most privacy protections will have to come from restrictions on subsequent retention and use of the recordings. The ACLU recommends the following policies to assist a department in protecting privacy rights:

“(1) Recording should be limited to uniformed officers and marked vehicles, so people know what to expect. An exception should be made for SWAT raids and similar planned uses of force when they involve non-uniformed officers.

(2) Officers should be required, wherever practicable, to notify people that they are being recorded (similar to existing law for dash cams in some states). One possibility departments might consider is for officers to wear an easily visible pin or sticker saying "lapel camera in operation" or words to that effect.

(3) Although if the preceding policies are properly followed it should not be possible (sic), it is especially important that the cameras not be used to surreptitiously gather intelligence information based on First Amendment protected speech, associations, or religion.

(4) Because of the uniquely intrusive nature of police recordings made inside private homes, officers should be required to be especially sure to provide clear notice of a camera when entering a home, except in circumstances such as an emergency or a raid. Departments might also consider a policy under which officers ask residents whether they wish for a camera to be turned off before they enter a home in non-exigent circumstances. (Citizen requests for cameras to be turned off should themselves be recorded to document such requests.) Cameras should never be turned off in SWAT raids and similar police actions.”

The ACLU recommends the following policy language regarding document retention issues:

“Data should be retained no longer than necessary for the purpose for which it was collected. For the vast majority of police encounters with the public, there is no reason to preserve video evidence, and those recordings therefore should be deleted relatively quickly.

Retention periods should be measured in weeks, not years, and video should be deleted after that period unless a recording has been flagged. Once a recording has been flagged, it would then switch to a longer retention schedule (need to follow state law requirements).

These policies should be posted online on the department's website, so that people who have encounters with police know how long they have to file a complaint or request access to footage.

Flagging should occur automatically for any incident:

- involving a use-of-force;
- that leads to detention or arrest; or
- where either a formal or informal complaint has been registered.

Any subject of a recording should be able to flag a recording, even if not filing a complaint or opening an investigation.

Police department personnel (including internal affairs investigators and supervisors) and third parties should also be able to flag an incident if they have some basis to believe police misconduct has occurred or have reasonable suspicion that the video contains evidence of a crime. We do not want the police or gadflies to be able to routinely flag all recordings in order to circumvent the retention limit.

If any useful evidence is obtained during an authorized use of a recording, the recording would then be retained in the same manner as any other evidence gathered during an investigation.

Back-end systems to manage video data must be configured to retain the data, delete it after the retention period expires, prevent deletion by individual officers, and provide an unimpeachable audit trail to protect chain of custody, just as with any evidence.”

The ACLU is very concerned with the public release of camera footage. The ACLU wants

law enforcement to be able to balance the need for oversight and accountability with the need to maintain privacy of individuals. To that end, the ACLU has provided the suggested policy language:

“Public disclosure of any recording should be allowed with the consent of the subjects, as discussed above.

Redaction of video records should be used when feasible – blurring or blacking out of portions of video and/or distortion of audio to obscure the identity of subjects. If recordings are redacted, they should be disclosable.

Unredacted, unflagged recordings should not be publicly disclosed without consent of the subject. These are recordings where there is no indication of police misconduct or evidence of a crime, so the public oversight value is low. States may need to examine how such a policy interacts with their state open records laws.

Flagged recordings are those for which there is the highest likelihood of misconduct, and thus the ones where public oversight is most needed. Redaction of disclosed recordings is preferred, but when that is not feasible, unredacted flagged recordings should be publicly disclosable, because in such cases the need for oversight outweighs the privacy interests at stake.”

ARE THERE EXEMPTIONS TO WEARING A BODY WORN CAMERA?

There is little debate that all patrol officers should be issued BWCs. Patrol officers have the most contact with members of the community and, therefore, would receive the most benefit of having a Body Worn Camera to record their interactions, such as traffic stops and other encounters that could result in a use of force situation or potential citizen complaint. It is in these daily citizen encounters where the BWCs will justify their costs.

There is justified debate as to whether some units, other than patrol, should be exempted from wearing BWCs. Do detectives need to wear BWCs as they conduct their day to day activities? The reality is that they do not need to wear BWCs, absent extenuating circumstances, such as making an arrest.

The issue of whether tactical teams and patrol dog teams should deploy with BWCs is more problematic. While agencies may feel that all law enforcement units should deploy with BWCs, care must be taken to determine whether such a mandate is feasible or even appropriate. Issues such as intelligence gathering and tactics being compromised must be discussed before determining whether BWCs should be worn by specialty units.

It might be impracticable for tactical team snipers to deploy with BWCs as they may be too far away for the cameras to be used and the cameras might even interfere with the abilities of the snipers to perform their duties. Likewise, it might be more advantageous for members of the entry team to deploy with audio recorders as opposed to BWCs. The audio recorders will record the knock and notice announcements and record the conversations that might take place inside a structure, without compromising tactics.

Caution must also be used when determining whether police service dog teams should deploy with BWCs. Testing should be conducted to ensure that the cameras do not interfere with the movements of the canine handler. Likewise, a balancing of interests must be engaged in before canine handlers deploy with a Body Worn Camera. If intelligence gathering techniques and tactics will be compromised by deploying a Body Worn Camera on a canine search, then perhaps the camera should not be deployed.

The deployment of BWCs on specialty units needs to be thoroughly vetted before such use occurs. Much of what occurs in law enforcement can be dangerous and visceral and members of the community may not appreciate and/or understand what is being shown on camera.

IN SUMMARY

The City of Los Angeles, through private donations, is going to equip all of its officers with BWCs. "At the end of the day, there's going to be lives saved, a whole lot of money saved, and a whole lot of legal hours saved," according to Steve Soboroff, president of the Los Angeles Police Commission.⁸

Surprisingly, the ACLU and PERF recommendations do not differ as much as one might expect. Both offer solid suggestions on building a workable BWC policy.

The use of BWCs would be an excellent tool to help modify the behavior of both the police and members of the community. In the event of a use of force incident, supervisors would be able to view what happened and determine whether any alleged misconduct occurred.



Some of the issues to be addressed include how will the video data be stored? Who will have access to the video data? And how often will the video data be reviewed to assess compliance with department policies and procedures? How will a state's Public Record Act request be handled, and who will make the final determination on whether a video should be released? There is also a legitimate concern over the costs associated with purchasing

BWCs and the attendant costs associated with storing the collected data. Once these concerns are addressed and BWCs become the norm, additional issues may emerge, such as the deployment of video devices for specific tasks. For example, the use with tactical and canine teams.

There is a legitimate concern that local prosecutors will demand that all criminal cases filed have an accompanying video along with the other hard evidence. There will have to be discussions with the prosecutors to determine what happens if a video does not exist for whatever reason. Likewise, there needs to be a discussion on whether officers need to write reports on encounters where a video is involved or just document that a video exists of the incident.

There is no doubt the current trend in law enforcement is to deploy BWCs to help combat crime, to reduce citizens' complaints and to reduce use of force situations. The policies that will determine the use of the BWCs have to be tailored to meet the needs of a particular locale. While the cameras are necessary for the patrol setting, care must be taken in determining whether BWCs are appropriate for all law enforcement functions. "It's a very different world in policing small towns versus areas with major drug gangs and crime problems," said John Donohue, a Stanford Law School Professor.⁹ With this in mind, the Los Angeles Police Department is beginning to deploy body cameras with its officers.

Based on evidence collected in the Rialto Study, the findings suggest that BWCs significantly reduce the prevalence of use-of-force by the police as well as citizens' complaints against the police. The use of the cameras has demonstrated the impact on the behavior of officers and citizens alike through the experience of being observed. This results in socially-desirable outcomes, most notably, the reduction in the use-of-force by police officers in police-public encounters. These reasons alone should compel the deployment of BWCs.

Technology is certainly impacting law enforcement in ways never thought possible just a few years ago. The use of BWCs is an opportunity to move forward with technology, in a reasonable expectation that law enforcement will actually benefit from the use of BWCs.

The major impediment to implementing BWCs, as previously discussed, is the issue of privacy. However, with proper training and the proper policies in place, this issue is not insurmountable. Law enforcement has successfully implemented the use of audio recordings and dash-mounted video systems for the past several years. The use of BWCs, therefore, should not be difficult to implement.

In the long run, the use of BWCs will prove to be a valuable tool for both law enforcement and the local community. However, it is just one tool among many and should not be thought to be the ultimate factor in judging the actions of officers. BWCs only provide one view of an incident. An officer will still have to explain his/her actions and then a determination must be made whether the ultimate decision made was reasonable under all of the circumstances presented to the officer.

ENDNOTES

¹ Eugene P. Ramirez, a founding member of the firm, graduated from Whittier College School of Law (J.D., 1987), where he was Notes & Comments Editor of the Law Review, a member of the Moot Court Honors Board and President of the Student Bar Association. At Whittier, he received an award as the Best Oral Advocate and the Outstanding Moot Court Graduate Award. He received his undergraduate degree in Political Science from California State University, Long Beach (B.A., 1983), where he minored in Criminal Justice & Public Policy.

Before joining the firm, Mr. Ramirez worked as a Deputy District Attorney for the Los Angeles County District Attorney's Office, where he conducted numerous misdemeanor and felony jury trials, including murder trials. He has also worked as a reserve police officer for the Whittier Police Department and the Monterey Park Police Department.

He serves as an advisor to several public entities on the issues of use of force, canine and SWAT issues and policies and procedures. He has provided training to thousands of police officers and supervisors, from around the country and Canada, over the past 20 years.

Mr. Ramirez is an instructor on liability issues for the Los Angeles County Sheriff's Department's Basic SWAT School. He is also an instructor for the California Association of Tactical Officers (CATO) and for the National Tactical Officers' Association (NTOA). He was a member of the State Attorney General's Blue Ribbon SWAT Committee and he was a member of POST's Executive Advisory Committee for SWAT Teams. He was a member of the LAPD Board of Inquiry, which examined LAPD SWAT operations. He is an approved California POST instructor.

Mr. Ramirez was profiled in the April 2003, California Lawyer Magazine, for his work in defending law enforcement. He was honored with the 2004 Lifetime Achievement Award from the Association of Los Angeles Deputy Sheriffs (ALADS). He has been named as a 2005-2011 Super Lawyer for Southern California. He was also named to the distinguished American Board of Trial Advocates (ABOTA), in 2005, an award only bestowed upon proven trial attorneys.

He was selected as the Los Angeles County Sheriff's Department's Trial Lawyer of the Year in 1993 and, 2006, by two different Sheriffs. He was selected as the 2009 Alumni Attorney of the Year for Whittier School of Law. He has been selected twice as one of the Top 25 Municipal Attorneys in California by the Daily Journal.

² Tony Farrar, *The Inescapable Panopticonic Gaze; The Effect of Body-Worn Cameras on Police Use-of-Force*, CAMBRIDGE UNIVERSITY (2013). Chief Farrar prepared a more thorough report on his study entitled, "Video Recordings of Police - Citizen Encounters by Officers Wearing Body-Word Video Cameras: Leading a Randomized Control Trial" (January 2013) (unpublished thesis submitted in part fulfillment of the requirement for the Masters Degree in Applied Criminology and Police Management, Fitzwilliam College) (on file with Supervisor, Dr. Barak Ariel, Fitzwilliam College).

⁴ See, e.g., Jon Collins, *Body camera on police officers? In Burnsville, it's old news*, MINNESOTA PUBLIC RADIO (October 22, 2013), available at <http://minnesota.publicradio.org/display/web/2013/10/22/news/burnsville-police-body-cameras>; Ian Lovett, *In California, a Champion for Police Cameras*, NEW YORK TIMES (August 21, 2013), available at http://www.nytimes.com/2013/08/22/us/in-california-a-champion-for-police-cameras.html?_r=0 (noting use of body cameras in Albuquerque, Fort Worth and Oakland); Joel Rubin, *Dodgers Donate to LAPD for Body Cameras*, POLICEONE.COM (October 22, 2013), available at <http://www.policeone.com/Grants/articles/6491445-Dodgers-donate-to-LAPD-for-body-cameras/> (originally published in LA Times); Metro, *Police Union Reach Agreement on Body Cameras*, KLAS CHANNEL 8 NEWS (September 23, 2013), available at <http://www.8newsnow.com/story/23499683/debate-growing-over-more-cops-tax> (noting use of body cameras in Las Vegas); Art Marroquin, Anaheim, *Fullerton police gauging value of clip-on cameras*, ORANGE COUNTY REGISTER (September 26, 2013), available at <http://www.ocregister.com/articles/officers-528151-police-cameras.html>.

⁵ *Floyd v. City of New York*, 08 CIV. 1034 SAS, 2013 WL 4046217 (S.D.N.Y. Aug. 12, 2013), appeal dismissed (Sept. 25, 2013). See also Barry Paddock, *NYPD cops in stop-and - frisk-iest precincts to wear body cams after judge's ruling*, NEW YORK DAILY NEWS (August 12, 2013), available at <http://www.nydailynews.com/new-york/nypd-cops-wear-body-cams-article-1.1425121>. See also Colleen Long, *NYPD ordered to start using officer-worn cameras*, THE ASSOCIATED PRESS (August 14, 2013), available at <http://www.policeone.com/police-products/body-cameras/articles/6386513-NYPD-ordered-to-start-using-officer-worn-cameras/>.

⁶ *Ligon v. City of New York*, 13-3123, 2013 WL 5835441 (2d Cir. Oct. 31, 2013) superseded in part sub nom. In re Reassignment of Cases, 13-3123, 2013 WL 5998139 (2d Cir. Nov. 13, 2013).

⁷ Jackie Valley, *Metro to outfit officers with cameras in pilot program beginning in 2014*, LAS VEGAS SUN (October 13, 2013), available at <http://www.lasvegassun.com/news/2013/oct/13/metro-outfit-officers-cameras-pilot-program-beginn/>.

⁸ Hamed Aleazlz, *LAPD Body Cameras Could Be Blueprint for Other Cities*, DAILY JOURNAL, (November 13, 2013)

⁹ *Id.* Note: Photographs used with permission from Taser, Inc.