

When Cameras Are Rolling: Privacy Implications of Body- Mounted Cameras on Police

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This Note analyzes the potential privacy implications of the use of body-mounted cameras by police. Specifically, this Note considers how policy concerns and legal limitations should shape when and where cameras may record and what may be done with the footage once it has been collected. Currently, there are few clearly established legal limits on the use of body-mounted cameras, although the Fourth and First Amendments, as well as state wiretapping statutes, provide some boundaries. Some groups have already released recommendations, but there is not a consensus in practice or in theory. This Note recommends a policy that would require police officers to tape all interactions, but would allow some exceptions, when requested by members of the public. This will likely capture almost all incidences of police misconduct. Likewise, a policy that requires police departments to use footage primarily as a means of identifying and disciplining officers who behave inappropriately instead of a tool for evidence collection will better reduce tensions between law enforcement and the community. Finally, a policy that allows the public to initiate the release of records but redacts personally identifiable information protects the privacy of individuals captured in the footage, but allows for transparency and accountability.

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I. INTRODUCTION

Imagine you are in your home with friends when an altercation erupts. You are worried for the safety of the individuals involved, as well for the bystanders. You decide to dial 911, and soon police are at your door. Imagine you are the victim of a violent sexual assault by a stranger in a public park. After the perpetrator leaves, you are traumatized emotionally and injured, but you decide to reach for your cellphone to call 911 to request medical attention and report the attack. Imagine you are a police officer on patrol with your partner. During a lull in activity, he tells you he thinks he might have uncovered evidence of corruption in the force, but he is worried about the blow-back if he reports it. You have had similar suspicions for some time, and you decide to tell your partner that he should report it.

Now imagine that in all of the above scenarios, you knew that the police officers were wearing body-mounted cameras with audio-recording capability. You are unsure of how long the footage is stored and how it is used, and whether it could be released to the public. The presence of the camera would certainly influence your decision-making. Policies and laws governing the use of body-mounted cameras and the footage created by body-mounted cameras will impact the behavior of members of the public and individual police officers. It is imperative that the policies governing body-mounted cameras are chosen with careful consideration of these practical factors.

Currently, however, although there are some pre-existing legal restrictions on the use of body-mounted cameras and the footage they produce, the policies of police departments vary widely. The First and Fourth Amendments, state "Freedom of Information" acts, and state wiretapping statutes all limit the use of video recording by law enforcement, however, the case law and statutes were not written with body-cameras in mind, leaving significant gaps between what is sound policy and what is legal. Policies and legislation addressing the use of body-mounted cameras should consider a multitude of factors, including the potential for embarrassment and harm to individual members of the public, the chilling effect on free speech, the effect on interactions between police officers and the public, and the privacy rights of police officers.

In Part II, this Note briefly discusses the recent endorsement of body-mounted cameras on police and their adoption by police departments, describes the technological capabilities of body-cameras, and outlines how they compare to other forms of video surveillance and how these differences give rise to new policy questions and legal uses. In Part III, this Note outlines the policy concerns behind these recommendations, which include the more invasive nature of body-worn cameras, the release of footage to the public, the use of footage in dragnet style policing, the effect on interactions with the public and free speech, and the invasion of the privacy of police officers. This Note then summarizes and compares three sets of recommendations for the use of body-worn cameras: one by the American Civil Liberties Union, one by the Police Executive Research Forum, and one created by the City of New York. In Part IV, this Note outlines the current legal limits on law enforcement use of video surveillance. Specifically, this Part discusses the Fourth Amendment limitations on body-cameras in the home, and on the use of compiled body-camera footage. In Part V, this Note will outline recommendations for the implementation of body-worn cameras.

II. BACKGROUND

To understand the policy implications of potential body-worn cameras, it is important to understand the social context in which the call for body-worn cameras has arisen, the technological capabilities of body-worn cameras, and the differences between body-worn cameras and existing video surveillance methods.

A. RECENT DEVELOPMENTS

In response to recent events, both activists and the general public have turned their attention to police accountability. Body-mounted cameras are emerging as one of the most popular solutions proposed to counter racial inequalities in policing and inappropriate use of force by police.¹ Academics, politicians and activ-

1. E.g., Jay Stanley, *Police Body-Mounted Cameras: With Right Policies in Place, a Win for All*, AM. CIVIL LIBERTIES UNION (Mar. 2015), https://www.aclu.org/sites/default/files/assets/police_body-mounted_cameras-v2.pdf [<http://perma.cc/SR65-3DAZ>]; Randall Stross, *Wearing a Badge, and a Video Camera*, N.Y. TIMES (Apr. 6, 2013), <http://www.nytimes.com/2013/04/07/business/wearable-video-cameras-for-police-officers.html> [<http://perma.cc/H355-WGHC>].

ists have touted their benefits.² Police departments are interested in body-camera use as well, because the cameras have the potential to decrease false claims lodged against the police force.³

Police departments throughout the country are beginning to implement body-worn cameras. Approximately a quarter of the country's police departments use body-mounted cameras, and 80% are evaluating their possible use.⁴ Body-worn cameras are being used, or are being implemented in San Francisco, Pittsburgh, Salt Lake City, Hartford, Fort Worth, Chesapeake VA, Modesto CA, Oakland, Chicago, New York, and Washington, D.C., among others.⁵ President Obama has proposed a federal

2. *E.g.*, David A. Harris, *Picture This: Body-Worn Video Devices (Head Cams) As Tools for Ensuring Fourth Amendment Compliance by Police*, 43 TEX. TECH L. REV. 357 (2010); Justin Sink, *White House favors cops wearing cameras*, THE HILL (Sept. 15, 2014), 2014 WL 4542444; Andy Cush, *NYPD's New Body Cameras May Help Catch Crooked Cops in the Act*, GAWKER (Dec. 2, 2014, 5:50 PM), <http://gawker.com/nypds-new-body-cameras-may-help-catch-crooked-cops-in-t-1665868715> [<http://perma.cc/7VD2-T4A9>].

3. MICHAEL D. WHITE, *POLICE OFFICER BODY-WORN CAMERAS: ASSESSING THE EVIDENCE* 22–24 (2014), <https://www.ojpdagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf> [<https://perma.cc/Y57B-2E5C>].

4. Dough Wyllie, *Survey: Police officers want body-worn cameras*, POLICEONE.COM (Oct. 23, 2012), <http://www.policeone.com/police-products/body-cameras/articles/6017774-Survey-Police-officers-want-body-worn-cameras> [<http://perma.cc/2CP5-RE7M>].

5. *E.g.*, Barak Ariel et al., *The Effect of Police Body-Worn Cameras on Use of Force and Citizen's Complaints Against the Police: A Randomized Controlled Trial*, 31 J. OF QUANTITATIVE CRIMINOLOGY 509 (Nov. 19, 2014); Vivian Ho, *San Francisco cops expected to get body-worn cameras*, SFGATE (Apr. 30, 2015, 8:47 AM), <http://www.sfgate.com/crime/article/San-Francisco-cops-expected-to-get-body-worn-6232517.php> [<http://perma.cc/JPH2-3C4P>]; Margaret Harding, *Pittsburgh police officers start wearing video cameras*, TRIBLIVE NEWS (Oct. 20, 2014, 11:00 PM), <http://triblive.com/news/alleggheny/6969202-74/cameras-officers-police#axzz3mEr9XUuc> [<http://perma.cc/39V8-P5A7>]; *SLCPD Body-Cams 101*, SALT LAKE CITY POLICE DEPT. (Dec. 4, 2014), <http://slcpd.com/slcpd-body-cams-101> [<http://perma.cc/QLK7-K3R6>]; Ana Radelat, *Police violence cases spurring CT proposals for body cameras*, THE CT MIRROR (May 18, 2015), <http://ctmirror.org/2015/05/18/connecticut-police-moving-toward-the-use-of-body-cameras> [<http://perma.cc/HGQ4-3C9N>]; Chris Van Horne, *Fort Worth Ahead of the Curve in Police Body Cameras*, NBCDFW.COM, (Dec. 10, 2014, 5:53 PM), <http://www.nbcdfw.com/news/local/Fort-Worth-Ahead-of-the-Curve-in-Police-Body-Cameras-285421541.html> [<http://perma.cc/S8TU-PTAQ>]; Margaret Matray, *Chesapeake has become go-to for police forces looking into body cameras*, THE VIRGINIAN-PILOT (June 1, 2015), <http://hamptonroads.com/2015/05/chesapeake-has-become-goto-police-forces-looking-body-cameras> [<http://perma.cc/2VHS-4GZC>]; Erin Tracy, *Modesto police out in front on body cameras*, THE MODESTO BEE (July 4, 2015), <http://www.modbee.com/news/article26510197.html> [<http://perma.cc/8RQ9-F25B>]; Kevin Fagan, *With body cameras rolling, police use less force*, SFGATE (May 11, 2015, 2:50 PM), <http://www.sfgate.com/news/article/With-body-cameras-rolling-police-use-less-force-6254667.php> [<http://perma.cc/FF64-8X64>]; J. David Goodman, *New York Police Officers to Start Using Body Cameras in a Pilot Program*, N.Y. TIMES (Sept. 4, 2014), <http://www.nytimes.com/2014/09/05/nyregion/new-york-police-officers-to-begin-wearing-body-cameras-in-pilot-program.html> [<http://perma.cc/5P5K-WG6P>]; Mike DeBonis & Victoria St. Martin, *D.C. police will wear body cameras as part of pilot program*, THE WASH. POST (Sept. 24, 2014), <https://www.washingtonpost.com/local/crime/dc-police-will-wear->

initiative that would give 50,000 body-mounted cameras to local police departments.⁶ As a result of the Stop and Frisk litigation challenging the legality of searches of members of the public, the court ordered the City of New York to implement a body-camera pilot program.⁷

The presence of cameras is believed to reduce police misconduct, false claims of police misconduct, and assault on officers by civilians.⁸ Studies have shown that when body-cameras are in use, police officers are less likely to use force and civilians are less likely to file complaints.⁹ In addition, the cameras are used to gather evidence against suspects. The cameras are particularly useful when a victim recants or is unwilling to testify, or when the emotions captured in the voices in an audio recording are more effective at accurately depicting events than the written transcripts and notes prepared by officers.¹⁰

B. TECHNOLOGICAL OVERVIEW

Advancements in technology have led to an increase in video recording by law enforcement as well as by private citizens, and the law has had to adjust to this reality. Body-worn cameras are part of this trend; however, there are several significant differences between body-worn cameras on police officers and other

body-cameras-as-part-of-pilot-program/2014/09/24/405f7f5c-43e7-11e4-b437-1a7368204804_story.html [https://perma.cc/PFK3-2YEG].

6. THE WHITE HOUSE, FACT SHEET: STRENGTHENING COMMUNITY POLICY (Dec. 1, 2014), <http://www.whitehouse.gov/the-press-office/2014/12/01/fact-sheet-strengthening-community-policing> [http://perma.cc/9N4E-CTQC].

7. *Floyd v. City of New York*, 959 F. Supp. 2d 668, 685–87 (S.D.N.Y. 2013).

8. Ariel, *supra* note 5, at 510.

9. Stross, *supra* note 1 (“The Rialto study began in February 2012 and will run until this July. The results from the first 12 months are striking. Even with only half of the 54 uniformed patrol officers wearing cameras at any given time, the department over all had an 88 percent decline in the number of complaints filed against officers, compared with the 12 months before the study, to 3 from 24. Rialto’s police officers also used force nearly 60 percent less often — in 25 instances, compared with 61. When force was used, it was twice as likely to have been applied by the officers who weren’t wearing cameras during that shift, the study found. And, lest skeptics think that the officers with cameras are selective about which encounters they record, Mr. Farrar noted that those officers who apply force while wearing a camera have always captured the incident on video.”); Connie Fossi-Garcia & Dan Lieberman, *Investigation of 5 cities finds body cameras usually help police*, FUSION (Dec. 7, 2014, 2:56 PM), <http://fusion.net/story/31986/investigation-of-5-cities-finds-body-cameras-usually-help-police> [http://perma.cc/SY8X-65X6].

10. Michelle Leonard, *Farmington police deploying body-worn cameras*, ST. PAUL PIONEER PRESS (Sept. 24, 2014, 12:01 AM), http://www.twincities.com/crime/ci_26601901/farmington-police-deploying-body-worn-cameras [http://perma.cc/2QXE-KJ43].

forms of surveillance such as closed circuit television (CCTV) cameras, dashcameras, and civilian cell phones. For this reason, body-worn cameras raise unique legal questions.

While several companies currently manufacture body-worn cameras designed for police work, the dominant supplier is Viewu, followed by Taser International.¹¹ The cameras manufactured by Taser International are 3.5 inches long, and can be worn on an officer's collar, cap, or glasses.¹² Body-mounted cameras record audio, and when worn on a police officer's glasses, will record what the officer sees.¹³ Typically, police officers are expected to turn on their cameras when they exit their police cars to interact with civilians.¹⁴ The cameras actually record even when "off," and automatically save the thirty seconds of "buffer" that precede being turned "on." This is so that the cameras can capture the initial moments of an encounter.¹⁵ It is possible to use facial recognition technology on the images captured by body-worn cameras.¹⁶ The cameras, although small, are noticeable to civilians.¹⁷

The recordings are stored temporarily on the device, until transferred to a storage system operated by Taser.¹⁸ The officer can label the type of interaction (e.g., traffic stop).¹⁹ Each video is labeled with a unique number, and the system records each time an officer accesses a video, creating a "chain of custody."²⁰

11. Christopher Mims, *What Happens When Police Officers Wear Body Cameras*, WALL ST. J. (Aug. 18, 2014, 5:28 AM), <http://www.wsj.com/articles/what-happens-when-police-officers-wear-body-cameras-1408320244> [<http://perma.cc/4Y9K-9QKG>]; Drew Harwell, *The body-camera industry is 'feeling phenomenal' after Ferguson*, THE WASH. POST (Dec. 3, 2014), <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/12/03/the-body-camera-industry-is-feeling-phenomenal-after-ferguson> [<http://perma.cc/766K-LNJU>].

12. Leonard, *supra* note 10.

13. *Id.*

14. Stross, *supra* note 1.

15. *Id.*

16. LINDSAY MILLER & JESSICA TOLIVER, POLICE EXECUTIVE RESEARCH FORUM, IMPLEMENTING A BODY-WORN CAMERA PROGRAM: RECOMMENDATIONS AND LESSONS LEARNED 11 (2014), <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf> [<http://perma.cc/6RX7-ZZ8J>] (Facial recognition technology allows digital images of faces to be searched for "matches," making it possible to determine the identity of an individual in a photograph by using a database of photos already paired with names.).

17. Stross, *supra* note 1 ("As small as the cameras are, they seem to be noticeable to civilians, he said. 'When you look at an officer,' he said, 'it kind of sticks out.' Citizens have sometimes asked officers, 'Hey, are you wearing a camera?' and the officers say they are, he reported.").

18. Leonard, *supra* note 10.

19. *Id.*

20. *Id.*

C. COMPARISONS TO OTHER TYPES OF VIDEO RECORDINGS

Body-worn cameras are part of a larger trend of increased surveillance of civilians by law enforcement and increased recordings of law enforcement by civilians.²¹ Unlike previous forms of surveillance, body-cameras can enter private spaces more easily, and can focus on individuals more effectively. These differences call for regulation and policies designed specifically to address body-mounted cameras.

1. *Dashboard Camera Recordings*

The purposes of dash cameras and body-worn cameras are similar. Both record interactions between police and citizens, and move with an officer or pair of officers while they complete a shift instead of focusing on a particular area or individual. Dash cameras are confined to places where cars can go, which are usually public places, such as roads and parking lots. A dash camera cannot easily record inside people's homes and other places where there is a heightened expectation of privacy. Dash cams are programmed to begin recording only when a siren or lights are turned on.²²

2. *CCTV/Surveillance Cameras*

Even without body-mounted cameras, law enforcement is capable of setting up an extremely comprehensive surveillance system using stationary cameras. The United Kingdom leads the world in the use of surveillance cameras.²³ The average Londoner is recorded 300 times a day and the ratio of cameras to residents in the country is one to fourteen.²⁴ Some believe that the United States should adopt this level of surveillance.²⁵ Many ma-

21. Erica Goode, *Video, a New Tool for the Police, Poses New Legal Issues, Too*, N.Y. TIMES (Oct. 11, 2011), <http://www.nytimes.com/2011/10/12/us/police-using-body-mounted-video-cameras.html> [<http://perma.cc/V9U2-KYAT>].

22. Stanley, *supra* note 1, at 2–3.

23. Jeremy Brown, *Pan, Tilt, Zoom: Regulating the Use of Video Surveillance of Public Places*, 23 BERKELEY TECH. L.J. 755, 758 (2008).

24. *Id.*

25. Dina Temple-Raston, *In U.S., Calls Grow for U.K.-Style Security Cameras*, NAT'L PUB. RADIO (July 4, 2007, 4:00 PM), <http://www.npr.org/templates/story/story.php?storyId=11737314> [<http://perma.cc/W763-F24P>].

major cities in the United States have video surveillance programs, including Chicago,²⁶ New York,²⁷ and Los Angeles.²⁸

Unlike body-mounted cameras, CCTV cameras do not record conversations. Additionally, CCTV cameras do not focus on individuals and only record in public places.²⁹ In contrast, body-mounted cameras are more invasive. It is also important to note that in conjunction with the use of face recognition technology (FRT) and CCTV, body-mounted cameras could become part of a surveillance network that capable of effectively tracking the movements of citizens.

III. POLICY CONCERNS

There is a tension between protecting the privacy of people who may be recorded, and the interest in ensuring accountability for police.³⁰ While the American Civil Liberties Union (ACLU) is generally opposed to the increasing prevalence of camera surveillance, they are in favor of body-worn cameras for police because body-worn cameras are useful in reducing police misconduct against civilians.³¹ Although body-mounted cameras may benefit the public in several ways, concerns about them include: the release of embarrassing footage to the public, the use of footage to identify suspects in additional crimes, the impact on police-community interactions, the potential impediment to free speech, and the ability to monitor police officers improperly.

26. Brown, *supra* note 23, at 758.

27. I. Bennett Capers, *Crime, Surveillance, and Communities*, 40 *FORDHAM URB. L.J.* 959, 960–61 (2013).

28. Brown, *supra* note 23, at n.12.

29. MILLER & TOLIVER, *supra* note 16, at 11 (quoting Sir Bernard Hogan Howe, Commissioner, London Police Service: “In London we have CCTVs, which are quite extensive and becoming even more so, but the distinction is that those cameras don’t listen to your conversations. They observe behavior and see what people do and cover public space, so you can see if there is a crime being committed. But CCTVs don’t generally seek out individuals. So I think there is an important distinction there.”).

30. Stanley, *supra* note 1, at 1.

31. Stross, *supra* note 1 (“But what about the privacy implications? Jay Stanley, a senior policy analyst at the American Civil Liberties Union, says: ‘We don’t like the networks of police-run video cameras that are being set up in an increasing number of cities. We don’t think the government should be watching over the population en masse.’ But requiring police officers to wear video cameras is different, he says: ‘When it comes to the citizenry watching the government, we like that.’ Mr. Stanley says that all parties stand to benefit — the public is protected from police misconduct, and officers are protected from bogus complaints. ‘There are many police officers who’ve had a cloud fall over them because of an unfounded accusation of abuse,’ he said. ‘Now police officers won’t have to worry so much about that kind of thing.’”).

A. GENERAL CONCERNS

The ACLU has highlighted some potential privacy concerns regarding body-worn cameras. Video footage differs from naked eye surveillance in several important ways. Video footage is not easily altered, and it can be more convincing than eye-witness accounts.³² Video footage also does not degrade, and is not influenced by personal biases.³³ Additionally, unlike a memory, one can “zoom-in,” on video footage, or improve it for low light, or otherwise enhance it.³⁴ Finally, video footage does not require labor intensive monitoring,³⁵ but can be reviewed later when law enforcement has reason to believe it contains something of interest.

The use of video by law enforcement is not new. The body-worn camera, however, differs in significant ways from its precursors. Body-worn cameras have the capacity to be even more invasive than other forms of video surveillance. CCTV or stationary surveillance cameras used by law enforcement are placed in public areas such as parking lots and transportation hubs where the people being filmed do not have an expectation of privacy.³⁶ Usually, dashboard cameras on police vehicles only record on public roads, and never indoors. Body-worn cameras are therefore more difficult for the public to avoid, and their presence is less predictable. Police officers often go inside businesses, private property and private homes as part of their duties. When police officers have a warrant, or believe there is an emergency, the occupants of a private home do not have a choice about the presence of those officers. A person who is approached by a police officer wearing a body-worn camera cannot readily avoid having his identity recorded (even if later it is established he was stopped without cause). On the other hand, a body-mounted camera is not automatically activated like a dash camera, which records when a police car stops. Instead, a body-mounted camera requires the wearer to activate it before it will record.

32. Robert Ellis Smith, *Sometimes, What Is Public Is Private*, 59-FEB R.I. B.J. 33, 35 (2011).

33. *Id.* at 35–36.

34. *Id.*

35. *Id.*

36. Robert Bickel et al., *Seeing Past Privacy: Will the Development and Application of CCTV and Other Video Security Technology Compromise an Essential Constitutional Right in a Democracy, or Will the Courts Strike a Proper Balance?*, 33 STETSON L. REV. 299, 305 (2003).

B. VIDEOS RELEASED TO THE PUBLIC

There are strong reasons to be concerned about footage becoming available to the public, either through a leak or legitimate release.³⁷ The ACLU points out that the release of footage showing police officer wrongdoing promotes police accountability.³⁸ On the other hand, footage showing embarrassing behavior by a public figure might be leaked due to the entertainment value of the footage, and not for purposes of accountability.³⁹ If police are recording all of their encounters with the public, they will inevitably record events that are embarrassing or would otherwise cause distress for the subject.⁴⁰ Additionally, footage of informants or witnesses cooperating with law enforcement could put those subjects in danger if released.⁴¹ Footage from dash cameras has been inadvertently released to the public and has spread on the Internet due to the embarrassing nature of the content or the famous identity of the subject, despite containing no content of public importance (such as evidence of police misconduct).⁴²

In some instances, existing laws might require police departments to release footage. The California Public Records Act creates a general rule that recordings stored by the government, with a few narrow exceptions, are accessible to the public.⁴³ The courts have narrowly construed these exemptions,⁴⁴ so some footage from body-mounted cameras on police would be potentially

37. Stross, *supra* note 1.

38. *Id.* at 1.

39. *Id.* at 3.

40. Erica Goode, *Video, a New Tool for Police, Poses New Legal Issues, Too*, N.Y. TIMES (Oct. 11, 2011), <http://www.nytimes.com/2011/10/12/us/police-using-body-mounted-video-cameras.html> [<http://perma.cc/EY4Z-QDDT>] (“If a police officer is taking a picture of every interaction, one of the things that he may find is me, naked as a jaybird, when my wife calls to complain,” said Franklin E. Zimring, a professor of law at the University of California, Berkeley. “Let’s assume that it’s either against the law or not, but I sure don’t want it on YouTube. The potential for a sort of permanent embarrassment is a looming presence when everything is filmed.”).

41. MILLER & TOLIVER, *supra* note 16, at 23.

42. Stanley, *supra* note 1, at 3.

43. MARK SCHLOSBERG & NICOLE A. OZER, UNDER THE WATCHFUL EYE: THE PROLIFERATION OF VIDEO SURVEILLANCE SYSTEMS IN CALIFORNIA 9 (2007), available at https://www.aclunc.org/docs/criminal_justice/police_practices/under_the_watchful_eye_the_proliferation_of_video_surveillance_systems_in_california.pdf [<https://perma.cc/RML5-RCTY>].

44. *E.g.*, Bakersfield City Sch. Dist. v. Superior Court, 118 Cal. App. 4th 1041, 1045 (2004); Cal. State Univ., Fresno Ass’n v. Superior Court, 90 Cal. App. 4th 810, 831 (2001); see also Lorig v. Med. Bd., 78 Cal. App. 4th 462, 467 (2000); Cty. of L.A. v. Superior Court, 82 Cal. App. 4th 819, 825 (2000).

accessible to the public under this law.⁴⁵ In Washington, a similar state law requires government institutions to hand over footage to members of the public as long as it is not relevant to a current investigation or case.⁴⁶ Two departments in Washington ended or considered ending their body-mounted camera programs after an individual requested a large volume of video footage for seemingly frivolous purposes.⁴⁷

In addition to privacy concerns, public records laws have caused a financial burden for police departments.⁴⁸ Videos from

45. SCHLOSBERG & OZER, *supra* note 43, at 9 ; CAL. GOV'T CODE § 6254(f) (West 2014) (“Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, the Office of Emergency Services and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. However, state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflects the analysis or conclusions of the investigating officer.”).

46. WASH. REV. CODE ANN. § 42.56.070 (West 2006).

47. Tracy Vedder, *Influx of Records Requests May Force Police to Drop Police to Drop Body-Cams*, KOMO NEWS (Nov. 10, 2014) <http://www.komonews.com/news/local/Police-Body-Cameras-282218401.html> [<http://perma.cc/7WGS-BQNU>].

48. Joshua Brustein, *Cop Cams Face Threat From Transparency Law in Washington State*, BLOOMBERG BUS. (Nov. 26, 2014), <http://www.bloomberg.com/bw/articles/2014-11-26/cop-cams-face-threat-from-transparency-law-in-washington-state> [<http://perma.cc/7X5C-MRLX>] (“Police departments say complying with demands for body camera footage presents a huge burden, because many videos must be blurred or muted before they can be released to protect the privacy of people caught on camera. Alan Townsend, the chief of police in Poulsbo, across the Puget Sound from Seattle, says it could take his department three years to respond to a request to release about 1,000 videos. The state’s law doesn’t require people making requests to identify themselves. Results can be sent to an e-mail address or cloud storage service such as Dropbox. Since September, an activist in Seattle, using the e-mail address policevideorequests@gmail.com, has used the law to make anonymous requests for body and dashboard camera video footage from police departments around the state. . . . His campaign briefly threatened to derail Seattle Police Department plans to add body cameras to its existing dashboard program. Seattle’s force has been subject to monitoring by the U.S. Department of Justice since 2012, after a federal investigation found the city’s officers routinely engaged in excessive use of force. The department responded to the footage requests by negotiating with the man via Twitter and asking that he withdraw or modify his demands. ‘We’ve been doing this publicly on Twitter so everyone can see where we stand on it,’ says Patrick Michaud, the department’s public

police car dash-cameras have been found to fall under state public records laws in Vermont,⁴⁹ New Jersey⁵⁰ and Arkansas.⁵¹ Reviewing and redacting footage is costly financially as well as in hours of labor.⁵² Several police departments have cited concerns about the cost of redacting footage.⁵³

An Albuquerque police chief explained, “Here in Albuquerque, everything is open to public record unless it is part of an ongoing investigation. So if police come into your house and it is captured on video, and if the video isn’t being used in an investigation, your neighbor can request the footage under the open records act,

affairs officer. ‘We’ve never been trying to hide it, but it’s terabytes of data we’d have to go through.’”)

49. VT. STAT. ANN. tit. 1, § 317 (West 2015) (“Notwithstanding subdivision (A) of this subdivision (5), records relating to management and direction of a law enforcement agency; records reflecting the initial arrest of a person, including any ticket, citation, or complaint issued for a traffic violation, as that term is defined in 23 V.S.A. § 2302; and records reflecting the charge of a person shall be public.”)

50. Paff v. Ocean Cty. Prosecutor’s Office, No. OCN-L-1645-14, 2014 WL 5139407, at *4 (N.J. Super. Ct. Law Div. Oct. 2, 2014).

51. ARK. CODE ANN. § 25-19-105 (West 2015); Charles N. Davis, *A Fine Example of Why the Public Needs Access to Dashboard Cam Video*, THE ART OF ACCESS BLOG (Aug. 19, 2012), <http://theartofaccess.com/2012/08/19/a-fine-example-of-why-the-public-needs-access-to-dashboard-cam-video> [<http://perma.cc/YB2H-JLGS>].

52. White, *supra* note 3, at 33–34.

53. Nicole Blake Johnson, *Baltimore Weighs the Hidden Costs of Police Body Cameras*, ST. TECH MAG. (Feb. 23, 2015), <http://www.statetechmagazine.com/article/2015/02/baltimore-weighs-hidden-cost-police-body-cameras> [<http://perma.cc/8XWD-8JXL>] (“The number of requests for camera footage also would affect program costs. The resources needed to redact videos are the greatest variable. A conservative estimate from the working group projects redaction would account for \$1.7 million of the first year’s budget”); Amanda Haggard, *Law Enforcement Complain Body Cameras Will Lead to Costly Records Requests*, NASHVILLE SCENE (Oct 20, 2015, 3:02 PM) (“‘The cost of this is more than just the equipment and infrastructure,’ said Chief David Rausch, president of the Tennessee Association of Chiefs of Police and chief of the Knoxville Police Department. ‘There’s also the redaction issue, especially when you have these overbroad requests.’”); Kathy Bolten, *Police: We Want Body Cameras; Need Money to Buy Them*, THE DE MOINES REG. (May 7, 2015, 3:01 PM), <http://www.desmoinesregister.com/story/news/2015/05/06/body-cameras-police-federal-grant/70918700/> [<http://perma.cc/3H6D-ETR4>] (“It’s unlikely all of the state’s 394 state troopers will be equipped with body cameras any time soon, said Sgt. Nathan Ludwig, Iowa Department of Public Safety spokesman. While it would cost an estimated \$315,200 to buy the cameras, the cost to upgrade the system used to store video footage would exceed \$4 million, Ludwig said. It also would cost \$149,000 to add two full-time employees to review and file the videos and handle public records’ requests. ‘It’s super expensive,’ Ludwig said.); Nick Adams, *‘Cop-Cam’ Complications*, HERALD TRIB. (Mar. 5, 2015 1:00AM) (“If the city gets many requests for camera footage, it’s conceivable that an extra police department employee would be needed to handle the review load, Fournier said. That has budget implications. And he warned of the city’s risk of lawsuits, both if it violates privacy and if it unduly hinders access to public records.”); FLA. STAT. ANN. § 119.071 (West 2005) (The statute has 600 very specific exemptions. Whether footage could be released would likely end up being decided on a case by case basis.).

and we must give it to them.”⁵⁴ On the flip side, in states with less extensive public records laws, video surveillance programs have been criticized for a lack of transparency.⁵⁵

Due to the nature of policing, officers will interact with members of the public who may be in undignified or embarrassing situations. Victims of crimes or accidents and juveniles are some categories of people who would be vulnerable if tapes of their interactions with police were to become public. In addition, citizens who are not breaking the law, but instead are participating in activities that they might not wish to be widely broadcast, such as union activity, non-mainstream sexual practices, or Alcoholics Anonymous meetings, to name a few, might be at risk of reprisals.

C. FOOTAGE USED TO IDENTIFY SUSPECTS IN FUTURE CRIMES

A second concern is that past footage would be used to identify suspects for crimes in the future, or as part of a “pan-surveillance” dragnet.⁵⁶ If combined with Facial Recognition Technology (FRT), footage from body-worn cameras could be aggregated and used not only to identify suspects, but also to find or discover new suspects. Body-mounted cameras with FRT have the potential to raise even greater concerns. Taser is already developing a body-worn camera with FRT.⁵⁷

54. MILLER & TOLIVER, *supra* note 16, at 15.

55. Adam Schwartz, *Chicago's Video Surveillance Cameras: A Pervasive and Poorly Regulated Threat to Our Privacy*, 11 NW. J. TECH. & INTELL. PROP. 47, 50–51 (2013) (“Under Chicago’s prior Mayor, Richard Daley, there was very little transparency regarding the City’s video surveillance camera system. For example, when the ACLU sent a Freedom of Information Act (FOIA) request to the City regarding its camera system, the City refused to state whether there had been any alleged misuse of the cameras, and did not disclose any electronic data regarding the cameras’ alleged effectiveness. Likewise, there was no public information available regarding the total number of cameras, the location of most cameras, the total amount of money spent on the cameras, and the sources of that money. Moreover, the City repeatedly failed to respond to the ACLU’s requests for permission to visit the OEMC’s operations center, and repeatedly failed to respond to the ACLU’s letters proposing new regulations.”).

56. Stross, *supra* note 1; Stanley, *supra* note 1, at 5 (“The ACLU supports the use of cop cams for the purpose of police accountability and oversight. It’s vital that this technology not become a backdoor for any kind of systematic surveillance or tracking of the public.”).

57. Shakeer Rahman, *Body cameras could transform policing - for the worse*, AL JAZEERA AM. (Apr. 17, 2015, 2:00 AM), <http://america.aljazeera.com/opinions/2015/4/body-cameras-could-transform-policing--for-the-worse1.html> [<http://perma.cc/KMU6-A2ZH>].

FRT is already used to track suspected terrorists, but the technology could be used to identify individuals captured on video tape by cross referencing a database of photos⁵⁸ or even to collect embarrassing footage of individuals in order to pressure them into complying with an investigation.⁵⁹

It is likely that as magnification technology and FRT becomes more advanced and affordable, law enforcement will use it in conjunction with body-mounted cameras. The Los Angeles Police Department has tested FRT on surveillance footage.⁶⁰ The City of Chicago's stationary camera surveillance system, the most extensive in the country, has the capability to track vehicles from one camera to the next and to zoom in and see small objects and detail hidden to the naked eye. Chicago has also looked into the possibility of using FRT.⁶¹ It is possible that in the near future, body-worn cameras will be equipped with FRT. Although current versions of body-worn cameras are not equipped with FRT, uploaded footage collected by body-worn cameras could still be scanned using FRT.

The use of body-mounted camera footage as a means of identifying suspects could have several negative consequences. First, it could make witnesses and others less likely to talk to police. Individuals might worry that if their face is captured by the camera, it will be compared to a database using FRT for outstanding warrants and matches to unsolved cases. Second, if combined with an extensive CCTV system and FRT, body-mounted cameras could become part of a comprehensive surveillance system capable of tracking the movements of individuals as they go about their daily activities. A body-mounted camera would allow an officer to purposefully follow an individual in areas not covered by CCTV, or police departments to comb footage from body-cameras

58. Douglas A. Fretty, *Face-Recognition Surveillance: A Moment of Truth for Fourth Amendment Rights in Public Places*, 16 VA. J.L. & TECH. 430, 434–38 (2011).

59. *Id.* at 437–38 (“Beyond tracking individuals already on a government watch-list, FRT’s data-mining capabilities are intended to recommend *new* suspects. For example, a police department could theoretically cross-reference surveillance footage between a high-drug-volume housing project and a nearby airport, revealing which project residents most frequent the airport, and thus producing evidence of possible drug trafficking. In the national-security context, the FBI is suspected of gathering embarrassing personal information about American Muslims to pressure them into informing on their fellow mosque-attendees. Such a tactic can be aided by FRT, which could cross-reference the exteriors of mosques with other, compromising locations such as homosexual establishments or bankruptcy offices.”).

60. SCHLOSBERG & OZER, *supra* note 43, at 5.

61. Schwartz, *supra* note 55, at 50.

after the fact to demonstrate that an individual was or was not at a location at a certain time.

D. EFFECT OF CAMERAS ON INTERACTIONS BETWEEN THE POLICE AND THE PUBLIC

A third concern is that the presence of a camera will interfere with interactions between the police and the public. Certain types of interactions are more likely to be effective if not filmed.⁶² Some police department leaders have argued that recording social interactions between police and civilians that are not directly related to law enforcement business is unnecessary and creates distrust.⁶³ Several departments have reported that the presence of body-worn cameras has hindered intelligence-gathering efforts.⁶⁴

On the other hand, other police departments dispute the validity of these concerns, arguing that body-worn cameras have not negatively impacted their ability to collect information and have actually improved community relations.⁶⁵ The presence of a cam-

62. Aviva Rutkin, *Ferguson protests spark call for cops to wear cameras*, NEW SCIENTIST (Aug. 27, 2014), <https://www.newscientist.com/article/mg22329844-400-ferguson-protests-spark-calls-for-cops-to-wear-cameras> [<https://perma.cc/7H2P-5D37>].

63. MILLER & TOLIVER, *supra* note 16, at 13.

64. *Id.* at 20 (“Some police executives reported that deploying body-worn cameras has in fact had a negative impact on their intelligence-gathering activities, particularly when officers are not allowed the discretion to turn off the camera. Chief of Police Sean Whent of Oakland, California, explained, ‘Our policy is to film all detentions and to keep recording until the encounter is over. But let’s say an officer detains someone, and now that person wants to give up information. We are finding that people are not inclined to do so with the camera running. We are considering changing our policy to allow officers to turn off the camera in those situations.’ The Mesa (Arizona) Police Department has also found that body-worn cameras can undermine information-gathering efforts. ‘We have definitely seen people being more reluctant to give information when they know that they are being videotaped,’ said Lieutenant Harold Rankin.”).

65. *Id.* (“However, other police executives said that these types of situations are rare and that body-worn cameras have not had a significant impact on their ability to gather information from the public. For some agencies, public reaction to the cameras has been practically nonexistent. Major Stephen Willis of the Charlotte-Mecklenburg (North Carolina) Police Department said, ‘We have had in-car cameras for many years, and in most instances the public has an expectation that they will be recorded. We encountered very little resistance from the public when we piloted body-worn cameras.’ Deputy Chief of Police Cory Christensen of Fort Collins, Colorado, said, ‘We are not seeing much pushback from the community. Often people do not even notice the presence of the cameras.’ ‘I disagree that cameras hurt community relationships,’ said Chief of Police William Farrar of Rialto, California. ‘We have not seen any evidence of that. People will ask officers if they have a camera on, but it does not seem to bother them.’ In fact, in its evaluation of its body-worn camera program, the Rialto Police Department found that officers made

era, they argue, actually causes both police and civilians to moderate their behavior, resulting in fewer negative interactions.⁶⁶

E. CHILLING EFFECTS ON FREE SPEECH

A fourth concern is that body-mounted cameras would chill political and other types of speech. Local and national law enforcement has monitored members of dissenting organizations in recent history, which can impede speech, and in some cases, violate the First Amendment.⁶⁷ Some would be hesitant to participate in peaceful dissenting assemblies, even in locations controlled by the group itself, such as a mosque, union hall, or community center, because if police officers entered the premises with body-worn cameras, the police could then use the footage and FRT to compile a list of attendees.

F. POLICE PRIVACY CONCERNS

A fifth concern is that supervisors could use recordings to monitor police officers. Simply being recorded at all times (even if a policy is in place where tapes are not reviewed unless there is a reason), might create an oppressive working environment.⁶⁸ Superiors could also comb through footage for any violations as a way to intimidate or punish union activists or whistleblowers.⁶⁹ In practice, police departments have looked through all of a police

3,178 more contacts with the public (not counting calls for service) during the year that cameras were deployed than in the prior year.”).

66. *Id.* (“Some police executives reported that body-worn cameras have actually improved certain aspects of their police-community relationships. These executives said that the presence of cameras leads to better behavior by both the officer and the person being recorded. ‘The cameras help defuse some of the tensions that might come up during encounters with the public. I think that 98 percent of the time, cameras help improve relationships with the community,’ said Chief Chitwood of Daytona Beach. Deputy Chief Christensen of Fort Collins agreed: ‘Officers wearing cameras have reported a noticeable improvement in the quality of their encounters with the public. With both sides behaving better, community relations will improve.’”).

67. *See Alliance to End Repression v. City of Chicago*, 237 F.3d 799, 800–01 (7th Cir. 2001); *Handschu v. Special Servs. Div.*, 349 F. Supp. 766, 768 (S.D.N.Y. 1972).

68. MILLER & TOLIVER, *supra* note 16, at 14 (“Some police executives also believe that requiring officers to record all encounters can signal a lack of trust in officers, which is problematic for any department that wants to encourage its officers to be thoughtful and to show initiative. For example, a survey of officers conducted in Vacaville, California, found that although 70 percent of officers were in favor of using body-worn cameras, a majority were opposed to a policy containing strict requirements of mandatory recording of all police contacts.”).

69. Stanley, *supra* note 1, at 2.

officer's footage in response to one or two incidents, looking for a history of misconduct, and used the uncovered evidence of undesirable behavior to fire the police officer.⁷⁰ In the aforementioned cases, the events were related to misconduct against civilians, thereby prompting the officer's superiors to review the footage.⁷¹ It is not unthinkable, however, that an officer who had displeased his superiors for other reasons might be subjected to a thorough review of his footage in retaliation.

Unlike other types of employees, however, police officers have a greater responsibility and a greater burden in their role as public servants, which might lessen their expectation of privacy. What any public official does with public resources is a matter of public interest. Accountability for police officers is especially important for a number of reasons. Police officers have the capacity to use legitimized violence.⁷² Police officers also control public resources that, if not properly allocated and used, can do the most damage to the public.⁷³ Furthermore, police officers act with more authority and power when interacting with members of the public than typical civil servants.⁷⁴

70. MILLER & TOLIVER, *supra* note 16, at 7–8 (“Law enforcement agencies have also found that body-worn cameras can help them to identify officers who abuse their authority or commit other misconduct and to assist in correcting questionable behavior before it reaches that level. In Phoenix, for example, an officer was fired after his body-worn camera captured repeated incidents of unprofessional conduct. Following a complaint against the officer, the police department reviewed footage from the incident along with video from prior shifts. Upon finding repeated instances of verbal abuse, profanity, and threats against members of the public, the department terminated the officer. ‘It clearly shocked the conscience when you saw all of the different incidents,’ said Assistant Chief of Police Dave Harvey of Phoenix. In Daytona Beach, Chief Chitwood requested that the officers with a history of complaints be among the first to be outfitted with body-worn cameras. Although he found that usually the videos demonstrated that ‘the majority of the officers are hardworking, good police,’ he has also seen how body-worn cameras can help an agency address discipline problems. Chitwood said: ‘We had an officer who had several questionable incidents in the past, so we outfitted him with a camera. Right in the middle of an encounter with a subject, the camera goes blank, and then it comes back on when the incident is over. He said that the camera malfunctioned, so we gave him another one. A week later he goes to arrest a woman, and again, the camera goes blank just before the encounter. He claimed again that the camera had malfunctioned. So we conducted a forensic review of the camera, which determined that the officer had intentionally hit the power button right before the camera shut off. Our policy says that if you turn it off, you’re done. He resigned the next day.’”).

71. *Id.*

72. Vincent Blasi, *The Checking Value in First Amendment Theory*, 1977 AM. B. FOUND. RES. J. 521, 538 (1977).

73. *Id.*

74. Jake Tracer, Note, *Public Officials, Public Duties, Public Fora: Crafting an Exception to the All-Party Consent Requirement*, 68 N.Y.U. ANN. SURV. AM. L. 125, 155 (2012).

Police privacy has already been discussed with regard to members of the public who record officers with their cell phones. When discussing the appropriateness of creating an exception to the two-party wiretapping statutes so that civilians would be allowed to record police interactions, some have suggested a distinction between activities where the police officer exercises his authority and when he is “on the clock,” but not exercising any special authority by virtue of his position.⁷⁵ Additionally, certain police activities, such as police work or communicating with informants, should not be filmed for the safety of the officer and informants.⁷⁶ Others have proposed that the distinction between when a police officer may be recorded (in a two-party consent state) should depend on where he is. Police officers who are in public, carrying out public duties should be recorded.⁷⁷

75. *Id.* at 159.

76. Rebecca G. Van Tassell, Comment, *Walking A Thin Blue Line: Balancing the Citizen's Right to Record Police Officers Against Officer Privacy*, 2013 B.Y.U. L. REV. 183, 194 (2013).

77. Tracer, *supra* note 74, at 159 (“If a public official is exercising a public duty, the physical location where the act takes place should affect the scope of an exception to the all-party consent requirement. Like the public duty issue discussed above, the public forum distinction affects the all-party consent requirement’s concern for the private nature of certain conversations. The need for a geographic limit on an exception is apparent when considering extreme positions on the continuum of public access to conversations involving public officials engaging in their public duties. At one end, when a police officer stops someone on a sidewalk, the location is clearly public because the public both has access to the location generally and can overhear the specific conversation taking place. The police officer also knows all this to be the case. At the other end of the spectrum, consider a conversation between two police officers in the station house that is secretly recorded. In that case, members of the public would be listening in on a conversation they ordinarily cannot hear, taking place in a location they ordinarily cannot access. The officers would have no notice of their “presence.” Because the state could consent to recording on behalf of both officers, the only rationale to prevent recording such a conversation is that the conversation itself is private. An exception to the all-party consent requirement should therefore include some means to filter which conversations involving public officials engaging in public duties remain too private to be opened to citizen recording.”).

G. RECOMMENDATIONS BY THE ACLU AND THE PERF

Because body-mounted camera technology is new, departments are continuing to develop policies for its use.⁷⁸ The policies of police departments vary with respect to when and where to record, and what is done with the footage.⁷⁹ A study found that of 63 law enforcement agencies that reported they were using body-worn cameras, one third did not have a written policy.⁸⁰

The ACLU and the Police Executive Research Forum (PERF) published the two existing extensive guidelines for the use of body-mounted cameras by police departments. The ACLU has advocated the adoption of body-mounted cameras on police as part of a campaign against police brutality and for police accountability.⁸¹ The ACLU also advocates for the privacy rights of the public and usually does not support the use of cameras by law enforcement.⁸² PERF is a non-governmental entity comprised of the leaders of local law enforcement agencies.⁸³ PERF produces reports on best practices, including topics such as minimizing the use of force, community policing, crime reduction and the use of technology.⁸⁴ Some have accused PERF for seemingly coordinating police action against the Occupy Wall Street movement.⁸⁵

78. See, e.g., MARK G. PETERS & PHILIP K. EURE, *BODY WORN CAMERAS IN NYC: AN ASSESSMENT OF NYPD'S PILOT PROGRAM AND RECOMMENDATIONS TO PROMOTE ACCOUNTABILITY* (July 2015), available at <http://www.nyc.gov/html/oignypd/assets/downloads/pdf/nypd-body-camera-report.pdf> [<http://perma.cc/KLR6-UMNS>].

79. *Id.* at 9, 11–12, 16–17, 20–22, 24–25, 27, 31–32, 33, 35, 37.

80. MILLER & TOLIVER, *supra* note 16, at 2 (“PERF received responses from 254 departments (a 51 percent response rate). Although the use of body-worn cameras is undoubtedly a growing trend, over 75 percent of the respondents reported that they did not use body-worn cameras as of July 2013. Of the 63 agencies that reported using body-worn cameras, nearly one-third did not have a written policy governing body-worn camera usage. Many police executives reported that their hesitance to implement a written policy was due to a lack of guidance on what the policies should include, which highlights the need for a set of standards and best practices regarding body-worn cameras.”).

81. See, e.g., Peter Hermann, *D.C. poised to test body-cameras for police officers*, THE WASH. POST (Sept. 6, 2014), http://www.washingtonpost.com/local/crime/dc-poised-to-test-body-cameras-for-police-officers/2014/09/06/358ebc52-3459-11e4-a723-fa3895a25d02_story.html [<http://perma.cc/2U72-8XF2>].

82. Stanley, *supra* note 1, at 1 (“Although we (at the ACLU) generally take a dim view of the proliferation of surveillance cameras in American life, police on-body cameras are different because of their potential to serve as a check against the abuse of power by police officers.”).

83. POLICE EXECUTIVE RESEARCH FORUM, ABOUT PERF, <http://www.policeforum.org/about> [<http://perma.cc/J749-ZMUY>].

84. *Id.*

85. Shawn Gaynor, *The Cop Group Coordinating the Occupy Crackdowns*, S.F. BAY GUARDIAN ONLINE (Nov. 18, 2011), <http://www.sfbg.com/politics/2011/11/18/cop-group->

Both sets of recommendations include guidelines for when and where recordings should be made, as well as what can be done with the footage.

1. *When and Where Recordings Should be Made*

The ACLU and PERF disagree about the amount of discretion officers should have when deciding when and where to record. In his report for the ACLU, Jay Stanley asserts that, “The balance that needs to be struck is to ensure that officers cannot 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.”⁸⁶ He points to several instances where dashboard camera or body-mounted camera recordings of alleged police misconduct disappeared, and brings up concerns for the working environment and rights of officers as employees.⁸⁷ In contrast, PERF recommends that police departments give officers discretion to turn their cameras off when warranted (for example, when talking to victims, assisting someone who is partially undressed, etc.), citing privacy concerns as well as the importance of maintaining good community relations.⁸⁸ The New York Police Department (NYPD) policy, mandated by court order, allowed some limited discretion for filming, but required that officers turn on their camera when they had a reasonable suspicion that the subject was committing a crime, when they stopped a vehicle, when they used force, when they took a subject into custody, when an interaction became adversarial, and when they conducted a “vertical patrol” of a building.⁸⁹ Additionally, the policy required that officers turn off their cameras during encounters not related to official activities, performance of administrative duties, in places with a reasonable expectation of privacy (i.e. hospitals and rest rooms), during certain protected political activities, when talking to a confidential wit-

coordinating-occupy-crackdowns [<http://perma.cc/5AHX-B6TX>]; aigeanta, *Confirmed: Police Executive Research Forum (PERF) coordinating Occupy raids*, DAILY KOS (Nov. 19, 2011, 6:07 AM), <http://www.dailykos.com/story/2011/11/19/1038054/-Confirmed-Police-Executive-Research-Forum-PERF-coordinating-Occupy-raids> [<http://perma.cc/EMW6-JVLT>].

86. Stanley, *supra* note 1, at 2.

87. *Id.* at 2.

88. MILLER & TOLIVER, *supra* note 16, at 13.

89. PETERS & EURE, *supra* note 78, at 9–10.

ness, and when requested by a victim or witness.⁹⁰ The report prepared by the City of New York on the pilot body-mounted camera program found that the policy should be amended to require officers to record a broader range of interactions beyond the “reasonable suspicion” standard because it did not capture the full range of interactions between the police and the community, and because interactions could begin without a reasonable suspicion, but could escalate.⁹¹

More specifically, the ACLU recommends that body-mounted cameras be turned on during every interaction with the public,⁹² whereas PERF recommends that cameras be turned on only during law enforcement related encounters, but not during informal, non-adversarial encounters.⁹³ PERF further recommends that departments prohibit recording during routine non-law enforcement activities, such as lunch at the station, or in the locker room.⁹⁴

The ACLU and PERF are more aligned with respect to notice to and consent of subjects of recordings. The ACLU recommends that officers give notice to the public that the cameras are present (to the extent that it is practical), and does not endorse the use of cameras for covert filming.⁹⁵ PERF also recommends that subjects be given notice that they are being recorded.⁹⁶ Additionally, PERF recommends that officers obtain consent from victims before recording them.⁹⁷ Additionally, PERF advises that officers turn off cameras when speaking to potential witnesses in the community.⁹⁸

The ACLU states that, “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.”⁹⁹ Alternatively, “[d]epartments 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 circumstanc-

90. *Id.* at 10–11.

91. *Id.*; PETERS & EURE, *supra* note 78, at iii.

92. Stanley, *supra* note 1, at 3.

93. MILLER & TOLIVER, *supra* note 16, at 40.

94. *Id.* at 42.

95. Stanley, *supra* note 1, at 4.

96. MILLER & TOLIVER, *supra* note 16, at 40.

97. *Id.* at 41.

98. *Id.*

99. Stanley, *supra* note 1, at 4.

es.”¹⁰⁰ The ACLU goes on to say that requests that cameras be turned off should also be documented. This is due to the “uniquely intrusive nature of police recordings made inside private homes.”¹⁰¹ However, the ACLU also maintains that “[c]ameras should never be turned off in SWAT raids and similar police actions.”¹⁰²

2. *What May be Done with Footage*

The ACLU recommends that recordings should not be viewed except for the purposes of an investigation of police misconduct (internal or external), or because law enforcement has a “reasonable suspicion” that the recording contains evidence of a crime. This proposal would include “[b]ack-end systems to manage video data” which “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.”¹⁰³

The ACLU also recommends limiting access to footage, keeping detailed records, and deleting footage automatically after a short period of time. The ACLU proposes a system where footage is only stored for a short period (“weeks, not years”) and then deleted, unless it is “flagged,” in which case, it would be stored for an extended period of time. Flagging would happen when the incident recorded included the use of force, a detention or arrest, or resulted in an informal or formal complaint. A recording should also be flagged, according to the ACLU, when the subject of a recording requests it, or when superiors in the police department have “some basis to believe police misconduct has occurred or have reasonable suspicion that the video contains evidence of a crime.”¹⁰⁴ The ACLU also proposes that recordings be stored in such a way to make it impossible for officers to delete, modify or make their own copies of footage, and that any time footage is accessed, a record is made.¹⁰⁵

In contrast, the PERF states that, “[o]fficers should properly categorize and tag body-worn camera videos at the time they are

100. *Id.*

101. *Id.*

102. *Id.*

103. *Id.* at 5.

104. *Id.* at 4.

105. *Id.* at 5–6.

downloaded” and that “videos should be classified according to the type of event or incident captured in the footage.”¹⁰⁶ If a video contains footage that can be used in an investigation or captures a confrontational encounter between an officer and a member of the public, it should be deemed “evidentiary” and categorized and tagged according to the type of incident.¹⁰⁷ The reasoning provided is that “the retention time for recorded data typically depends on the category of the event captured in the video. Thus, proper tagging is critical for determining how long the data will be retained in the agency’s system.”¹⁰⁸ Additionally, “accurate tagging helps supervisors, prosecutors, and other authorized personnel to readily identify and access the data they need for investigations or court proceedings.” PERF recommends retaining recordings as long as required by applicable regulation and state laws.¹⁰⁹ PERF recommends that footage be viewed by superiors when there is a specific complaint regarding an incident, or as part of a training and intervention program.¹¹⁰ PERF also recommends allowing officers involved in an incident to review footage before making a statement.¹¹¹

The report prepared by the City of New York recommended that supervisors be able to access all footage, but that arbitrary review for the purposes of finding an infraction for selective discipline would be considered a misuse of the resources.¹¹² The New York report also advised that officers not be allowed to review footage prior to giving a statement and that individual members of the public should not be able to access footage in a way that disadvantages officers.¹¹³

The ACLU recommends that recordings be released when subjects consent, or when recordings have been flagged.¹¹⁴ Whenever possible, redaction (such as blurring or blacking out images or distorting or removing audio) should be used to hide the identity of the subjects in a video.¹¹⁵ These recommendations are an attempt to find a balance between “the need for government over-

106. MILLER & TOLIVER, *supra* note 16, at 43.

107. *Id.*

108. *Id.*

109. *Id.* at 44.

110. *Id.* at 46.

111. *Id.* at 45.

112. PETERS & EURE, *supra* note 78, at v–vi.

113. *Id.* at vi.

114. Stanley, *supra* note 1, at 5.

115. *Id.*

sight and openness, and privacy.”¹¹⁶ Flagged recordings should be releasable because there is the “highest likelihood of misconduct,” and so “public oversight is most needed.”¹¹⁷

PERF’s recommendations are more focused on compliance with state laws (in addition to the privacy of subjects) than the ACLU, but they also recommend “a broad disclosure policy to promote agency transparency and accountability.”¹¹⁸ PERF recommends releasing video when required by state “Freedom of Information” laws, but not when the contents could violate the privacy of a subject, such as footage recorded inside a private home.¹¹⁹ PERF also recommends releasing footage in cases of controversy over incidents, explaining that, “[i]n some cases, the video may support a contention that an officer was in compliance with the law. In other cases, the video may show that the department is taking appropriate action against an officer.”¹²⁰ PERF also mentions the logistical and financial burdens of redacting identifiable content from videos.¹²¹

The New York report recommended that the NYPD should develop procedures to comply with New York State’s Freedom of Information law.¹²² The report pointed out that unlike other data subject to the freedom of information acts, footage from body cameras was likely to contain sensitive material, and that it had the potential to be spread rapidly via the internet.¹²³ The report did not make specific recommendations, but advised that the department develop procedures to ensure compliance with Freedom of Information requests while protecting the privacy of individuals who had been filmed as well as keeping the costs of review and redaction down.¹²⁴ The report further strongly advised against showing a complainant footage before the individual had a chance to make a formal statement, despite the fact that other departments had the practice of showing “walk-in” individuals who wished to file a complaint the footage of incident and had

116. *Id.*

117. *Id.*

118. MILLER & TOLIVER, *supra* note 16, at 46.

119. *Id.*

120. *Id.* at 47.

121. *Id.* at 33.

122. PETERS & EURE, *supra* note 78, at vi.

123. *Id.* at 30.

124. *Id.* at 30–31.

found that it often dissuaded the individual from filing a complaint at all because the footage did not support their account.¹²⁵

IV. LEGAL LIMITATIONS ON THE USE OF BODY-MOUNTED VIDEO CAMERAS

While technology makes it possible for law enforcement to misuse video footage, there are several ways in which the law, as it currently exists, limits police use of body-worn cameras. The Fourth Amendment gives some protection against recordings made in the home by body-worn cameras. There may also be Fourth Amendment protections against some particularly invasive recordings made outside the home by body-mounted cameras. The First Amendment may offer some protection against recordings of certain types of activities. Finally, in some states, wiretapping statutes offer broad protections against recordings made without the consent of all subjects, which would include recordings made by body-mounted cameras.

A. FOURTH AMENDMENT LIMITATIONS

The Fourth Amendment guarantees that “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizures, shall not be violated.” In *Katz v. United States*, the Court clarified that one’s right to privacy was not restricted to a particular area, but rather, “[w]hat a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.”¹²⁶ In his concurring opinion, Justice Harlan explained that there are two requirements for Fourth Amendment privacy protections to be implicated. The first is that the person showed a subjective expectation of privacy.¹²⁷ The second is that that expectation is reasonable by the standards of society.¹²⁸ The court subsequently

125. *Id.* at 33.

126. Van Tassell, *supra* note 76, at 199 (citing *United States v. Katz*, 389 U.S. 347, 351–352 (1967)).

127. *Id.* at 199–200 (citing *United States v. Katz*, 389 U.S. 347, 361 (Harlan, J., concurring)).

128. *Id.*

adopted Harlan's test as the primary test for determining whether the Fourth Amendment is at issue.¹²⁹

1. *Recording & Gathering Evidence*

The Fourth Amendment limitations on the use of body-worn cameras depend on where they are being used. The most significant distinction is between recordings made inside private homes and recordings made in public.

i. Inside the Home

There are several related questions raised by the use of body-cameras by police in the homes of civilians. One is whether a traditional (unrecorded) search of a home that is permissible under the Fourth Amendment is also permissible when the search is being recorded. The courts have noted that video surveillance of a home is more invasive than a manual search.¹³⁰ The Ninth Circuit explained that video surveillance is directed at individuals rather than property, and that "the silent unblinking lens of the camera [is] intrusive in a way that no temporary search of the office could have been."¹³¹

The fact that the body-worn cameras are recording law enforcement-related events strengthens the argument for recording inside private homes. The public has a greater interest in recordings of police actions, even if they are recorded in locations with a heightened expectation of privacy. In *Jean v. Massachusetts State Police*, the court found that police actions in a private home give rise to a strengthened public interest in the release of a recording.¹³² Several facts in *Jean* differ from the context of body mounted cameras. In *Jean*, the recording was made without the knowledge of the police officers by a "nanny cam" when Paul Pechonis was arrested in his home.¹³³ Pechonis gave the plaintiff, Mary Jean, the recording, and she posted it online. The court found that although the recording was made illegally, the privacy interest of the officers was "virtually irrelevant," explaining that

129. *Smith v. Maryland*, 442 U.S. 735, 740 (1979).

130. *United States v. Koyomejian*, 970 F.2d 536, 551 (9th Cir. 1992) (Kozinski, J., concurring); *United States v. Taketa*, 923 F.2d 665, 677 (9th Cir. 1991).

131. *Taketa*, 923 F.2d at 677.

132. *Jean v. Massachusetts State Police*, 492 F.3d 24, 30 (1st Cir. 2007).

133. *Id.* at 25.

the recording was of “a search by police officers of a private citizen’s home in front of that individual, his wife, other members of the family, and at least eight law enforcement officers,” which was “warrantless and potentially unlawful search of a private residence,” making it “a matter of public concern.”¹³⁴

The Supreme Court has traditionally been concerned about the protection of private homes from police searches. The Court in *Silverman v. United States* held that any search that involves a physical intrusion into a private home, no matter how slight, required a warrant.¹³⁵ And the courts have also recognized the danger in allowing technology to expand the ability of law enforcement to observe inside private homes, even without physical intrusion. In *Kyllo v. United States*, the Court grappled with the question of “what limits there are upon this power of technology to shrink the realm of guaranteed privacy.”¹³⁶ The court explained that “details of the home” that are not generally discoverable absent physical intrusion were “intimate details” and law enforcement needed a warrant to conduct a search that would uncover any of those details.¹³⁷ On the other hand, “[t]he Fourth Amendment protection of the home has never been extended to require law enforcement officers to shield their eyes when passing by a home on public thoroughfares,” and visual surveillance of a civilian’s home is usually permissible.¹³⁸

There are several cases that directly deal with videotaped searches of people’s homes. In these cases, however, the filming was done with a television crew, with the intention of broadcasting the footage on television. One of the first such cases was *Ayeni v. Mottola*, which involved a government search, filmed by a CBS Television crew.¹³⁹ The wife and children of the suspect brought the action. The wife was opposed to the filming, attempted to hide her and her children’s faces, and was not told that the camera crew was employed by CBS and not the government.¹⁴⁰ Although the footage was never broadcast, the Second

134. *Id.* at 30.

135. *Silverman v. United States*, 365 U.S. 505, 513 (1961).

136. *Kyllo v. United States*, 533 U.S. 27, 34 (2001).

137. *Id.* at 37, 40.

138. *California v. Ciraolo*, 476 U.S. 207, 213 (1986).

139. *Ayeni v. Mottola*, 35 F.3d 680, 683 (2d Cir. 1994).

140. Michael N. Levy, *The Price of Fame: Should Law Enforcement Officers Who Permit Camera Crews to Film the Execution of A Warrant in A Private Home Be Held Liable for Civil Damages?*, 92 NW. U. L. REV. 1153, 1157–58 (1998) (citing *Ayeni*, 35 F.3d at 683).

Circuit found that the lead agent's decision to allow the camera crew to film inside the home while executing the warrant amounted to an unreasonable search under the Fourth Amendment.¹⁴¹ In *Ayeni*, however, the footage was filmed by a third party who was not serving a law enforcement or civic purpose, whereas this would not be the case with video recorded by police body-mounted cameras.

Courts have, however, upheld covert recordings made by law enforcement or law enforcement informants who consensually entered a home. In *United States v. Davis*, the defendant invited a government informant into his home and carried out a drug transaction.¹⁴² The court allowed the admission of a video recording made inside the defendant's home, extending earlier rulings that covered audio recordings.¹⁴³ The court held that "video recordings that capture images visible to a consensual visitor" do not violate the Fourth Amendment.¹⁴⁴ In another case, a secret video, made by an undercover U.S. Fish and Wildlife agent who was invited inside the defendant's house, was also admitted for the same reasons.¹⁴⁵

Neither decision gives serious attention to the argument that video recording is significantly different from audio recording. This is despite the fact that video recordings contain additional information, including the appearance of individuals who are present, even if they choose not to speak, as well as the layout and contents of the home. While an audio recording captures what is happening at the time the recording is being made, a video recording captures additional, more static, details.

141. *Ayeni*, 35 F.3d at 686.

142. *United States v. Davis*, 326 F.3d 361, 363 (2d Cir. 2003).

143. *Id.* (citing *United States v. White*, 401 U.S. 745, 749, 753 (1971); *Lopez v. United States*, 373 U.S. 427, 438–40 (1963)); *Lopez*, 373 U.S. at 438–40 ("[T]he Government did not use an electronic device to listen in on conversations it could not otherwise have heard. Instead, the device was used only to obtain the most reliable evidence possible of a conversation in which the Government's own agent was a participant and which that agent was fully entitled to disclose. And the device was not planted by means of an unlawful physical invasion of petitioner's premises under circumstances which would violate the Fourth Amendment. It was carried in and out by an agent who was there with petitioner's assent, and it neither saw nor heard more than the agent himself.").

144. *Davis*, 326 F.3d at 363.

145. *United States v. Wahchumwah*, 710 F.3d 862, 868 (9th Cir. 2012).

ii. Outside the Home

While individuals generally have little protection from video surveillance outside the home, there are some legal protections against particularly invasive video surveillance, which might include certain uses of body-mounted camera footage. Specifically, the Fourth Amendment might also limit the use of body cameras for video surveillance. Some have argued that surveillance, even in a public place, constitutes a search when an “uninvited ear” observes the subject, or when other types of surveillance that violate a reasonable expectation of privacy are employed.¹⁴⁶ Others have argued that observation of an individual in public becomes a search when law enforcement records without the physical presence of a police officer or when the technology is used to enhance the image or sound in such a way as to reveal information that would normally not be apparent without a pat-down or physical search.¹⁴⁷

Traditional Fourth Amendment analysis has focused on physical detention and search.¹⁴⁸ With increased technological capabilities, however, surveillance of individuals in public places has the potential to reveal information about a person that the person would have expected to remain hidden, absent detention or physical search. The aggregation of data collected from surveillance of people in public over a long period of time and over large areas,

146. Capers, *supra* note 27, at 970 (“The argument is that it is one thing to be observed by a police officer, even one in plain clothes, who is physically present, but it is another thing entirely to be observed by a police officer via a remote video camera, particularly when one is unaware of the camera. The former scenario is analogous to an invited ear, re-conceptualized as an invited eye. The latter is analogous to an uninvited ear, re-conceptualized as an uninvited eye.”); Jennifer Mulhern Granholm, *Video Surveillance on Public Streets: The Constitutionality of Invisible Citizen Searches*, 64 U. DET. L. REV. 687, 695–96 (1987).

147. Marc Jonathan Blitz, *The Fourth Amendment Future of Public Surveillance: Remote Recording and Other Searches in Public Space*, 63 AM. U. L. REV. 21, 22 (2013).

148. *E.g.*, Erin Murphy, *Paradigms of Restraint*, 57 DUKE L.J. 1321, 1321–22 (2008) (“But whereas physical incapacitation of dangerous persons has always invoked some measure of constitutional scrutiny, virtually no legal constraints circumscribe the use of its technological counterpart. Across legal doctrines, courts erroneously treat physical deprivations as the archetypal “paradigm of restraint,” and thus largely overlook the significant threat to liberty posed by technological measures. Similarly, little academic attention has been paid to the state’s use of targeted forms of non-physical control. Much scholarly interest has focused on the increased use of physical incapacitation as a means of exerting regulatory control over, for example, illegal immigrants, pretrial detainees, or the mentally ill. And an equally vibrant debate surrounds the protection of information privacy in general society. Yet nearly no attention has been paid to the connection between these two developments.”).

as well as the magnification of things too small or far away to be readily observed, are two examples of the ability of technology to gather detailed information about individuals without detaining or physically searching them.¹⁴⁹ In some instances, these practices may constitute a search.¹⁵⁰

Police officers who are wearing body-mounted cameras are not shielded by the Fourth Amendment from being filmed because they are aware of the recording. Covert filming of employees at work can violate the Fourth Amendment, however, if the employees had a reasonable expectation of privacy.¹⁵¹ For this reason, it is important that police departments have policies for when police officers should have their cameras on, so that other officers and government employees know whether they are being filmed. Additionally, once a policy is established, it should be followed, otherwise the subject of the film could argue that they were filmed when they had a reasonable expectation of privacy.

The Supreme Court in *United States v. Knotts* mentioned that extensive monitoring of individuals without a warrant might be unconstitutional.¹⁵² In *Florida v. Riley*, the Supreme Court also suggested that although it was not unconstitutional to observe an individual from the air, it might be if particularly intrusive.¹⁵³ In *United States v. Maynard*, the D.C. Circuit applied the “mosaic theory,” the idea that information acquired through methods

149. Blitz, *supra* note 147, at 47.

150. *Id.*

151. Richards v. County of Los Angeles, 775 F. Supp. 2d 1176, 1186 (C.D. Cal. 2011).

152. United States v. Knotts, 460 U.S. 276, 283–84 (1983) (“Respondent does not actually quarrel with this analysis, though he expresses the generalized view that the result of the holding sought by the government would be that ‘twenty-four hour surveillance of any citizen of this country will be possible, without judicial knowledge or supervision.’ Br. for Resp., at 9 (footnote omitted). But the fact is that the ‘reality hardly suggests abuse,’ *Zurcher v. Stanford Daily*, 436 U.S. 547, 566 (1978); if such dragnet type law enforcement practices as respondent envisions should eventually occur, there will be time enough then to determine whether different constitutional principles may be applicable”).

153. Florida v. Riley, 488 U.S. 445, 451–52 (1989) (“This is not to say that an inspection of the curtilage of a house from an aircraft will always pass muster under the Fourth Amendment simply because the plane is within the navigable airspace specified by law. But it is of obvious importance that the helicopter in this case was not violating the law, and there is nothing in the record or before us to suggest that helicopters flying at 400 feet are sufficiently rare in this country to lend substance to respondent’s claim that he reasonably anticipated that his greenhouse would not be subject to observation from that altitude. Neither is there any intimation here that the helicopter interfered with respondent’s normal use of the greenhouse or of other parts of the curtilage. As far as this record reveals, no intimate details connected with the use of the home or curtilage were observed, and there was no undue noise, and no wind, dust, or threat of injury. In these circumstances, there was no violation of the Fourth Amendment.”).

which do not amount to a search individually can amount to a search when aggregated and analyzed, and found that prolonged GPS tracking of a car constituted a search.¹⁵⁴ In *United States v. Jones*, the Supreme Court found prolonged GPS surveillance of a vehicle to be a search.¹⁵⁵ In her concurrence, Justice Sotomayor explained that current technology made it cheap and feasible to aggregate large amounts of data, and to “mine it years in the future.”¹⁵⁶ Unlike previous Fourth Amendment jurisprudence, the mosaic theory concentrates on what is done with information after it is collected, including aggregation and analysis, not on the collection itself.¹⁵⁷ It has been suggested that the mosaic theory applies to video filmed in public.¹⁵⁸ Extending this logic, footage from body-mounted cameras could also fall under the mosaic theory if aggregated.

Despite these arguments, it is unlikely that the courts will find the use of body-mounted cameras to record individuals in public to be unconstitutional. Covert video surveillance of an individual’s property, such as a backyard for up to thirty days has been upheld by the courts.¹⁵⁹ The courts have not limited the use of stationary surveillance cameras outside the home, finding that an individual does not have an expectation of privacy on street,¹⁶⁰

154. *United States v. Maynard*, 615 F.3d 544, 555–56, 562 (D.C. Cir. 2010), *aff’d in part sub nom.*, *United States v. Jones*, 132 S. Ct. 945 (2012).

155. *Jones*, 132 S. Ct. at 946 (2012).

156. *Id.* at 955–56 (Sotomayor, J., concurring) (“In cases involving even short-term monitoring, some unique attributes of GPS surveillance relevant to the *Katz* analysis will require particular attention. GPS monitoring generates a precise, comprehensive record of a person’s public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations. The Government can store such records and efficiently mine them for information years into the future. And because GPS monitoring is cheap in comparison to conventional surveillance techniques and, by design, proceeds surreptitiously, it evades the ordinary checks that constrain abusive law enforcement practices: ‘limited police resources and community hostility.’ Awareness that the Government may be watching chills associational and expressive freedoms. And the Government’s unrestrained power to assemble data that reveal private aspects of identity is susceptible to abuse. The net result is that GPS monitoring — by making available at a relatively low cost such a substantial quantum of intimate information about any person whom the Government, in its unfettered discretion, chooses to track — may ‘alter the relationship between citizen and government in a way that is inimical to democratic society.’”) (citations omitted).

157. Orin S. Kerr, *The Mosaic Theory of the Fourth Amendment*, 111 MICH. L. REV. 311, 331–32 (2012).

158. *Montana State Fund v. Simms*, 270 P.3d 64, 69–72 (Mont. 2012).

159. *United States v. Houston*, 965 F. Supp. 2d 855, 916 (E.D. Tenn. 2013).

160. *McCray v. State*, 581 A.2d 45, 48 (Md. Ct. Special App. 1990).

sidewalk,¹⁶¹ taverns,¹⁶² front yards,¹⁶³ hallways at self-storage facilities,¹⁶⁴ the common area of bathrooms,¹⁶⁵ and even on top of mountains¹⁶⁶ and in open fields.¹⁶⁷

Many have criticized the state of current Fourth Amendment law for not adapting more to advances in technology. The California ACLU points out that “video surveillance cameras do not simply record information that is readily observable or available, they also record additional information and retain it for uses never before possible. Regrettably, the courts’ view of the privacy protections that apply in public places has not expanded to account for this change in the technological landscape, and Fourth Amendment court decisions do not reflect it.”¹⁶⁸

2. Use and Storage of Footage

There are few legal barriers to assembling images collected through body-worn cameras. Law enforcement continues to pursue the use of cameras with capacities beyond that of the naked eye.¹⁶⁹ Additionally, the Supreme Court has found that a person does not have a Fourth Amendment interest in her facial appearance, voice and other identifying features that are displayed in public.¹⁷⁰ The Supreme Court has upheld databases of private

161. *State v. Augafa*, 992 P.2d 723, 734 (Haw. Ct. App. 1999) (finding that footage of the defendant on a public sidewalk did not violate article 1 section 7 of Hawaii’s state constitution, which is “[s]imilar to the Fourth Amendment to the United States Constitution . . .”).

162. *Sponick v. Detroit Police Dep’t*, 211 N.W.2d 674 (Mich. Ct. App. 1973).

163. *State v. Holden*, 964 P.2d 318 (Utah Ct. App. 1998).

164. *State v. Bailey*, No. 1:05-CV-02, 2001 WL 1739445 (Del. Super. Ct. Nov. 30, 2001).

165. *People v. Lynch*, 445 N.W.2d 803 (Mich. Ct. App. 1989).

166. *United States v. Sherman*, No. 92-30067, 1993 WL 77236 (9th Cir. Mar. 18, 1993).

167. *State v. Costin*, 720 A.2d 866 (Vt. 1998).

168. SCHLOSBERG & OZER, *supra* note 43, at 7–8 (2007).

169. See, e.g., Ellen Nakashima, *FBI Prepares Vast Database of Biometrics*, WASH. POST (Dec. 22, 2007), <http://www.washingtonpost.com/wp-dyn/content/article/2007/12/21/AR2007122102544.html> [<http://perma.cc/WNM4-ARNQ>]; Craig Timburg, *New surveillance technology can track everyone in an area for several hours at a time*, WASH. POST (Feb. 4, 2014), http://www.washingtonpost.com/business/technology/new-surveillance-technology-can-track-everyone-in-an-area-for-several-hours-at-a-time/2014/02/05/82f1556e-876f-11e3-a5bd-844629433ba3_story.html [<http://perma.cc/5JEG-RFWT>]; Jerome Pender, *What Facial Recognition Technology Means for Privacy and Civil Liberties*, THE FEDERAL BUREAU OF INVESTIGATION (July 18, 2012), <https://www.fbi.gov/news/testimony/what-facial-recognition-technology-means-for-privacy-and-civil-liberties> [<https://perma.cc/AF5E-YA8E>].

170. *United States v. Dionisio*, 410 U.S. 1, 14 (1972); see also *United States v. Karo*, 468 U.S. 705, 730–31 (1984) (finding no expectation of privacy in what is exposed to the public).

information.¹⁷¹ There are also few constitutional limits on the use of a photographic database and FRT to scan faces in public in real-time.¹⁷² The use of a database within the home without a warrant, however, would possibly be found to violate the Fourth Amendment.¹⁷³

The boundaries of the mosaic theory as applied to video originally collected by body-mounted cameras, and not as part of an investigation are not well defined. There is disagreement over whether mosaic searches always require a warrant, or whether a reasonableness standard is sufficient in most cases.¹⁷⁴ Under current Fourth Amendment jurisprudence, it is unclear whether the aggregation of information from separate investigations by separate law enforcement agencies falls under the mosaic theory.¹⁷⁵

With digital recording technology, footage can be stored for long periods of time.¹⁷⁶ In the UK, the CCTV system can store footage for up to two years.¹⁷⁷ There are, however, considerable financial costs associated with the storage of large amounts of digital video.¹⁷⁸ In the United States, the length of time police departments store footage varies — some departments have set limits, while others store footage indefinitely.¹⁷⁹ In contrast, the

171. *Whalen v. Roe*, 429 U.S. 589, 605–06 (1977) (holding that a state database of patients who were prescribed certain drugs was not unconstitutional).

172. Susan McCoy, *O'big Brother Where Art Thou?: The Constitutional Use of Facial-Recognition Technology*, 20 J. MARSHALL J. COMPUTER & INFO. L. 471, 484 (2002).

173. *Kyllo v. United States*, 533 U.S. 27, 40 (2001) (requiring a warrant for the use of a thermal imager to determine heat radiating from inside of a home). *But cf.* *Minnesota v. Carter*, 525 U.S. 83, 85 (1998) (upholding the warrantless peeking through a slit in the closed blinds of a ground-level apartment).

174. Kerr, *supra* note 157, at 338.

175. *Id.* at 336.

176. Justine Brown, *Oakland Police Test Cloud Storage for Body Camera Video*, Government Technology (Feb. 26, 2015), <http://www.govtech.com/data/Oakland-Police-Test-Cloud-Storage-for-Body-Camera-Video.html> [<http://perma.cc/SEF5-44GB>] (“The Oakland Police Department, which currently has more than 600 body-worn cameras deployed citywide (the largest deployment of body cameras worldwide, according to Oakland Police Department Officer Dave Burke) is piloting the VERIPATROL platform for the Microsoft Azure Government cloud. Oakland retains video from its body-worn cameras on an in-house system for five years, but recently found the volume of video being stored was overwhelming its servers.”).

177. Dina Temple-Raston, *In U.S., Calls Grow for U.K.-Style Security Cameras*, NAT'L PUB. RADIO (July 4, 2007), <http://www.npr.org/templates/story/story.php?storyId=11737314> [<http://perma.cc/K9KJ-TEB6>].

178. White, *supra* note 3, at 31.

179. *Id.* (“Departments that have adopted body-worn cameras have varied widely on many of these issues. For example, many departments have set limits on how long video

norm in the U.K. is to delete footage from body-mounted cameras after 30 days.¹⁸⁰

B. FIRST AMENDMENT LIMITATIONS

Footage collected by body-mounted cameras could be used in a way that violates the First Amendment if it used to identify individuals engaged in protected activities, or intimidate members of particular groups. Department policies should reflect this constitutional limitation. Some argue that the Constitution grants a right to anonymity in public, and that indiscriminate use of surveillance systems and FRT on people moving in public interferes with a person's right to locomotion (guaranteed by the due process clause of the Fifth Amendment), rights of association and expression (guaranteed by the First Amendment) and the right to feel secure from unjustified government observation of everyday activities.¹⁸¹ Others have similarly argued that identification of individuals by video recording could violate their right to anonymity in political discourse.¹⁸² Just as surveillance generally can have a chilling effect¹⁸³ on political activity,¹⁸⁴ video recordings of certain activities could have a chilling effect. The courts have recognized the the First Amendment concerns when law enforcement attempts to compel organizations to turn over their membership lists,¹⁸⁵ or require people who are distributing leaflets to identify themselves.¹⁸⁶ They contend that if the government used surveillance cameras to identify attendees of a meeting, or individuals distributing leaflets, this would be a violation of the first amendment.¹⁸⁷

will be archived, but the Oakland (California) Police Department is currently storing video indefinitely . . .”).

180. Rutkin, *supra* note 62.

181. Christopher Slobogin, *Community Control over Camera Surveillance: A Response to Bennett Capers's Crime, Surveillance, and Communities*, 40 FORDHAM URB. L.J. 993 (2013).

182. Smith, *supra* note 32, at 36.

183. Jennifer Mulhern Granholm, *Video Surveillance on Public Streets: The Constitutionality of Invisible Citizen Searches*, 64 U. DET. L. REV. 687, 709 (1987).

184. *Buckley v. Am. Constitution Law Found.*, 525 U.S. 182 (1999); *Lamont v. Postmaster General*, 381 U.S. 301 (1965).

185. *NAACP v. Alabama*, 357 U.S. 449 (1958).

186. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, at 341–42.

187. SCHLOSBERG & OZER, *supra* note 43, at 7 (“Video cameras in public places also chill speech and associational activity by preventing people from remaining anonymous. Installing cameras in public spaces is tantamount to requiring people to identify themselves whenever they walk, speak, or meet in public. If these surveillance systems were

C. STATUTORY LIMITATIONS

The use of body-worn cameras is also not restricted by state law in many cases. Most state legislatures and local governments have not enacted law regulating other types of video surveillance, despite them having existed for some time.¹⁸⁸ While states have begun to enact statutes governing the use of body-mounted cameras and the footage they produce, it remains unregulated in many states.¹⁸⁹ A survey of police departments found that most who use CCTV video surveillance do not have written policies, and only a quarter of California cities using video surveillance had a written policy.¹⁹⁰

If left unmodified, some state wiretapping laws conflict with the use of body-worn cameras.¹⁹¹ Wiretapping laws fall into roughly two categories. Most states have “one-party consent” statutes, meaning that recordings of conversations are permitted so long as one person participating agrees to be recorded.¹⁹² In “two-party consent” states, however, recordings made without the consent of all parties are prohibited.¹⁹³ There are several variations of two-party statutes. Some only protect conversations where the parties had a reasonable expectation of privacy.¹⁹⁴

everywhere, it would be practically impossible to be in a public place without wondering whether the government was monitoring and recording who you were, where you were, and what you were doing. A government camera aimed at the entrance to a building where an organization held meetings could reveal association as readily as a membership list. Such a scenario would violate established First Amendment protections of speech and association. The U.S. Supreme Court has held that requiring people to identify themselves when expressing themselves in public is unconstitutional; likewise for requiring identification of a person’s association with others or with organizations. Individuals have a right to protest, leaflet, and circulate petitions anonymously, and courts have also ruled that it is improper to force the disclosure of membership lists.” (citations omitted).

188. BROWN, *supra* note 23, at 760.

189. *Access to Body-worn Camera Video*, REPORTER’S COMMITTEE FOR THE FREEDOM OF THE PRESS, <http://www.rcfp.org/bodycams> [<http://perma.cc/FPG8-HPKP>]; Kimberly Kindy, Kennedy Elliot & Ted Mellnik, *Of 138 Bills, Only Eight Provide a Pathway to Police Body Cameras*, WASH. POST (Oct. 8, 2015), <http://www.washingtonpost.com/graphics/national/body-cam-legislation> [<http://perma.cc/DUV5-8N6G>].

190. ACLU OF NORTHERN CALIFORNIA, 2006 PUBLIC RECORDS SURVEY SUMMARY FINDINGS (2006), http://www.aclunc.org/docs/government_surveillance/report_spreadsheet_for_web.pdf [<https://perma.cc/CP45-7ENP>] [hereinafter Public Records Summary].

191. MILLER & TOLIVER, *supra* note 16, at 14.

192. Van Tassel, *supra* note 76, at 185–86.

193. *Id.* at 186.

194. *Id.* at 186–87.

Others only prohibit secret recordings, and do not consider whether there is a reasonable expectation of privacy.¹⁹⁵

The states have differed in their interpretations of when a “reasonable expectation of privacy” protects private citizens. The Pennsylvania courts used a very fact-specific test to determine whether a police officer had a reasonable expectation of privacy.¹⁹⁶ A deciding factor in one case was that interviews are typically recorded and the officer was taking notes.¹⁹⁷ Other states, such as Washington, only apply their two-party wiretapping statute to conversations that are not public or official.¹⁹⁸ Although some actions by police officers exist in a gray zone, arrests are definitely public, and so not covered under the wiretapping statute.¹⁹⁹ In Massachusetts, where the statute forbids “secret” recordings, the courts have found that even conversations occurring in public and consisting of official police business, such as stopping and frisking a member of the public, for example, cannot be secretly recorded.²⁰⁰

There are constitutional limits on wiretapping statutes, however, and the courts have decided that even if a recording was made in a way that violates a two-party statute, the party who releases it to the public is not liable for that public release if public interest in the content is great enough.²⁰¹ In 2014, the Illinois wiretapping statute, which prohibited all recordings made without the consent of all parties, was ruled unconstitutional under the Illinois state constitution for being too broad.²⁰² The Court found that it was too broad, in many cases prohibiting conduct that was innocent and did not involve a legitimate privacy interest, thereby burdening speech.²⁰³

Pennsylvania has already changed their two-party wiretapping statutes to exclude police officers wearing cameras.²⁰⁴ Legis-

195. *Id.* at 187.

196. *Id.* at 189 (citing *Commonwealth v. Henlen*, 564 A.2d 905, 905–06 (Pa. 1989)).

197. *Henlen*, 564 A.2d at 517–18.

198. *Van Tassel*, *supra* note 76, at 190–91 (citing *Washington v. Flora*, 845 P.2d 1355 (Wash. Ct. App. 1992) and *Johnson v. Hawe*, 388 F.3d 676 (9th Cir. 2004)).

199. *Van Tassel*, *supra* note 76, at 190–91 (citing *Flora*, 845 P.2d at 1355–58).

200. *Van Tassel*, *supra* note 76, at 191–92 (citing *Glik v. Cunniffe*, 655 F.3d 78, 79 (1st Cir. 2011) and *Commonwealth v. Hyde*, 750 N.E.2d 963, 964 (Mass. 2001)).

201. *Van Tassel*, *supra* note 76, at 197–98 (citing *Bartnicki v. Vopper*, 532 U.S. 514 (2001); *Jean v. Mass. State Police*, 492 F.3d 24 (1st Cir. 2007)).

202. *People v. Melongo*, 6 N.E.3d 120, 126–27 (Ill. 2014).

203. *Id.* at 126.

204. 18 PA.C.S. § 5704 (16).

lators in other states are planning to follow suit.²⁰⁵ While some believe that body-mounted cameras will decrease instances where civilians are prosecuted for filming police,²⁰⁶ the existence of state wiretapping statutes alongside body-mounted cameras could lead to only police being permitted to record police encounters, a situation that worries some.²⁰⁷

D. TORT LAW LIMITATIONS

Tort law might place some limitations on the use of body-cameras and the footage they produce, particularly footage obtained illegally, such as during an improper search of a home. However, tort law is unlikely to limit any footage captured in public. As technology has made visual and auditory recording easier and common, there have been concerns that recordings made of people in public constitute a violation of privacy. As early as the 1890s, with the advent of portable cameras and press photographers, some legal scholars argued that the law should evolve to protect individuals from the “unauthorized circulation of portraits of private persons; and the evil of the invasion of privacy by the newspapers.”²⁰⁸ These scholars sought to find some principle of common law that would forbid the unauthorized dissemination of photographs.²⁰⁹

The courts, however, did not find such a “right to privacy” to forbid the reproduction and distribution of a likeness merely on the grounds that those actions would be distressing to the person depicted.²¹⁰ In the decades leading up to the 1960s, however, the concept of a right to privacy gained strength, and was included in

205. MILLER & TOLIVER, *supra* note 16, at 14.

206. Goode, *supra* note 21 (“If nothing else, he and other legal scholars said, the adoption of the body cameras by police departments may help discourage attempts to prosecute citizens for making their own video records of police interactions, in most cases under wiretapping or eavesdropping laws that prohibit recording without consent from both parties.”).

207. *Id.* (“Professor Wasserman noted that if the police are also videotaping their actions, ‘to say “we can have the cameras and nobody else can” really becomes problematic.”); Travis S. Triano, *Who Watches the Watchmen? Big Brother’s Use of Wiretap Statutes to Place Civilians in Timeout*, 34 CARDOZO L. REV. 389, 421 (2012).

208. Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 195 (1890) (footnote omitted).

209. *Id.*

210. *Roberson v. Rochester Folding Box Co.*, 171 N.Y. 538 (1902); *Murray v. Gast Lithographic & Engraving Co.*, 28 N.Y.S. 271 (N.Y.C.P. 1894).

state law and the Second Restatement of Torts.²¹¹ Photographs taken while the subject was in public were not generally included under these privacy torts, except in unusual circumstances where the photograph was taken when the subject's "status was changed without her volition to a status embarrassing to an ordinary person of reasonable sensitivity."²¹²

V. RECOMMENDATIONS

In light of the legal limitations on the use of body-worn cameras, and the policy concerns covered above, this Part will outline recommendations for departmental policies regarding the use of body-worn cameras, including when and where recordings can be made, and what should be done with the footage that is collected. This Note recommends that officers turn on their cameras whenever they exit the vehicle to interact with a member of the public, but may subsequently turn off their camera if requested by a member of the public. This Note also recommends that officers offer to turn off the camera when entering a home at the resident's invitation, but that SWAT operations inside homes should always be filmed. This Note further recommends that recordings not be used as a means to collect evidence and that footage not be stored for lengthy periods of time. Police Departments should only release footage that is redacted, and only in response to Freedom of Information requests.

A. WHEN TO RECORD

Under current Fourth Amendment case law and tort law, it is legal for police officers to record people who are in public. If body-cameras are used in a way that is meant to chill free speech, they may run afoul of the First Amendment, but otherwise there are few legal limits on the types of interactions that may be filmed in public. For various policy reasons, however, police departments should adopt a policy that allows officers to turn off cameras at the request of individuals, and when police officers are not performing their duties in a public place.

211. Alan Kato Ku, *Talk Is Cheap, but A Picture Is Worth A Thousand Words: Privacy Rights in the Era of Camera Phone Technology*, 45 SANTA CLARA L. REV. 679, 684 (2005).

212. *Daily Times Democrat v. Graham*, 160 So. 2d 474, 478 (Ala. 1964).

One possible standard for recordings could be for cameras to run continuously during a shift. Taking away officers' ability to turn off their cameras would ensure that the most volatile situations would be recorded.²¹³ Concerns about recording manipulation or failure to record events of public importance are especially important in states with two-party consent wiretapping statutes. This is because police have much broader rights to record than civilians, who cannot record police without the officers' consent.²¹⁴ This standard is attractive because it eliminates any ambiguity about when an officer should be recording, but it would also result in recording too much content, containing much information of no public importance. In addition, there is not a clear causal relationship between recording conversations between partners while they are alone in their vehicle, and reducing police brutality. Police officers in departments that have introduced body-mounted cameras have expressed concern regarding the loss of privacy.²¹⁵ If officers know they are being recorded, they will likely be reluctant to speak amongst each other about certain topics. These topics might include issues of public importance, such as departmental corruption, incompetency, or labor and employment issues. This could in turn hamper coordination among officers concerned with these issues.

A solution that could resolve most of the tensions involved in determining a policy of when to record would require officers to turn on cameras whenever they exit their vehicles into a public space while on duty, but would allow them to turn off cameras in a non-adversarial situation only if requested by a member of the public. Officers should be trained to offer to turn off cameras in situations where doing so would create a greater degree of comfort, but should not unilaterally decide to turn off their cameras. There should be a record of the request on the recording before it ends. This should minimize the chances that an officer would opportunistically record interactions, but would also allow the

213. Stanley, *supra* note 1, at 2.

214. MILLER & TOLIVER, *supra* note 16, at 14 ("In many two-party consent states, however, police executives have successfully worked with their state legislatures to have the consent requirement waived for body-worn police cameras. For example, in February 2014 Pennsylvania enacted a law waiving the two-party consent requirement for police using body-worn cameras. Efforts are under way to change two-party consent statutes in other jurisdictions as well. Each department must research its state laws to determine whether the two-party consent requirement applies."); Triano, *supra* note 207, at 421.

215. White, *supra* note 3, at 28.

public to interact with police officers more freely. If a situation becomes adversarial, the officer should switch his camera back on.

B. WHERE TO RECORD

Currently under the Fourth Amendment, recordings made by visitors within the home sometimes may be admissible. The increased expectation of privacy within the home²¹⁶ may prohibit the use of body-worn cameras as evidence collection tools when officers enter a home. For those constitutional reasons, as well as for policy reasons, police departments should include in their policies that consensual visits by police officers without a warrant are not used to collect footage that is later used to charge an individual with a crime, retroactively turning the visit into a search. Residents should have the option to demand that cameras are turned off before they allow police into their homes. In cases where there is a warrant, departments might consider a policy of not reexamining video footage as a means to find additional evidence beyond what was found at the search itself, but only as way to monitor police behavior.

Finally, the ACLU's recommendation that during SWAT raids cameras not be turned off²¹⁷ should be adopted. Although residents have a high degree of privacy protections in their homes, SWAT raids are likely to be volatile, and a policy of recording raids would help protect the safety of individuals inside the home, since officers will be aware that their actions are being recorded and may be more careful. Additionally, it is important to avoid creating a perverse incentive for police to accost individuals in their homes by surprise, rather than by other means, in order to avoid recording the exchange.

C. STORAGE OF RECORDINGS

The ACLU's policy does not assume that video footage will be used as evidence against members of the public in the same way that PERF's does.²¹⁸ If PERF's recommendation is followed, and

216. See Ayeni, 35 F.3d at 686.

217. See Stanley, *supra* note 1, at 4.

218. Stanley, *supra* note 1, at 7 ("The ACLU supports the use of cop cams for the purpose of police accountability and oversight. It's vital that this technology not become a

body-worn cameras become a systematic tool for evidence collection,²¹⁹ this will lead to more distrust of police interactions, hampering efforts to build better relationships between police departments and citizens. It may also make it more difficult to convince witnesses to talk with police.²²⁰ This is an especially pressing concern considering the technological implications of FRT and the extent of other types of surveillance.

Additionally, law enforcement officers should not worry that if they displease a superior, he will comb through years of footage in order to find incidents that he can use to discipline the officer. Finally, by limiting the amount of time footage is stored, the amount of footage released in a leak is minimized. For these reasons, the ACLU's position that footage should only be viewed when it is believed to contain evidence of a crime, and not scanned in an effort to find evidence of any crime, should be adopted alongside short storage periods.

D. RELEASE TO THE PUBLIC

Currently, tort law does not prohibit the distribution of recordings made in public, no matter how embarrassing,²²¹ and state Freedom of Information statutes require the release of redacted footage. There are significant policy reasons, however, for restricting the distribution of video from body-mounted cameras. It is important that members of the public do not avoid police for fear that footage will be released to the public. The recording of vulnerable individuals can create discomfort,²²² and the threat that the footage will be released to the public would only increase that discomfort. On the other hand, footage from body-worn

backdoor for any kind of systematic surveillance or tracking of the public. Since the records will be made, police departments need to be subject to strong rules around how they are used. The use of recordings should be allowed only in internal and external investigations of misconduct, and where the police have reasonable suspicion that a recording contains evidence of a crime. Otherwise, there is no reason that stored footage should even be reviewed by a human being before its retention period ends and it is permanently deleted. Nor should such footage be subject to face recognition searches or other analytics.”).

219. MILLER & TOLIVER, *supra* note 16, at 9.

220. White, *supra* note 3, at 27.

221. Daily Times Democrat, 162 So. 2d at 383; Josh Blackman, *Omniveillance, Google, Privacy in Public, and the Right to Your Digital Identity: A Tort for Recording and Disseminating an Individual's Image over the Internet*, 49 SANTA CLARA L. REV. 313, 321 (2009); See, e.g., *Dempsey v. Nat'l Enquirer*, 702 F. Supp. 927, 931 (D. Me. 1988) (citing Restatement (Second) of Torts § 652B (1977)).

222. White, *supra* note 3, at 7.

cameras can be used to promote police accountability, hopefully restoring trust between law enforcement and the communities they serve.

In light of these considerations and the importance of individual privacy, a policy where footage is released to the public only in redacted form (unless the consent of the subjects is obtained) and only when requested under Freedom of Information laws is an appropriate policy. PERF recommends releasing footage “preemptively,” but if a case is truly generating controversy amongst the public, a third party or the subject is likely to request the footage. Preemptive releases might be used to impinge the character of victims of police brutality. In the interest of fostering positive relationships with the community and encouraging voluntary interactions between police officers and the public, police departments should not pursue policies of “preemptive” release. Departments should establish procedures to ensure that requests under the Freedom of Information Act serve a public function and are not motivated by a desire to embarrass an individual by a member of the public or by a member of law enforcement.

Additionally, state Freedom of Information statutes should be modified to account for the use of this new technology and accompanying footage. Because requests for large amounts of footage can be costly,²²³ police departments should be able to challenge frivolous requests for large amounts of footage in court. Additionally, police departments and the subjects of recordings themselves should be able to prevent the release of particularly sensitive footage if it lacks any public significance.

VI. CONCLUSION

While body-mounted cameras have the potential to reduce police misconduct and brutality, their misuse has the potential to harm rather than help police/community relations. It is clear, after reviewing the current legal limitations, recommendations and typical practices of police departments, that the legal limits of how cameras can be used have not been completely established. It is also essential that policies adequately protect the

223. *Id.* at 33–34.

privacy of the public and officers alike, in addition to protecting free speech interests.

A policy that requires police officers to tape all interactions but allows some exceptions when requested by members of the public will capture almost all incidences of police misconduct committed against members of the public. Likewise, a policy that requires police departments to use footage primarily as a means of identifying and disciplining officers who behave inappropriately, instead as of a tool for evidence collection, will lead to better outcomes in reducing tensions between law enforcement and the community. Finally, a policy that allows the public to initiate the release of records but redacts personally identifying information protects the privacy of subjects while allowing for transparency and accountability.