

12-1-2015

## **Vol. 7 No. 1, Fall 2015; As If All The World Were Watching: Why Today's Law Enforcement Needs To Be Wearing Body Cameras**

Rikkilee Moser

Follow this and additional works at: [https://huskiecommons.lib.niu.edu/niulr\\_sup](https://huskiecommons.lib.niu.edu/niulr_sup)



Part of the [Law Commons](#)

---

### **Original Citation**

Rikkilee Moser, Comment, As If All The World Were Watching: Why Today's Law Enforcement Needs To Be Wearing Body Cameras, 7 N. Ill. U. L. Rev. Online Supp. 1 (2015).

This Article is brought to you for free and open access by the College of Law at Huskie Commons. It has been accepted for inclusion in Northern Illinois Law Review Supplement by an authorized administrator of Huskie Commons. For more information, please contact [jschumacher@niu.edu](mailto:jschumacher@niu.edu).

# As If All the World Were Watching: Why Today’s Law Enforcement Needs To Be Wearing Body Cameras

RIKKILEE MOSER\*

*The widespread use of body-worn cameras among police departments across the nation is not only the next logical step in law enforcement, but in the wake of the confrontation in Ferguson, Missouri between Michael Brown and Darren Wilson, it is also crucial to ensuring the safety of both civilians and officers alike. This article discusses the numerous advantages to body-worn technology and the positive results that have been demonstrated by precincts already utilizing the equipment; as well as dispels several counter arguments, namely that body-worn cameras are a violation of privacy.*

I.	INTRODUCTION.....	1
II.	BACKGROUND AND HISTORY.....	5
	A. POLICE USE OF EXCESSIVE FORCE.....	5
	B. USE OF BODY-WORN CAMERAS.....	9
	C. USE OF SIMILAR DEVICES.....	15
III.	PROTECTING THE CITIZENS.....	16
IV.	PROTECTING THE POLICE.....	19
V.	OVERCOMING THE OPPOSITION.....	21
	A. PRIVACY.....	21
	B. OTHER CONCERNS.....	24
VI.	SETTING THE STANDARDS.....	26
VII.	CONCLUSION.....	28

## I. INTRODUCTION

It was Saturday, August 9, 2014, in Ferguson, Missouri.<sup>1</sup> Michael Brown and his friend had just shoplifted a single pack of cigarillos and

---

\* Juris Doctor Candidate, May 2016, Northern Illinois University College of Law. I would like to thank my family and friends for their never ending support and encouragement; and I would like to thank Abigail Buckels for helping me realize the importance of this topic. I also wish to acknowledge the hours of hard work that the members of the Northern Illinois University Law Review have put into not only this article, but the entire publication.

<sup>1</sup> Rachel Clarke & Christopher Lett, *What Happened When Michael Brown Met Officer Darren Wilson*, CNN (Aug. 26, 2014, 5:00 PM), [perma.cc/TR2W-U6EN](http://perma.cc/TR2W-U6EN).

were heading home down the middle of the street.<sup>2</sup> A squad car approached them and the officer, Darren Wilson, began to curse at them to get out of the road.<sup>3</sup> The two young men responded by saying that they were a minute away from their destination and would soon be out of the street.<sup>4</sup> Frustrated, Wilson threw the car in reverse, backing up so quickly he almost hit Brown and his friend.<sup>5</sup> Inches away, when the officer attempted to open the car door, it slammed closed off the bodies of both boys.<sup>6</sup> Still inside the vehicle, Wilson reached out, grabbed Brown by the neck, and pulled him in through the open window.<sup>7</sup> When Brown resisted, Wilson grabbed his gun and threatened to shoot.<sup>8</sup> An instant later he did just that—striking Brown with a bullet.<sup>9</sup> Fear stricken, Brown turned to run from the squad car.<sup>10</sup> It was then that Wilson exited the vehicle, took aim, and shot at the retreating Brown.<sup>11</sup> At that point the teenager turned with his hands up to face the officer, begging for him to cease fire.<sup>12</sup> Wilson ignored the request and fired upon Brown several more times before the eighteen-year-old finally collapsed dead on the ground.<sup>13</sup>

At least, that is the story according to Brown's friend and other witnesses. If you ask Officer Wilson however, a different story is relayed.<sup>14</sup>

It was Saturday, August 9, 2014, in Ferguson, Missouri.<sup>15</sup> While on another call, Officer Darren Wilson heard a description from dispatch of two suspects of an alleged strong-arm robbery at a local convenience store.<sup>16</sup> After leaving the scene of his original call, the officer encountered the suspects walking down the middle of the street and requested that they relocate from the road where they were blocking traffic.<sup>17</sup> The two young men refused with cursing.<sup>18</sup> At this point, the officer backed the squad car

---

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. Clarke & Lett, *supra* note 1.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. Clarke & Lett, *supra* note 1.

12. *Id.*

13. *Id.*

14. See Grand Jury Tr. vol. 5, State of Missouri v. Darren Wilson, at 195 (Mo. Grand Jury Sept. 16, 2014), [perma.cc/Y9QS-2Z3L](http://perma.cc/Y9QS-2Z3L) (contains the entire testimony of Officer Darren Wilson about his encounter with Michael Brown).

15. Clarke & Lett, *supra* note 1.

16. *Id.*

17. *Id.*

18. *Id.*

up and attempted to exit the vehicle.<sup>19</sup> However, Brown and his friend slammed the car door violently shut before Wilson was able to get out.<sup>20</sup> Wilson again attempted to vacate the vehicle, but Brown shoved him back inside and punched him in the face.<sup>21</sup> It was then that the officer reached for his gun, which Brown immediately grabbed for as well.<sup>22</sup> Brown had the gun turned against the hip of Wilson, and when the officer shoved it away the gun went off.<sup>23</sup> Afterwards, Brown took off running.<sup>24</sup> Protocol calls for pursuit, so Wilson exited the vehicle and yelled at Brown to freeze.<sup>25</sup> The teen stopped, turned to face the officer, and began to taunt him.<sup>26</sup> Then Brown began to rush at full speed towards Wilson.<sup>27</sup> The officer opened fire, which seemingly had no effect on Brown who kept rushing forward; so Wilson continued to shoot until the young man fell dead several feet in front of him.<sup>28</sup>

The only similarities between these two accounts of the exact same event are the date and location. So who are we supposed to believe? That same question was presented to a twelve person grand jury in St. Louis County.<sup>29</sup> Over the three months following the incident, seventy hours of testimony from sixty witnesses were presented.<sup>30</sup> On November 24, 2014, the grand jury's verdict to not indict Officer Wilson was released.<sup>31</sup> This decision sparked mass outrage, chaos, riots, and destruction across the country—with its epicenter in Ferguson.<sup>32</sup> Even the National Guard was deployed, which had been on standby per the request of Missouri Governor Jay Nixon.<sup>33</sup> Protesters shut down the interstate, all incoming St. Louis flights were cancelled, and the area above Ferguson was temporarily declared a no-fly zone.<sup>34</sup> Media reporters were pelted with rocks and other

---

19. *Id.*

20. Clarke & Lett, *supra* note 1.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. Clarke & Lett, *supra* note 1.

26. *Id.*

27. *Id.*

28. *Id.*

29. Moni Basu et al., *Fires, Chaos Erupt in Ferguson After Grand Jury Doesn't Indict in Michael Brown Case*, CNN (Nov. 25, 2014, 8:53 AM), [perma.cc/SA9F-U9M6](http://perma.cc/SA9F-U9M6).

30. Julie Bosman et al., *Amid Conflicting Accounts, Trusting Darren Wilson*, N.Y. TIMES (Nov. 25, 2014), <http://www.nytimes.com/2014/11/26/us/ferguson-grand-jury-weighed-mass-of-evidence-much-of-it-conflicting.html>.

31. Basu, *supra* note 29.

32. *See id.*

33. *Id.*

34. *Id.*

materials in an attempt to prevent reporting of the destruction.<sup>35</sup> As many as twenty-five stores were looted and set ablaze—including the convenience store which Brown had robbed prior to his death.<sup>36</sup> Additionally, multiple vehicles were also set on fire.<sup>37</sup> In fact, there were so many fires that the fire department could not reach them all.<sup>38</sup> The police department made over eighty arrests that fateful night, and St. Louis Police Chief Jon Belmar claimed he heard numerous shots ring out, none of which he avows were fired by law enforcement.<sup>39</sup>

Unfortunately, this particular example is not a unique one.<sup>40</sup> Although the extreme level of rioting seen in Ferguson may be rare, it is actually quite common for “radically divergent accounts of incidents” to be presented following an altercation involving law enforcement.<sup>41</sup> The sad irony however, is that the contradiction between witnesses and Officer Wilson could have easily been resolved; and even more so, Michael Brown’s life could have potentially been spared.

The Ferguson Police Department, at the time of the shooting, had a supply of what are commonly known as body-worn cameras.<sup>42</sup> These devices attach to the uniform of an officer and, in startling clarity, record both video and audio of an officer’s interactions with the public.<sup>43</sup> If these devices had been in use on August 9 instead of sitting in a storage room, the small town of Ferguson, Missouri would not be talked about in homes across the country. Either the witnesses’ stories or Wilson’s story would be verified and the proper steps would accordingly have been taken.

Retired commander of officer training, Neill Franklin, stated that during training sessions he would tell officers to behave as though they were constantly being filmed.<sup>44</sup> His reasoning was that “[police officers] – like

---

35. *Id.*

36. *Gunshots, Looting After Grand Jury in Ferguson Case Does Not Indict Officer in Michael Brown Shooting*, FOX NEWS (Nov. 25, 2014), [perma.cc/M4GJ-UN46](http://perma.cc/M4GJ-UN46) [hereinafter *Gunshots*]; Basu, *supra* note 29.

37. Basu, *supra* note 29.

38. *Id.*

39. *Gunshots*, *supra* note 36; Basu, *supra* note 29.

40. 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, 357 (2010).

41. Jay Stanley, *Police Body-Mounted Cameras: With Right Policies in Place, a Win For All*, ACLU 1 (Oct. 2013), [perma.cc/TN7E-MV76](http://perma.cc/TN7E-MV76).

42. 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>.

43. *E.g.*, Harris, *supra* note 40, at 362.

44. Neill Franklin, *Body Cameras Could Restore Trust in Police*, N.Y. TIMES (Oct. 22, 2013, 4:44 PM), [perma.cc/Y66S-AUXR](http://perma.cc/Y66S-AUXR).

most people – behave better when they believe they’re being watched.”<sup>45</sup> Assuming the witness testimony is truthful—if Officer Wilson had known his actions were being documented, more likely than not he never would have pulled that trigger. However, on the converse, if Wilson’s story is the truthful one, his actions would be justified and he would not have been forced to resign.<sup>46</sup>

Thus, the aim of this Comment is to prove that mandating the use of body-worn technology among all police departments across the nation protects the undeserving victims of police brutality, the officers against career threatening false accusations, and police departments against timely and costly criminal investigations. Part II of this Comment will first provide a brief summary of the issue of police use of excessive force, as well as the historical background of heightened police tactics and the use of body-worn cameras. Part III will establish that implementing regulations governing the use of such devices protects primarily the general public, yet Part IV will illustrate that law enforcement officers reap the benefits as well. The focus of Part V will be to rebut the major arguments in opposition of body-worn cameras—namely the invasion of privacy. Afterwards, this Comment will offer several suggestions in Part VI for appropriate standards pertaining to body-worn technology, and will ultimately conclude in Part VII.

## II. BACKGROUND AND HISTORY

### A. POLICE USE OF EXCESSIVE FORCE

“[H]istory exposes an unfortunate number of instances where those sworn to serve and protect have fallen well short of the acceptable standard.”<sup>47</sup> And there is indeed a clear standard. The International Association of Chiefs of Police published a continuum of appropriate use of officer force based on the amount of resistance faced.<sup>48</sup>

---

45. *Id.*

46. Jack Healey & Monica Davey, *Darren Wilson, Officer in Ferguson Shooting, Resigns From Police Dept.*, N.Y. TIMES (Nov. 29, 2014), [perma.cc/MCW7-K3S9](http://perma.cc/MCW7-K3S9).

47. Steven A. Lutt, Comment, *Sunlight is Still the Best Disinfectant: The Case for a First Amendment Right to Record the Police*, 51 WASHBURN L.J. 349, 352 (2012).

48. Michael E. Miller, *Taser Use and the Use-of-Force Continuum: Examining the Effect of Policy Change*, 77:9 THE POLICE CHIEF, Sept. 2010, at 72, 72 [perma.cc/GB6V-QB55](http://perma.cc/GB6V-QB55).

Suspect Resistance	Officer Use of Force
1. No resistance	1. Officer presence
2. Verbal noncompliance	2. Verbal commands
3. Passive resistance	3. Hands-on tactics, chemical spray
4. Active resistance	4. Intermediate weapons: batons, Taser, strikes, nondeadly force
5. Aggressive resistance	5. Intermediate weapons, intensified techniques, nondeadly force
6. Deadly-force resistance	6. Deadly force

**Use-of-Force Continuum**<sup>49</sup>

Furthermore, in an attempt to avoid ambiguity and subjectivity, the Association has also defined the latter four levels of resistance. Passive resistance is considered to be present when “[t]he subject fails to obey verbal direction, preventing the officer from taking lawful action.”<sup>50</sup> Active resistance occurs when “[t]he subject’s actions are intended to facilitate an escape or prevent an arrest. The action is not likely to cause injury.”<sup>51</sup> Aggressive resistance exists when “[t]he subject has battered or is about to batter an officer, and the subject’s action is likely to cause injury.”<sup>52</sup> Lastly, deadly force resistance is identified when “[t]he subject’s actions are likely to cause death or significant bodily harm to the officer or another person.”<sup>53</sup>

Unfortunately, these standards are not always met. One of the most prominent instances of law enforcement falling short of the acceptable standard of use of force involved a man named Rodney King. The police conduct was so egregious that their acquittals sparked riots across Los Angeles.<sup>54</sup> In a unique twist for the early 1990s, the King beating was captured on camera by an amateur bystander.<sup>55</sup> It is presumable that if the officers

---

49. *Id.*

50. *Id.* at 73.

51. *Id.*

52. *Id.*

53. Miller, *supra* note 48, at 73.

54. Douglas O. Linder, *The Trials of Los Angeles Police Officers’ in Connection with the Beating of Rodney King*, UNIV. OF MO.-KAN. CITY SCH. OF LAW (2001), [perma.cc/R8PK-MGB6](http://perma.cc/R8PK-MGB6).

55. *Id.*

involved had known they were being filmed they would not have continued to kick, beat, and otherwise brutalize a defenseless man.<sup>56</sup>

The Rodney King case from 1991 is unfortunately not the only example of police brutality that history produces. In 1998, an unarmed black man was shot forty-one times and killed in the entry of his own home; incredulously, the New York officers were acquitted of all charges.<sup>57</sup> An unarmed individual in the entryway of his own home does not display any sort of resistance or threat to an officer, and does not warrant a single shot fired, let alone forty-one.<sup>58</sup> According to the continuum, the proper response by officers would have been mere presence and verbal commands.<sup>59</sup>

In 2002, two California police officers were secretly filmed beating a handcuffed sixteen-year-old boy by repeatedly punching and choking him, as well as slamming his limp body against the trunk of their squad car even after he had passed out.<sup>60</sup> Once an individual is unconscious they are no longer resisting in any manner, and officer use of force should immediately cease.<sup>61</sup>

In 2006, an unarmed Maryland college student “suspected” of theft was killed after he was struck in the back eight times by an officer firing sixteen bullets.<sup>62</sup> An unarmed individual whose back is turned away from an officer constitutes minimal threat. Even if the student was displaying active resistance by attempting to escape, the proper response would have been to use intermediate weapons.<sup>63</sup>

Three years later, in 2009, a special needs fifteen-year-old boy was punched, slammed into a row of lockers, and wrestled to the ground by a Chicago policeman after the teen “talked back” to the officer.<sup>64</sup> Back talk from a teenager can hardly be considered resistance. While it may have

56. *Infra* pp. 18-19.

57. U.S. COMM’N ON CIVIL RIGHTS, *Police Brutality is Widespread*, in POLICE BRUTALITY 21, 22 (Sheila Fitzgerald ed., 2007); Michael Cooper, *Officers in Bronx Fire 41 Shots, And an Unarmed Man Is Killed*, N.Y. TIMES (Feb. 5, 1999), <http://www.nytimes.com/1999/02/05/nyregion/officers-in-bronx-fire-41-shots-and-an-unarmed-man-is-killed.html>.

58. *See* Miller, *supra* note 48, at 72-73.

59. *Id.*

60. Pete Brush & Alexandria Sage, *Cop’s Taped Beating Trial Starts*, CBS NEWS (July 14, 2003, 9:08 AM), [perma.cc/7RCD-Q4G6](http://perma.cc/7RCD-Q4G6).

61. *See* Miller, *supra* note 48, at 72-73.

62. U.S. COMM’N ON CIVIL RIGHTS, *supra* note 57, at 24; Ruben Castaneda, *Officer Liable in Student’s Killing*, WASH. POST (Jan. 20, 2006), [perma.cc/VG7X-JM8F](http://perma.cc/VG7X-JM8F).

63. *See* Miller, *supra* note 48, at 72-73.

64. Kim Janssen & Jeremy Gorner, *Dolton Cop Caught on Camera in Student’s Beating in Jail on Rape Charge*, CHI. TRIB. (Oct. 9, 2009), [perma.cc/2WLG-K8HN](http://perma.cc/2WLG-K8HN) (reporting that not only did this particular officer beat a special needs teenager, but is also now imprisoned for an unrelated rape charge following his departure from the Chicago police force).



offended the officer, the boy's actions in no way constituted a threat or warranted any level of physical retaliation.<sup>65</sup>

In 2014, an unarmed mentally ill man named Ezell Ford was shot and killed by two Los Angeles police officers.<sup>66</sup> Similar to the discrepancies in Ferguson, the officers involved offered one story where the victim was violent towards them, while witnesses offered a different version where a struggle never ensued.<sup>67</sup> Unless the officers' story was proven true (which is nearly impossible without video evidence) and the amount of violence displayed by Mr. Ford was enough to threaten death or serious bodily injury to the two officers, less lethal means should have been used.<sup>68</sup>

Less than a week after the Ford incident, New York officers were caught on tape beating a man being arrested without cause.<sup>69</sup> Santiago Hernandez was compliant with a stop-and-frisk which turned up no results, yet when the officer attempted to handcuff him Hernandez refused to put his arm behind his back and questioned why he was being placed under arrest.<sup>70</sup> At this point the officers on scene began to punch, kick, beat with their batons, and even pepper spray the man.<sup>71</sup> Hernandez cannot be considered to have displayed even passive resistance since that requires the prevention of performance of a *lawful* act.<sup>72</sup> The officer had no lawful reason to arrest Mr. Hernandez at that moment.<sup>73</sup>

Unnecessary use of violence is not limited to local law enforcement either. Officers of the United States Customs and Border Patrol (CBP), a division of the Department of Homeland Security, have ended the lives of twenty-seven people in the last four years.<sup>74</sup> Even more troubling, the list of deceased includes "minors, U.S. citizens, individuals alleged to be throwing rocks, and individuals killed while on the Mexican side of the border."<sup>75</sup> The American Civil Liberties Union (ACLU) reported that "CBP officials

---

65. See Miller, *supra* note 48, at 72-73.

66. Thomas Johnson, *Ezell Ford: The Mentally Ill Black Man Killed by the LAPD Two Days After Michael Brown's Death*, WASH. POST (Aug. 15, 2014), [perma.cc/U89N-5NHK](http://perma.cc/U89N-5NHK).

67. *Id.*

68. See Miller, *supra* note 48, at 72-73.

69. Ed Mazza, *Santiago Hernandez Claims Police Brutality in NYPD Beating Caught on Video*, HUFFINGTON POST (Sept. 8, 2014, 2:52 AM), [perma.cc/BZC7-QP4J](http://perma.cc/BZC7-QP4J).

70. *Id.*

71. *Id.*

72. See Miller, *supra* note 48, at 72-73.

73. See Mazza, *supra* note 69.

74. *Strengthening CBP with the Use of Body-Worn Cameras*, ACLU, [perma.cc/P2ZU-D9ZA](http://perma.cc/P2ZU-D9ZA) (last updated June 27, 2014).

75. *Id.*

at ports of entry have a pattern of using force abusively and some Border Patrol agents have improperly used force on children.”<sup>76</sup>

The stories are endless. That is not to say however, that all cops are corrupt or engage in the use of excessive force. There are plenty of honest police officers in this country; the problem is that “plenty” is not enough. “No person should be above the law, particularly those sworn to uphold it.”<sup>77</sup> Even one life unjustly taken is one too many. That is why the implementation of body-worn cameras is crucial to our society.

The fact that police brutality does occur is not something that remains a mystery. The United States government is, and was, well aware of the issue, prompting Congress to pass the Violent Crime Control and Law Enforcement Act of 1994.<sup>78</sup> This Act specified that “[t]he Attorney General shall, through appropriate means, acquire data about the use of excessive force by law enforcement officers. . . . [and] publish an annual summary of the data acquired.”<sup>79</sup> Despite this federal law, information on police use of excessive force has not been collected or reported in over a decade.<sup>80</sup>

## B. USE OF BODY-WORN CAMERAS

Body-worn technology is not a novel issue. Agencies in the United Kingdom began testing body cameras as early as 2005.<sup>81</sup> Plymouth, England commenced its first tests using a head-mounted video system, and continued its use in 2006 during the department’s Domestic Violence Enforcement Campaign.<sup>82</sup> After these maiden trials, the Police Standards Unit found that the potential for body-worn cameras to significantly “improve the effectiveness of operational policing” was great.<sup>83</sup> It was reported that as a result of head cameras in the Plymouth Police Department, officers had a heightened awareness of their behavior, which led to an increased manner of professionalism when interacting with the public.<sup>84</sup> Additionally, numerous complaints against the officers were quickly and easily negated after footage of the encounter was viewed.<sup>85</sup>

---

76. *Id.*

77. Franklin, *supra* note 44 (emphasis added).

78. Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C § 14142 (2012).

79. *Id.*

80. Steve Strahley, *Federal Law Requiring Annual Report on Excessive Force by Police has been Ignored for 20 Years*, ALLGOV (Aug. 22, 2014), [perma.cc/NT6Y-DDAJ](http://perma.cc/NT6Y-DDAJ).

81. Harris, *supra* note 40, at 361.

82. Martin Goodall, *Guidance for the Police Use of Body-Worn Video Devices*, POLICE AND CRIME STANDARDS DIRECTORATE 6 (July 2007), [perma.cc/VG3R-K2YN](http://perma.cc/VG3R-K2YN).

83. *Id.*

84. *Id.* at 32.

85. *Id.*

Specifically, the Police Standards Unit reported seven key aspects of policing that were enhanced by the use of this technology.<sup>86</sup> First, evidence is able to be recorded with far greater precision, thus, eliminating doubt about what actually transpired.<sup>87</sup> Second, officers save precious time with less paperwork and fewer court visits.<sup>88</sup> Third, charges are less likely to be contested when conduct was captured on film, leading to a more prompt resolution of cases.<sup>89</sup> Fourth, when an officer deploys the use of a firearm their actions may more easily be proven justified (or unjustified).<sup>90</sup> Fifth, prosecution of domestic violence is made easier by presenting an accurate record of the scene, including the emotional state of the victim.<sup>91</sup> After all, “videos often provide a raw, unedited portrayal of events that compels the viewer in a way that conventional second-hand . . . reports simply cannot.”<sup>92</sup> Sixth, individuals reduce erratic behavior when confronted by an officer with a head camera.<sup>93</sup> Seventh, and lastly, body-worn technology is an invaluable tool for training new officers; as well as evaluating the performance of both rookie and experienced officers.<sup>94</sup>

This small study that began with one head camera<sup>95</sup> morphed into a national phenomenon within less than a decade.<sup>96</sup> Today, every police force in the United Kingdom uses body-worn technology in some manner or another.<sup>97</sup> In fact, Paul Kinsella of the Body Worn Video Steering Group and the West Mercia Police<sup>98</sup> even claims that the first instances of uniform national standards for the implementation and use of body cameras are imminent.<sup>99</sup>

Following the trend, in 2013, Rialto—a small town in Southern California—conducted a field experiment to test “whether police body-worn cameras would lead to socially-desirable behavior of the officers who wear

---

86. Goodall, *supra* note 82, at 7-8.

87. *Id.* at 7; Harris, *supra* note 40, at 361.

88. Goodall, *supra* note 82, at 7; Harris, *supra* note 40, at 361.

89. Goodall, *supra* note 82, at 7; Harris, *supra* note 40, at 361.

90. Goodall, *supra* note 82, at 7; Harris, *supra* note 40, at 362.

91. Goodall, *supra* note 82, at 8; Harris, *supra* note 40, at 362.

92. Lutt, *supra* note 47, at 350.

93. Goodall, *supra* note 82, at 8.

94. *Id.*

95. *Id.* at 30.

96. See Jose Sanchez de Muniain, *Are You Getting the Full Picture?*, 27 APCO CAN. 20, 21 (2014), [perma.cc/X9TT-7D5G](http://perma.cc/X9TT-7D5G).

97. *Id.*

98. The West Mercia Police are in charge of the fourth largest geographic area in all of England and Wales. *About Us*, WEST MERCIA POLICE, [perma.cc/4YUK-ALUK](http://perma.cc/4YUK-ALUK) (last visited Dec. 16, 2015).

99. Sanchez de Muniain, *supra* note 96.

them.”<sup>100</sup> For an entire year officers’ shifts were randomly assigned to either a control group or an experimental group.<sup>101</sup> The control group consisted of officers who did not have a camera, while those in the experimental group were fitted with a high definition (HD) body-worn camera that captured audio and video of every single police-public encounter during that shift.<sup>102</sup> The rectitude of research was maintained by monitoring footage to ensure that all officers were complying with the regulations of the experiment.<sup>103</sup> Preliminary results showed that there were twice as many instances of force used during shifts *without* cameras than during shifts *with* cameras.<sup>104</sup> Furthermore, compared with the previous year, complaints against officers plummeted by an astounding 88%, while officers’ use of force declined by 60%.<sup>105</sup> Rialto, California’s police chief and thirty-four year police force veteran, William Farrar, said that he believed the cameras had a positive impact on both the citizens and the officers, and that the body-worn devices “mitigated a lot of circumstances instead of escalating them.”<sup>106</sup>

Rialto is not the only stateside precinct to implement the use of body-worn cameras.<sup>107</sup> Arizona cities Phoenix and Mesa both piloted their own programs as well. In 2012, the Mesa Police Department outfitted fifty officers with body cameras for a year-long study.<sup>108</sup> Results from the police officers with body cameras were compared to a control group of demographically similar officers without the technology.<sup>109</sup> The outcomes showed that, during the first eight months of the study, a total of eight complaints were filed against those with body cameras, while twenty-three complaints were filed against officers without the devices.<sup>110</sup> And just to prove that the distinction was not due to the unique officers in each group, Mesa also compared the camera users to their performance the preceding year before the technology had been introduced.<sup>111</sup> By the time the project was to be com-

---

100. Tony Farrer, *Self-Awareness to Being Watched and Socially-Desirable Behavior: A Field Experiment on the Effect of Body-Worn Cameras on Police Use-of-Force*, POLICE FOUND. 2 (Mar. 2013), [perma.cc/Z9FX-XPHC](http://perma.cc/Z9FX-XPHC).

101. *Id.* at 5.

102. *Id.*

103. *Id.*

104. *Id.* at 8.

105. Rory Carroll, *California Police Use of Body Cameras Cuts Violence and Complaints*, THE GUARDIAN (Nov. 4, 2013, 12:00 PM), [perma.cc/BWJ4-T87L](http://perma.cc/BWJ4-T87L).

106. Ashley Fantz, *No Dashcams in Ferguson: One Less Tool in Michael Brown Shooting Investigation*, CNN (Aug. 14, 2014, 10:02 PM), [perma.cc/Z3P8-K9ZM](http://perma.cc/Z3P8-K9ZM).

107. See, e.g., Jeremy Gorner, *Officers’ Body Cameras to Pose Tough Issues for Chicago Police*, CHI. TRIB. (Sept. 15, 2014, 5:00 AM), [perma.cc/XX7Y-UUL4](http://perma.cc/XX7Y-UUL4).

108. MICHAEL D. WHITE, POLICE OFFICER BODY-WORN CAMERAS: ASSESSING THE EVIDENCE 17 (2014), [perma.cc/NJJ4-Y5Q5](http://perma.cc/NJJ4-Y5Q5).

109. *Id.* at 18.

110. *Id.* at 21.

111. *Id.*

pleted, it was projected that a total of twelve complaints would be made against the officers in the study, while thirty had been made the year before.<sup>112</sup> 80% of Mesa officers further stated they believed the cameras would improve the quality of evidence, and 76% said they would facilitate domestic violence cases by preserving the demeanor of the victim.<sup>113</sup> Furthermore, in 2013, Phoenix began its year-long trial with a test group of fifty-six officers equipped with body-worn cameras.<sup>114</sup> This group was compared to a neighboring squad of fifty officers without cameras.<sup>115</sup> Law enforcement from the test group affirmed that the devices caused citizens to behave better once they realized they were on film.<sup>116</sup>

Many other cities have also implemented body-camera procedures for their officers, although they have not undergone official comparative studies as Rialto, Mesa, and Phoenix have done.<sup>117</sup> The Police Executive Research Forum found that of 254 departments surveyed—about a quarter of them used body cameras.<sup>118</sup> Additionally, of the one hundred most populous U.S. cities, forty-one are currently using body-worn technology, and twenty-five have plans to do so in the near future.<sup>119</sup>

Washington D.C. police began their trial program in October of 2014 and was so successful that in order to fund a full-scale program outfitting all D.C. patrol officers with body-worn cameras, Mayor Muriel Bowser allotted \$5.1 million for the project in her 2016 Fiscal Year budget proposal.<sup>120</sup> Similarly, Chicago delved into its pilot trial in January of 2015, with hopes to extend the program another four years after a favorable preliminary finding.<sup>121</sup> Additionally, in New York City, Judge Shira A. Scheindlin provided a judicial mandate for officer-worn cameras for three reasons.<sup>122</sup>

First, [the recordings] will provide a contemporaneous, objective record of stops and frisks . . . .

---

112. WHITE, *supra* note 108, at 21.

113. *Id.* at 25.

114. *Id.*

115. *Id.*

116. *Id.* at 23.

117. *E.g.*, Peter Hermann & Rachel Weiner, *Issues Over Police Shooting in Ferguson Lead Push for Officers and Body Cameras*, WASH. POST. (Dec. 2, 2014), [perma.cc/W42P-ZKY2](http://perma.cc/W42P-ZKY2).

118. *Id.*

119. *Is Your Police Force Wearing Body Cameras?*, VOCATIV (Nov. 15, 2014, 10:11 AM), [perma.cc/D9GP-RXNF](http://perma.cc/D9GP-RXNF).

120. Metropolitan Police Department, *MPD and Body-Worn Cameras*, DC.GOV, [perma.cc/MUP8-9PJZ](http://perma.cc/MUP8-9PJZ) (last visited Dec. 16, 2015).

121. Derrick Blakley, *Chicago Police To Begin Testing Body Cams This Week*, CBS CHI. (Jan. 20, 2015, 6:26 PM), [perma.cc/3XNH-9KEP](http://perma.cc/3XNH-9KEP).

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

[which] may either confirm or refute the belief of some minorities that they have been stopped simply as a result of their race, or based on the clothes they wore . . . . Second, the knowledge that an exchange is being recorded will encourage lawful and respectful interactions on the part of both parties. Third, the recordings will diminish the sense on the part of those who file complaints that it is their word against the police.<sup>123</sup>

Moreover, several states have also introduced legislation requiring the use of body-worn technology throughout their jurisdictions. Lawmakers in Maryland,<sup>124</sup> Mississippi,<sup>125</sup> Missouri,<sup>126</sup> New Hampshire,<sup>127</sup> New Jersey,<sup>128</sup> and New York<sup>129</sup> have previously presented bills to their respective legislatures.

Maryland House Bill 633 was originally brought in the House of Representatives in January of 2014, and suggested that police officers in the city of Baltimore be required to wear a camera and record video, without audio, of all interactions between the officer and the public.<sup>130</sup> Footage was to be preserved for a minimum of thirty days.<sup>131</sup> At the same time, Mississippi also attempted to pass an act requiring that law enforcement be provided with body-worn cameras with which to capture both audio and video.<sup>132</sup> Mississippi House Bill 1069 further suggested the use of penalties for those officers who failed to follow the provisions of the act.<sup>133</sup> Again in January of 2014, in the Missouri House of Representatives, Bill 1699 was introduced requiring the same policies as the Maryland bill—law enforcement to wear a camera during their shift and to store footage for at least thirty days.<sup>134</sup> The only difference in Missouri was that the use of audio was also required along with the video recordings.<sup>135</sup> New Hampshire House

---

123. *Id.* (emphasis omitted).

124. H.B. 633, 434th Gen. Assemb., Reg. Sess. (Md. 2014).

125. H.B. 1069, 2014 Leg., Reg. Sess. (Miss. 2014).

126. H.B. 1699, 97th Gen. Assemb., 2d Reg. Sess. (Mo. 2014).

127. H.B. 1575, 163rd Gen. Assemb., Reg. Sess. (N.H. 2013).

128. A.B. 3852, 216th Leg. Sess. (N.J. 2014).

129. A.B. 8243, 236th Annual Leg. Sess. (N.Y. 2013).

130. H.B. 633, 434th Gen. Assemb., Reg. Sess. (Md. 2014) (bill was given an unfavorable report by the Judiciary on March 13, 2013 and died in chamber).

131. *Id.*

132. H.B. 1069, 2014 Leg., Reg. Sess. (Miss. 2014) (bill failed in committee on February 4, 2014).

133. *Id.*

134. H.B. 1699, 97th Gen. Assemb., 2d Reg. Sess. (Mo. 2014) (bill was referred to, and died with, the Crime Prevention and Public Safety Committee).

135. *Id.*

Bill 1575 was introduced with bipartisan support in December of 2013, and required that all uniformed state police officers wear a camera and record both video and audio of each interaction with the public.<sup>136</sup> New Jersey Assembly Bill 3852 was introduced in October of 2014, and not only required the use of body cameras for all state and local officers, but also specified that the cameras were to be purchased with the fines collected from certain crimes.<sup>137</sup> Lastly, New York Assembly Bill 8243, introduced in November of 2013, was unique in that it called for the commissioner of criminal justice to establish a pilot program using body-worn technology on officers throughout the city of New York.<sup>138</sup>

Moreover, United States Congressman Al Green introduced Bill 5407 into the House of Representatives on September 8, 2014.<sup>139</sup> The bill's stated purpose was "[t]o direct the Attorney General to conduct a study on the cost of the purchase and use of body cameras by State and local law enforcement agencies, and to require law enforcement agencies to purchase and use body cameras as a condition on the receipt of Federal funding."<sup>140</sup> Although by the end of the 113th congressional meeting forty-two others had joined Representative Green in co-sponsoring the bill, it was never enacted before the session expired.<sup>141</sup> However, the mere fact that this type of legislation is being introduced all across the country, including at the Federal level, is encouraging progress.

### C. USE OF SIMILAR DEVICES

Although there is strong opposition to the use of body-worn cameras, criticism is not uncommon when it comes to new and innovative ideas. Two staples in the law enforcement profession—dashboard cameras and electroshock weapons (more commonly known as stun guns or Tasers<sup>142</sup>)—were originally met with similar distrust.<sup>143</sup> Police officers were initially very

---

136. H.B. 1575, 163d Gen. Assemb., Reg. Sess. (N.H. 2014) (bill was referred to the Criminal Justice and Public Safety Committee and was recommended for future legislation by a vote of 13-0).

137. A.B. 3852, 216th Leg. 1st Sess. (N.J. 2014) (bill was referred to, and died with, the Assembly Law and Public Safety Committee).

138. A.B. 8243, 236th Leg. Reg. Sess. (N.Y. 2013) (bill was referred to, and died with, the Governmental Operations Committee).

139. Transparency in Policing Act of 2014, H.R. 5407, 113th Cong. (2014).

140. *Id.*

141. *Id.*

142. See TASER INT'L, [perma.cc/8U9F-9EXP](http://perma.cc/8U9F-9EXP) (last visited Sept. 24, 2015) (Taser International is a corporation which produces a variety of products used both in the law enforcement world and in the private sector. There are multiple electroshock weapons in the Taser product line).

143. Mims, *supra* note 42.

resistant to the idea of dash cams because they felt as though “they were being spied on, or that they weren’t trusted to do their job. But after awhile, they realized it was the best possible tool to prevent someone from making a bogus claim against them. They realized that if they were doing their job, footage could back them up.”<sup>144</sup> In 2002, the International Association of Chiefs of Police investigated the evidence and found that dash cams heightened officer safety, documented citizen behavior and violations, reduced court time and frivolous lawsuits, and increased the likelihood of successful prosecution.<sup>145</sup> Ultimately, by 2003 over half of all precincts in the United States had dashboard cameras installed in their patrol cars, and by 2007 it was 61%.<sup>146</sup> Similarly, stun guns went from introduction to use in over two-thirds of police departments across the nation in about a decade’s time.<sup>147</sup>

Today, not only are stun guns and dash cams widely accepted among police departments spanning all fifty states,<sup>148</sup> but miniature cameras attachable to the actual Taser itself have also become quite common.<sup>149</sup> In fact, according to Taser International, the manufacturer of Taser cams and arguably the most recognizable name in the stun gun industry, over 110,000 devices are used across the country today.<sup>150</sup> These devices accomplish precisely what body-worn cameras aim to do—simply in a more limited capacity. Stun guns and dash cams have been promising initial steps, yet in order to keep up with technological advances and respect the safety of both civilians and their law enforcement counterparts, greater strides still need to be made.

### III. PROTECTING THE CITIZENS

As displayed in Part II(A) of this Comment, police brutality is all too common. The ACLU made a bold, yet necessary, statement in regard to the Customs and Border Patrol, asserting that “[a]n agency-wide policy that mandates appropriate use of body-worn cameras in enforcement interactions with the public would provide much-needed oversight in response to

---

144. Fantz, *supra* note 106.

145. Kimberly McCullough, *Changing the Culture of Unconstitutional Interference: A Proposal for Nationwide Implementation of a Model Policy and Training Procedures Protecting the Right to Photograph and Record On-Duty Police*, 18 LEWIS & CLARK L. REV. 543, 548 & n.19 (citing INT’L ASS’N OF CHIEFS OF POLICE, THE IMPACT OF VIDEO EVIDENCE ON MODERN POLICING 1, 11 (William Albright et al. eds.), [perma.cc/SYK7-NKW3](http://perma.cc/SYK7-NKW3)).

146. Fantz, *supra* note 106.

147. *Id.*

148. *See id.*

149. TASER INT’L, <http://www.taser.com/products/on-officer-video/taser-cam-hd> (last visited Sept. 24, 2015).

150. TASER INT’L, <https://www.taser.com/products/on-officer-video> (last visited Sept. 24, 2015).



criticisms about CBP's track record. Cameras would help deter violence . . . and exonerate those who face false accusations of misconduct."<sup>151</sup> If the ACLU's suggestion was heeded, it would be a great improvement of the current situation; however, it would not target the area in most need. There are approximately sixty thousand CBP employees,<sup>152</sup> while the number of local and state law enforcement officers is closer to 1.1 million.<sup>153</sup>

In addition to the use of excessive force, police perjury is often another tactic used to prevent less than appropriate conduct from coming to light.<sup>154</sup> "[B]rutality and abuse cannot occur absent police control over the determination of facts in subsequent litigation. . . . This sort of behavior can survive only if it can be effectively covered-up."<sup>155</sup> Professor of Law, Donald Dripps, drew attention to the plain and simple fact that, all too often, determining the facts comes down to a swearing contest between the officer and the individual.<sup>156</sup> When this is the case, who is more credible? Is the police chief more likely to believe his own sergeant, or an individual complaining against his department? Is the judge more likely to believe an officer sworn to uphold the law, or an ordinary citizen? Undeniably the officer's story is more likely to be favored in most scenarios.<sup>157</sup> Yet at the same time, do these officers not have the most to lose? Do they not have the stronger incentive to fabricate the facts of the encounter? Future outcomes are determined by controlling what happened in the past.<sup>158</sup> If a law enforcement agent can convince his superiors that his version of the story is accurate and that he was acting pursuant to his authority as an officer, then there will be no consequences to befall him. He will be absolved of any wrongdoing while the victim is viewed as the true delinquent and possibly even punished. However, with the use of body-worn cameras, officers would not be given the opportunity to control the past. The true facts would be clearly displayed through captured audio and video.

Evidence suggests that individuals are far more likely to be found guilty by their peers when there is direct proof available, versus when they

---

151. *Strengthening CBP with the Use of Body-Worn Cameras*, *supra* note 74.

152. *U.S. Customs and Border Protection*, DEP'T OF HOMELAND SEC., [perma.cc/MP7M-XJSZ](http://perma.cc/MP7M-XJSZ) (last visited Dec. 16, 2015).

153. Brian A. Reaves, *Census of State and Local Law Enforcement Agencies, 2008*, U.S. DEP'T OF JUSTICE 1 (July 2011), [perma.cc/77JR-RD9L](http://perma.cc/77JR-RD9L).

154. See Donald A. Dripps, *Police, Plus Perjury, Equals Polygraphy*, 86 J. CRIM. L. & CRIMINOLOGY 693 (1996) (arguing that polygraph tests should be admitted as evidence to court proceedings in instances where the determination of facts comes down to the story of the officer versus the story of the civilian).

155. *Id.* at 700-01.

156. *Id.* at 716.

157. See *id.*

158. *Id.* (citing GEORGE ORWELL, 1984, at 19 (1949)).

are forced to rely on circumstantial inferences.<sup>159</sup> Perhaps that is why, despite being presented with the equivalent of thousands of pages of evidence, the Ferguson grand jury refused to return a true bill for Officer Wilson.<sup>160</sup> Of course, we do not know that for sure, and it is unlikely that we ever will, but experiments involving similar situations have indicated that might be the case.<sup>161</sup> One particular study asked participants to determine the culpability of an individual based on a given scenario.<sup>162</sup> One group was presented with direct evidence, while the other was presented with circumstantial evidence.<sup>163</sup> Even though the circumstantial evidence, when compiled, added up to the equivalent of the direct evidence, only 60% of respondents stated they would convict; whereas slightly over 81% of those who received the direct evidence chose to convict.<sup>164</sup> Several similar studies yielded parallel results.<sup>165</sup> These experiments are not conclusive as to what prompted

---

159. See Eyal Zamir et al., *Seeing is Believing: The Anti-Inference Bias*, 89 IND. L.J. 195, 195 (2014).

160. Holly Yan, *Ferguson Case: New Mountain of Grand Jury Documents Released*, CNN (Dec. 9, 2014, 11:17 AM), [perma.cc/ZK4U-BR9B](http://perma.cc/ZK4U-BR9B).

161. See Zamir, *supra* note 159.

162. *Id.* at 205. The scenario involved speeding on a toll way. The direct evidence situation presented a single speed camera registering a car traveling at 125 KPH on a road with a specified speed limit of 100 KPH. The camera admittedly had a probability of error of 2%. On the other hand, when circumstantial evidence was presented requiring the participants to make inferences, there were two cameras that captured not the speed of the vehicle, but the exact time the car passed by each location a camera was installed at. Based on the distance between the two cameras and the time elapsed between the moment the car passed each camera, it was inferred that the driver had been traveling at 125 KPH. The probability of error was again 2%. *Id.* at 205.

163. *Id.*

164. *Id.* at 206.

165. Zamir, *supra* note 159, at 207-14. In one experiment, participants were asked to imagine they were part of a team of experts expected to implement a new policy regarding the enforcement of speed limits. Two options were presented: the first was comparable to the direct evidence scenario in the first study where cameras were to be installed that registered the exact speed of the driver; the second was similar to the circumstantial evidence situation in the first study where multiple cameras would be installed which recorded the time each vehicle passed by. Each respondent was asked whether they preferred method one, method two, or were indifferent. 53.1% reported to favor the first direct evidence option, while 24.5% preferred method two and 22.4% found themselves indifferent. *Id.* at 208. Another experiment focused on eyewitness testimony. The direct evidence scenario presented a tourist bus, legally limited to transporting no more than fifty individuals at one time, which was stuck and in need of assistance. An officer who arrived on scene observed that there were actually fifty-four tourists on board. In the circumstantial evidence situation however, two minibuses arrived to take the tourists away. Each minibus was capable of seating twenty-five individuals. After the two busses left completely full, there were still four remaining tourists stuck on the original tour bus. Based on the remaining passengers the policeman inferred that the tour bus had been carrying fifty-four individuals. 64% of participants chose to convict the tour bus driver of breaking the law when presented with the direct evidence, while only 38.1% chose to find the driver guilty when inferences had to be made. *Id.* at 209-10.

the decision in Ferguson, nor do they predict how other grand juries would rule in the absence of footage from a body-worn camera. However, one thing is certain: across the board the ability to witness something with one's own eye is given *considerably* more weight than deduced facts from other sources of evidence.<sup>166</sup>

Additionally, the use of body-worn technology has great potential to not only ensure that the truth is told, but to prevent abhorrent behavior from occurring in the first place. "A voluminous body of research across various disciplines has shown that when humans become self-conscious about being watched, they often alter their conduct."<sup>167</sup> This phenomenon is supported by a well-known theory of psychology known as reactivity. Reactivity suggests the knowledge that oneself is being observed will trigger a change in behavior.<sup>168</sup> This idea was proven when scientists at the Center for Behavior and Evolution conducted an experiment in which they hung posters containing images of human eyes in public areas.<sup>169</sup> The results showed that even the mere resemblance of a watchful eye was enough to alter the demeanor of most people.<sup>170</sup> This indicates that while knowingly on film, both the public and the police will be on their best behavior.

#### IV. PROTECTING THE POLICE

Not only would the use of body-worn cameras protect the general public against police brutality, but would also provide numerous benefits for law enforcement as well. As evidenced in both the British and Californian

---

Yet another experiment considered two dairy farmers selling their milk, which must be free of antibiotic residue. Milk from each farmer is transported in a single truck, so a sample from each farm is taken before the milk is combined. In the direct evidence situation, a yogurt batch was a failure and it was revealed through the samples that farmer one had antibiotics in his milk, while farmer two's sample had none. In the circumstantial evidence scenario farmer one's sample was lost and could not be tested, while farmer two's sample turned up no evidence of antibiotic residue. In both instances the probability that the laboratory results were correct was 85%. 81.7% of participants stated they would find farmer one culpable when his milk tested positive, while only 40.2% said they would convict the farmer even in the absence of his lab results. *Id.* at 213-14.

166. Zamir, *supra* note 159, at 220.

167. Farrer, *supra* note 100, at 2.

168. Barbara Sommer, *Observation: Sources of Error*, PSYCHOL. U.C. DAVIS, [perma.cc/3JPN-Q6EH](http://perma.cc/3JPN-Q6EH) (last visited Nov. 15, 2014).

169. Sander van der Linden, *How the Illusion of Being Observed Can Make You a Better Person*, SCIENTIFIC AM. (May 3, 2011), [perma.cc/APA6-QWX2](http://perma.cc/APA6-QWX2).

170. *Id.* (the experiment was conducted by swapping pictures of flowers with pictures of human eyes at a popular Newcastle University cafeteria where observers had previously recorded significant instances of littering and failure to clean up after oneself; however, when the posters containing eyes were displayed, people were twice as likely to clean up after themselves than when the posters with flowers were displayed)

field experiments, when law enforcement was equipped with a recording device, false accusations against the officers significantly decreased.<sup>171</sup> Additionally, in a study conducted by the International Association of Chiefs of Police, 50% of complaints against officers were withdrawn when video evidence was available.<sup>172</sup> Cutting unwarranted claims in half saves precious time and money for the precinct as well as the court, and allows officers more time to devote to serving and protecting the public instead of defending bogus accusations.

For those complaints that were not dropped, an astonishing 93% of officers were exonerated when video evidence was introduced.<sup>173</sup> During the first week of the Rialto field study, officers wearing body cameras were dispatched to a public location where a man was waiting in his car with a gun.<sup>174</sup> Upon arrival of law enforcement, the man exited his vehicle and raised his gun toward the officers.<sup>175</sup> One officer, responding appropriately to the situation, fired his own gun in response.<sup>176</sup> A bystander also filmed the interaction with his cell phone and sent the footage to local media outlets.<sup>177</sup> Since the bystander was at an inadequate vantage point his commentary included that it appeared the officer had opened fire without provocation.<sup>178</sup> Luckily for the officer, who in this scenario had complied with the proper standards and committed no wrongdoing, body-cam footage was presented and disproved the accusations made by the bystander.<sup>179</sup> When officers are compliant with the law, body-worn technology clearly offers a unique protection that would not otherwise be available.

It is important to note that today only 9% of American adults do not have a cell phone.<sup>180</sup> In a nation with a population of over 322 million people, 9% barely scratches the surface.<sup>181</sup> Additionally, over half of adult cell phone users have a smartphone, which means fancy cameras with quick access to social media outlets.<sup>182</sup> Even those phones that are not considered

---

171. See Carroll, *supra* note 105; Farrer, *supra* note 100, at 8.

172. *Strengthening CBP with the Use of Body-Worn Cameras*, *supra* note 74 (citing Steve Lovell, *Body-Worn (Video) Evidence*, 12:2 EVIDENCE TECH. MAGAZINE, Mar.-Apr. 2014, at 24, [perma.cc/UNV4-VL4E](http://perma.cc/UNV4-VL4E)).

173. *Id.*

174. Fantz, *supra* note 106.

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. Fantz, *supra* note 106.

180. Mark Rogowsky, *More Than Half of Us Have Smartphones, Giving Apple and Google Much to Smile About*, FORBES (June 6, 2013, 10:04 AM), [perma.cc/T63B-UKY4](http://perma.cc/T63B-UKY4).

181. *U.S. and World Population Clock*, U.S. CENSUS BUREAU, [perma.cc/L8V6-6NJZ](http://perma.cc/L8V6-6NJZ) (last visited Dec. 16, 2015).

182. Rogowsky, *supra* note 180.

“smart” are still more likely than not to have a basic functioning camera built in. This advance in technology has led to the increase of “citizen-initiated video surveillance of police officers.”<sup>183</sup> There have been many instances where a confrontation between an officer and a citizen has gone viral after being posted on the internet.<sup>184</sup> Whether this is a good thing or not, it is undeniably unavoidable. One fact is clear with citizen recorded video—it does not provide in-the-action footage as adequately as body-worn cameras do. As evidenced in the situation previously mentioned in Rialto, sometimes smartphones, or their wielders, simply get it wrong. Recording encounters is not something that should be left up to individual bystanders, but instead ought to be harnessed by law enforcement entities and utilized in a way that provides the most accurate and unbiased results. Dallas Chief of Police, David Brown, recognized this need and aptly stated that body-worn cameras are the future of policing.<sup>185</sup>

An additional benefit for police forces, and potentially citizens as well, is that footage from body-worn cameras can help supplement witness testimony.<sup>186</sup> Recently, more acknowledgement has been given to the fact that witness credibility may not be as strong as we would like.<sup>187</sup> There are two unavoidable limitations that are attached to eyewitnesses: “(1) the natural fallibility of an individual’s perception and memory; and (2) the mind’s vulnerability with respect to suggestive influences.”<sup>188</sup> There is no way that a single individual can take in an entire scene with all of the minute, yet crucial, details it has to offer.<sup>189</sup> However, with body-worn technology there is no need for a witness to do so. The camera will capture the situation in near-perfect detail. Furthermore, the camera will retain the details exactly as they were, without the possibility of distortion. Similarly, while one’s memories may be susceptible to both internal and external manipulation, video footage safely stored off-site with secured access is free from potential alterations.

---

183. Bryce C. Newell, Comment, *Crossing Lenses: Policing’s New Visibility and the Role of “Smartphone Journalism” as a Form of Freedom-Preserving Reciprocal Surveillance*, 14 U. ILL. J.L. TECH. & POL’Y 59, 60 (2014).

184. *Id.*

185. *Strengthening CBP with the Use of Body-Worn Cameras*, *supra* note 74 (citing Nomaan Merchant, *Dallas Cop Indicted for Shooting Mentally Ill Man*, ASSOCIATED PRESS (May 5, 2014, 7:14 PM), [perma.cc/Y8D9-9KF6](http://perma.cc/Y8D9-9KF6); Tristan Hallman, *Lawsuits Against Dallas Police Costing City Millions*, DALLAS MORNING NEWS (May 11, 2014, 10:25 PM), [perma.cc/9XTM-NKQD](http://perma.cc/9XTM-NKQD)).

186. See Kristin Bergman, *Cyborgs in the Courtroom: The Use of Google Glass Recordings in Litigation*, 20 RICH. J.L. & TECH. 1, 11-14 (2014).

187. *Id.* at 11.

188. *Id.* at 12.

189. *Id.* at 13.

## V. OVERCOMING THE OPPOSITION

## A. PRIVACY

One of the primary arguments against mandating the use of body-worn cameras is that it violates the privacy of not only the officer, but the citizens as well.<sup>190</sup> There is no mistaking that privacy is a legitimate concern; however, this technology does not violate any constitutional interests. The United States Code outlines that:

It shall not be unlawful under this chapter [18 USCS §§ 2510 et seq.] for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.<sup>191</sup>

An officer of the law who has consented to wearing a recording device would therefore satisfy this requirement that at least one party involved be on notice.

In addition to this federal law, there are also individual state wiretapping laws to be aware of. While federally the United States operates under a one-party consent law (meaning that consent from only one party to the conversation is necessary), there are eight multi-party consent states that mandate the approval of all parties to have any in-person conversation recorded. These states are: California,<sup>192</sup> Florida,<sup>193</sup> Maryland,<sup>194</sup> Massachusetts,<sup>195</sup> Montana,<sup>196</sup> New Hampshire,<sup>197</sup> Pennsylvania,<sup>198</sup> and Washing-

---

190. Heidi Reamer Anderson, *The Mythical Right to Obscurity: A Pragmatic Defense of No Privacy in Public*, 7 ISJLP 543, 547 (2012).

191. 18 U.S.C.S § 2511(2)(d) (West 2015).

192. CAL. PENAL CODE § 632 (West 2014).

193. FLA. STAT. § 934.03(2)(d) (2015).

194. MD. CODE ANN., CTS. & JUD. PROC. § 10-402(c)(3) (West 2015).

195. MASS. GEN. LAWS ANN. ch. 272, § 99(C) (West 2014).

196. MONT. CODE ANN. § 45-8-213(1)(c) (2015).

197. N.H. REV. STAT. ANN. § 570-A:2(1) (2015).

198. 18 PA. CONS. STAT. ANN. § 5704(4) (West 2015).

ton.<sup>199</sup> Moreover, over half of those states provide varying exceptions for officers obtaining communications in the course of their duties.<sup>200</sup>

Furthermore, an additional exception that *every* multi-party consent state reserves is that permission from each participant is only necessary when the conversation has a reasonable expectation of privacy.<sup>201</sup> The general rule of thumb is that there is no privacy in that which is already public.<sup>202</sup> Essentially, anything said or done in the purview of others in a public setting carries no protectable privacy interest.<sup>203</sup> Therefore, someone being stopped on the street or in a park has no reasonable expectation of privacy and a recording from a body-worn camera could legally be made by an officer in any state.<sup>204</sup>

In the context of the Fourth Amendment,

As the search location moves away from the inside of one's home, the objective reasonableness of the privacy expectation becomes more remote. . . . [B]ecause as the search moves away from a person's home, it becomes more likely that the person has voluntarily consented to having the information made available to others.<sup>205</sup>

---

199. WASH. REV. CODE § 9.73.030(1)(a) (2015).

200. FLA. STAT. § 934.03(2)(c) (2015) (allowing law enforcement to record without the consent of all parties for the purpose of obtaining evidence in a criminal investigation); MD. CODE ANN., CTS. & JUD. PROC. § 10-402(c)(2, 4, 6) (West 2015) (allowing law enforcement to record without the consent of all parties during criminal investigations, or during the detention of a vehicle after making the recording known); MASS. GEN. LAWS ANN. ch. 272, § 99(D)(1)(c, e) (West 2014) (allowing law enforcement to record without the consent of all parties pursuant to the laws of the United States and acting within their authority or for the safety of undercover officers); N.H. REV. STAT. ANN. § 570-A:2(II)(d, j, i) (2015) (allowing law enforcement to record without the consent of all parties during investigations of certain crimes, or during a routine stop or in conjunction with an electroshock device if proper notification is given); 18 PA. CONS. STAT. ANN. § 5704(16) (West 2015) (allowing law enforcement to record without the consent of all parties if (1) the recording does not take place in the home, (2) the officer is in uniform, (3) the officer is in close proximity, (4) the officer is using an approved device, and (5) the officers notifies the parties of the recording).

201. CAL. PENAL CODE § 632 (West 2014); FLA. STAT. § 934.03 (2015); MD. CODE ANN., CTS. & JUD. PROC. § 10-402(c)(3) (West 2015); MASS. GEN. LAWS ANN. ch. 272, § 99(C) (West 2014); MONT. CODE ANN. § 45-8-213 (2015); N.H. REV. STAT. ANN. § 570-A:2 (2015); 18 PA. CONS. STAT. ANN. § 5704 (West 2015); WASH. REV. CODE § 9.73.030 (2015).

202. Reamer Anderson, *supra* note 190, at 553 (quoting *Gill v. Hearst Pub. Co.*, 253 P.2d 441, 444 (Cal. 1953)).

203. See Reamer Anderson, *supra* note 190.

204. See generally *id.*

205. *Id.* at 561.

The same ought to be true in the context of audio and visual recordings. Moreover, the United States Supreme Court has consistently ruled that there is no legitimate expectation of privacy in information shared with third parties.<sup>206</sup> Thus, even if an officer were to record an encounter in the home, presumably anything that the home-owner says or does is willingly shared with a third party (the officer) and therefore a reasonable expectation of privacy no longer exists.<sup>207</sup> Supreme Court case law is also quite clear that the free flow of information is absolutely crucial to society, especially when it relates to government affairs.<sup>208</sup>

Another privacy concern pertains to embarrassment and loss of dignity.<sup>209</sup> If the video captured by body-worn technology was leaked or shared with any number of people, the parties involved may suffer humiliation or unwanted attention and notoriety from the public.<sup>210</sup> However, this could be easily avoided—simply protect the footage by storing what is captured on a secure server which is only viewed by superior officers in the instance of a dispute.<sup>211</sup> Thus, there is little to no risk of exposure. Even though there may be no reasonable expectation of privacy, this simple precaution would nonetheless minimize the possibility for individuals to suffer as a result of exposure exceeding their scope of expectations.

## B. OTHER CONCERNS

Opponents of this technology have also stated that officers wearing the cameras may hesitate in life-threatening situations, knowing that their actions are being captured on film.<sup>212</sup> However, in a survey conducted of officers in twenty-one departments across the United States, 86% admitted that cameras did not have any bearing on their ability to handle a situation, while 89% stated cameras had zero influence over their decision of whether or not to use force.<sup>213</sup> This lack of influence is due to the fact that in emergency circumstances a spontaneous physiological reaction causes the chemical epinephrine (more commonly known as adrenaline) to surge through the body inciting instinct to take over.<sup>214</sup> If an officer was facing a threat in

---

206. *Smith v. Maryland*, 442 U.S. 735, 743-44 (1979).

207. *See* Reamer Anderson, *supra* note 190, at 562.

208. *Lautt*, *supra* note 47, at 374 (citing *Stanley v. Georgia*, 394 U.S. 57, 564 (1969); *Mills v. Alabama*, 384 U.S. 214, 218 (1966)).

209. Reamer Anderson, *supra* note 190, at 574.

210. *Id.*

211. U.S. DEP'T OF JUSTICE, IMPLEMENTING A BODY-WORN CAMERA PROGRAM: RECOMMENDATIONS AND LESSONS LEARNED 42-43 (2014), [perma.cc/TR7B-DCE5](http://perma.cc/TR7B-DCE5); Stanley, *supra* note 41, at 5.

212. *Lautt*, *supra* note 47, at 355.

213. Fantz, *supra* note 106.

214. *Epinephrine*, UNIV. OF DEL. (2000), [perma.cc/SJW6-AQ3T](http://perma.cc/SJW6-AQ3T).



which he truly believed his life to be in danger, the fact that his actions were going to be caught on camera would barely be a fleeting thought.<sup>215</sup> Joseph LeDoux, a professor of neural science and psychology at New York University, explains that the brain's reaction to fear is done "outside of conscious awareness" and that "[w]e respond to danger, then only afterward realize danger is present."<sup>216</sup> It is evident that even if an officer were cognizant of the body camera, as soon as a *justified* threat presented itself, the subconscious would take over and the officer would not hesitate to act.

A third foible asserted by adversaries to this advancement is that the device is an encumbrance to officers in the field.<sup>217</sup> However, most versions of the camera are approximately the size of a pager and clip to the officer's uniform, hat, or sunglasses.<sup>218</sup> The devices used in Rialto, California weigh about 108 grams<sup>219</sup>—less than the weight of a typical cell phone.<sup>220</sup> Furthermore, the cameras are fully water resistant which means that their use is not restricted in the rain or snow.<sup>221</sup> Many versions also offer low-light retina displays which provide clear video even in the dark.<sup>222</sup> Sporting such a small size and light weight, not to mention the additional features and capabilities, these body-worn cameras can hardly be called encumbrances.

Cost is also an issue commonly raised in objection to body-worn technology. Depending upon the audio and video quality as well as recording capabilities, the price tag of each unit will vary from \$120 to \$2,000.<sup>223</sup> Currently, Taser is advertising their Axon body device for \$400<sup>224</sup> and their Axon Flex, which attaches to a pair of sunglasses, costs \$600.<sup>225</sup> The other leading competitor in body-worn technology, Veivu, offers the VIEVU<sup>2</sup> for \$350<sup>226</sup> and the LE3 for \$900.<sup>227</sup> Unfortunately, these numbers do not cover

215. See Joseph LeDoux, Op-Ed., *Search the Brain for the Roots of Fear*, N.Y. TIMES (Jan. 22, 2012, 5:00 PM), [perma.cc/2JYX-NCPB](http://perma.cc/2JYX-NCPB).

216. *Id.*

217. Mims, *supra* note 42.

218. Harris, *supra* note 40, at 361 n.28.

219. Farrer, *supra* note 100, at 6.

220. See Will Shanklin, *iPhone 6 vs. Galaxy S5*, GIZMAG (Sept. 10, 2014), [perma.cc/7G79-ZPXD](http://perma.cc/7G79-ZPXD).

221. Farrer, *supra* note 100, at 6.

222. TASER INT'L, <http://www.taser.com/products/on-officer-video/axon-body-on-officer-video> (last visited Dec. 9, 2014).

223. *Strengthening CBP with the Use of Body-Worn Cameras*, *supra* note 74; U.S. DEP'T OF JUSTICE, *supra* note 212, at 32.

224. TASER INT'L, <http://www.taser.com/products/on-officer-video/axon-body-on-officer-video> (last visited Dec. 9, 2014).

225. TASER INT'L, <http://www.taser.com/products/on-officer-video/axon-flex-on-officer-video> (last visited Dec. 9, 2014).

226. VIEVU, <http://www.viewu.com/viewu-products/hardware/#viewu-squared> (last visited Sept. 26, 2015).

the cost of storage, tech support, and other incidental expenses. Regardless of whether the footage is stored on a cloud and managed by an off-site company or kept in-house on a secure database, the additional maintenance cost will be a hefty one.<sup>228</sup> The most popular database is Evidence.com which offers storage packages ranging from \$15 to \$99 a month per user.<sup>229</sup> One cost minimizing tactic however, would be to forgo storing each video indefinitely. For example, Washington D.C. precincts keep footage not needed for court for a total of ninety days before deleting it.<sup>230</sup> By reducing the length of time each video is stored (unless there is an ongoing dispute pertaining to that particular footage), storage space necessary, and thereby costs, would be significantly reduced.<sup>231</sup>

On average, law enforcement in the United States spends over two billion dollars per year resolving claims.<sup>232</sup> That is about \$1,818 per state/local officer. Logically, the one-time purchase of a body-worn camera, even including additional incurred expenses, would save precincts significant costs in the long run—not to mention the fact that human lives could be spared with this technology.

The importance of body-worn cameras despite the price has even been recognized at the Executive level.<sup>233</sup> On December 1, 2014, President Barack Obama proposed a plan that would provide seventy-five million dollars over a period of three years in order to reimburse police departments half of the cost of buying body-worn cameras and a storage plan.<sup>234</sup> This would provide for 50,000 recording devices to communities across the United States.<sup>235</sup> Additionally, presidential candidate Hillary Clinton stated that “[w]e should make sure that every police department in the country has body cameras to record interaction between officers [sic] on patrol and suspects” in an attempt to improve transparency and accountability as well as protect innocent people on both sides of the spectrum.<sup>236</sup>

---

227. VIEVU, <http://www.viewu.com/viewu-products/hardware/#le3> (last visited Sept. 26, 2015).

228. U.S. DEP’T OF JUSTICE, *supra* note 212, at 32.

229. EVIDENCE.COM, [perma.cc/3MAZ-635T](http://perma.cc/3MAZ-635T) (last visited Sept. 26, 2015).

230. Hermann, *supra* note 117.

231. *See id.*

232. TASER INT’L, Annual Report (Form 10-K) 7 (Mar.12, 2015).

233. Hermann, *supra* note 117.

234. *Id.*

235. *Id.*

236. Brianna Keilar & Dan Merica, *Hillary Clinton calls for mandatory police body cameras, end 'era of mass incarceration'*, CNN (Apr. 29, 2015, 7:49 PM), [perma.cc/H2X6-3992](http://perma.cc/H2X6-3992).

## VI. SETTING THE STANDARDS

With such extensive divergences among existing policies regarding body-worn cameras, it is crucial to develop certain national standards if this technology is going to live up to its potential. Identifying certain practices from various cities and melding them into an all encompassing model is critical. Although there are countless methods of implementing policies for body-worn technology, there are five pivotal standards that should be mandatory procedure among all jurisdictions.

First, officers should not be in control of when the camera is turned on and off. Officer discretion leads to “forgetful” moments, such as that in Albuquerque when the officer used lethal force against a nineteen-year-old female, yet had failed to turn his camera on beforehand.<sup>237</sup> Also insufficient is the instruction to turn the camera on in instances which might result in a complaint. Police-citizen encounters often escalate quickly, and there is no telling what might transpire from a seemingly routine stop.<sup>238</sup> For example, a New Orleans officer had not turned her camera on before making a traffic stop, and the situation ended with the driver being shot in the head.<sup>239</sup> The rule of thumb should be that the camera is on if the officer is coming into contact with the public in any capacity.<sup>240</sup> Additionally, the officer should make every effort to inform the subjects they are being recorded unless doing so would prove to be a safety hazard or otherwise impractical.<sup>241</sup>

Furthermore, there needs to be more than a slap on the wrist for an officer who fails to activate the camera before an encounter.<sup>242</sup> As suggested in a 2013 ACLU report, precincts should adopt not only some form of disciplinary action, but also an exclusionary rule that would prohibit the use of evidence obtained during an unrecorded encounter.<sup>243</sup> Moreover, “[a]nother means of enforcement might be to stipulate that in any instance in which an officer wearing a camera is accused of misconduct, a failure to record that incident would create an evidentiary presumption against the officer.”<sup>244</sup> Although these cameras aim to protect and assist officers, without the threat of significant negative consequences for non-compliance, the policies would be nothing but futile facades.

---

237. Connie Fossi-Garcia & Dan Lieberman, *Investigation of 5 Cities Finds Body Cameras Usually Help Police*, FUSION, [perma.cc/G6ZQ-HNLN](http://perma.cc/G6ZQ-HNLN) (last visited Dec. 10, 2014).

238. *See id.*

239. *Id.*

240. *See Harris, supra* note 40, at 365.

241. U.S. DEP’T OF JUSTICE, *supra* note 212, at 40.

242. *See Stanley, supra* note 41, at 3.

243. *Id.*

244. *Id.*

Second, footage should not be reviewable by a commanding officer unless a complaint has been made or force was reportedly used.<sup>245</sup> The amount of time required to examine each moment of captured footage would be daunting and nugatory; thus, it should be verified that video was uploaded at the end of the officer's shift, yet without justifiable reason to watch what was uploaded the recordings should be secured without further action. Furthermore, although officers ought to fill out their own field reports, they also ought to be allowed to view the footage in the instance of a claim against them. This allows them to refresh their memories and make an accurate statement before the court or an administrative review.<sup>246</sup>

Third, releasing recordings to the public ought to be treated with the utmost care. Naturally, when there is video evidence the public will demand for it to be released; however, this request should only be complied with if there are legitimate claims of misconduct.<sup>247</sup> Moreover, the release should be focused, with no extraneous footage being presented to the public. The identities of the individuals in the recording should be protected (unless otherwise already widely known) by blurring/blacking out faces and distorting voices.<sup>248</sup>

Fourth, at the end of each shift, police officers should upload their footage in a secure manner that prevents tampering with, altering, or deleting the recordings.<sup>249</sup> Once secured on a server or in a database, that footage should not be accessible without the authority of a superior, and only in the instances mentioned above. The records ought to be stored for a specified time, ideally ninety days, before being destroyed in the absence of a claim.<sup>250</sup>

Fifth, in order to ensure that law enforcement across the nation are on equal footing, as well as understand the technology and its potential consequences, there needs to be uniform training programs.<sup>251</sup> Each officer equipped with a camera ought to complete a training program that explains the way the cameras function, the department's policies and protocols, and an overview of the relevant state privacy laws that might affect recording in certain situations.<sup>252</sup> Additionally, manuals must be made available to each officer to ensure that he or she is constantly informed if a question arises.<sup>253</sup>

---

245. *See id.* at 5.

246. U.S. DEP'T OF JUSTICE, *supra* note 212, at 45.

247. Stanley, *supra* note 41, at 5.

248. *Id.*

249. U.S. DEP'T OF JUSTICE, *supra* note 212, at 43.

250. *See id.* at 44.

251. *Id.* at 47.

252. *Id.*

253. *Id.*

## VII. CONCLUSION

Without a doubt, mandating national protocols for police officer body-worn technology is not going to be an easy task. However, neither is it going to be an easy task for Officer Darren Wilson to rebuild his life with a new career path. Nor was it an easy task for the parents of Michael Brown to bury their teenage son. This technology has its challenges, as does any form of technology; but that does not mean we should give-up. The benefits, as proven in this Comment, far outweigh the consequences. Citizens are far less likely to suffer unwarranted brutality at the hands of an officer,<sup>254</sup> and it is much more improbable that the police will face false accusations from the public.<sup>255</sup> Thomas Jefferson wisely said: “Whenever you do a thing, act as if all the world were watching.”<sup>256</sup> In order to prevent another Rodney King or Michael Brown situation, both citizens and officers alike must act as if all the world were watching—which can only be accomplished through the wide-spread use of body-worn cameras.

---

254. *Supra*, Part IV.

255. *Supra*, Part V.

256. van der Linden, *supra* note 169 (quoting Thomas Jefferson).