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## YALE LAW & POLICY REVIEW

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### Police Body-Worn Camera Footage: A Question of Access

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#### INTRODUCTION

When President Obama closed 2014 by requesting \$263 million to support the deployment of 50,000 body-worn cameras (or BWCs) for state officers,<sup>1</sup> he was endorsing an idea whose time had come. The deaths of Michael Brown<sup>2</sup> and Eric Garner<sup>3</sup> provided names and faces to a growing call for police accountability that would eventually develop into the broader Black Lives Matter movement.<sup>4</sup> Brown's parents themselves vigorously campaigned to place body cameras on every law enforcement officer,<sup>5</sup> at the same time that polling suggested greater white outrage over Garner's death than Brown's—quite likely, commentators noted, due to the fact that the former was filmed.<sup>6</sup>

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1. Carrie Dann & Andrew Rafferty, *Obama Requests \$263 Million for Body Cameras, Training*, NBC NEWS (Dec. 1, 2014, 7:15 PM), <http://www.nbcnews.com/politics/first-read/obama-requests-263-million-police-body-cameras-training-n259161>.
2. Moni Basu et al., *Fire, Chaos Erupt in Ferguson After Grand Jury Doesn't Indict in Michael Brown Case*, CNN (Nov. 25, 2014, 8:53 AM), <http://www.edition.cnn.com/2014/11/24/justice/ferguson-grand-jury>.
3. Ray Sanchez & Shimon Prokupecz, *Protests After N.Y. Cop Not Indicted in Chokehold Death*, CNN (Dec. 4, 2014, 6:09 AM), <http://www.cnn.com/2014/12/03/justice/new-york-grand-jury-chokehold/index.html>.
4. Elizabeth Day, *#BlackLivesMatter: The Birth of a New Civil Rights Movement*, GUARDIAN (July 19, 2015), <http://www.theguardian.com/world/2015/jul/19/blacklivesmatter-birth-civil-rights-movement> (crediting the reaction to Brown and Garner's deaths as crucial to expanding a movement originally prompted by Trayvon Martin's killing).
5. Alexa Van Brunt, *Mike Brown's Law is a Start, but Police Body-Cams Are No Panacea for Violence*, GUARDIAN (Nov. 27, 2014), <http://www.theguardian.com/commentisfree/2014/nov/27/mike-brown-law-police-body-cams-change> (including statement of the Brown family lawyer).
6. See, e.g., Aaron Blake, *Why Eric Garner Is the Turning Point Ferguson Never Was*, WASH. POST (Dec. 8, 2014), <http://www.washingtonpost.com/blogs/the-fix/wp/>

While police body-worn cameras (BWCs) are a promising tool for police accountability, expanding body camera use will come at a serious financial cost, and will require municipalities adopting these programs to make hard choices.<sup>7</sup> In particular, decisions made about retention time and disclosure breadth will be crucial to the financial feasibility of any program. While the ideal program would retain BWC footage for months or even years, the cost of video storage can become prohibitive very quickly. Further, if police footage is treated as a traditional public record under state FOIA laws, departments may be faced with a choice between costly redaction, risking the release of sensitive footage, or scuttling a program altogether.

This Comment asserts that footage access policies can be designed to both serve the public interest and safeguard legitimate privacy interests without breaking the bank for municipalities. The guiding principle I offer is that BWC programs *must* provide full footage access to the victims of suspected undue police violence and their families—allowing for an accountability baseline and setting victims' rights as paramount. Public record policies should not impede this core goal by imposing public access where the associated costs could stymie such programs altogether.

In Part I of this Comment, I provide an overview of the storage approaches taken within police departments implementing camera programs. In Part II, I discuss some differing approaches taken regarding public disclosure of BWC footage, touching on the financial and privacy concerns raised. In Part III, I offer three policy recommendations to offer a baseline of officer accountability without incurring undue financial or privacy costs in the name of general transparency.

#### I. BODY CAMERAS TODAY: THE EXPERIMENTATION PHASE

Just as concern for police bias predates recent cases, so does the demand for increased video monitoring of police. Similar outcries were made after the 1991

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2014/12/08/why-eric-garner-is-the-turning-point-ferguson-never-was (stating results of a Bloomberg poll that shows a majority of black Americans and a smaller majority of whites opposed the decision not to indict for excessive force); Jennifer De Pinto et al., *Michael Brown and Eric Garner: The Police, Use of Force and Race*, CBS NEWS (Dec. 10, 2014, 6:31 PM), <http://www.cbsnews.com/news/michael-brown-and-eric-garner-the-police-use-of-force-and-race> (finding a greater polling division between black and white Americans in Brown case than in the Garner case, with a majority opposed to force used in the latter, and racial division over whether police were more likely to use deadly force against black Americans generally).

7. Brian Bakst & Ryan J. Foley, *For Police Body Cameras, Big Costs Loom in Storage*, ASSOCIATED PRESS (Feb. 6, 2015), <http://www.policione.com/police-products/body-cameras/articles/8243271-For-police-body-cameras-big-costs-loom-in-storage> (discussing budget sacrifices made in Wichita, Berkeley, Des Moines, and other municipalities to attempt trial camera programs).

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beating of Rodney King<sup>8</sup> and the 2009 killing of Oscar Grant.<sup>9</sup> Dashboard camera use was expanded from the 1980s onward out of concern about racial bias in policing.<sup>10</sup> A 2002 DOJ-sponsored study found that such cameras led both to more professional behavior on the part of officers and to speedier resolution of complaints regarding officer professionalism, often due to voluntary withdrawal.<sup>11</sup> In recent years, New Orleans,<sup>12</sup> Seattle,<sup>13</sup> and New York City<sup>14</sup> have all consented to preliminary use of body cameras following allegations of police abuse.

Initial studies on the impact of BWCs are tentatively encouraging.<sup>15</sup> Popular media often cite a study from Rialto, California,<sup>16</sup> where officers wearing cameras were the objects of 88% fewer complaints and cut their total use of force by

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8. TONY FARRAR, POLICE FOUND., SELF-AWARENESS TO BEING WATCHED AND SOCIALLY-DESIRABLE BEHAVIOR 2 (2013) <http://www.policefoundation.org/publication/self-awareness-to-being-watched-and-socially-desirable-behavior-a-field-experiment-on-the-effect-of-body-worn-cameras-on-police-use-of-force>.
  9. Vern Sallee, *Outsourcing the Evidence Room: Moving Digital Evidence to the Cloud*, POLICE CHIEF (Apr. 2014), [http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display\\_arch&article\\_id=3319&issue\\_id=42014](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display_arch&article_id=3319&issue_id=42014).
  10. INT'L ASS'N OF CHIEFS OF POLICE, THE IMPACT OF VIDEO EVIDENCE ON MODERN POLICING 5, 46 (2007) <http://www.ric-zai-inc.com/Publications/cops-wo404-pub.pdf> [hereinafter IACP].
  11. Lonnie Westphal, *The In-Car Camera: Value and Impact*, POLICE CHIEF (Aug. 2004), [http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display&article\\_id=358](http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display&article_id=358).
  12. Van Brunt, *supra* note 5.
  13. Lynsi Burton, *Seattle Police to Sport New Uniforms, Body Cameras*, SEATTLE POST-INTELLIGENCER (Dec. 18, 2014, 4:48 PM), <http://blog.seattlepi.com/seattle911/2014/12/18/seattle-police-to-sport-new-unis-new-body-cameras>.
  14. Rocco Parascandola, *NYPD Demonstrates Body Camera Pilot Program Slated To Start Friday*, N.Y. DAILY NEWS (Dec. 3, 2014), <http://www.nydailynews.com/new-york/nypd-body-camera-pilot-program-start-friday-article-1.2031875>. The program responded to the order in *Floyd v. City of New York*, 959 F. Supp. 2d 668, 685-86 (S.D.N.Y. 2013).
  15. See generally MICHAEL D. WHITE, OFF. OF JUSTICE PROGRAMS DIAGNOSTIC CTR., U.S. DEP'T OF JUSTICE, POLICE OFFICER BODY-WORN CAMERAS: ASSESSING THE EVIDENCE (2014), <https://www.ojpdagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf> (discussing five programs in the U.S. and U.K.).
  16. See, e.g., *Floyd*, 959 F. Supp. 2d at 686 (citing the Rialto study); Rachel Weiner, *Police Body Cameras Spur Privacy Debate*, WASH. POST (Nov. 10, 2013), [http://www.washingtonpost.com/local/crime/police-body-cameras-spur-privacy-debate/2013/11/10/7e9ee504-2549-11e3-b75d-5b7f66349852\\_story.html](http://www.washingtonpost.com/local/crime/police-body-cameras-spur-privacy-debate/2013/11/10/7e9ee504-2549-11e3-b75d-5b7f66349852_story.html) (same).

50%.<sup>17</sup> Asked if this indicated better behavior by police or by citizens, Rialto Chief William Farrar ventured that it was “probably a little bit of both.”<sup>18</sup> Subsequent studies in the United States<sup>19</sup> and the United Kingdom<sup>20</sup> have also shown a drop in complaints and in use of force when BWCs are in use.<sup>21</sup> Police administrators have expressed satisfaction with the financial savings derived from fewer complaints<sup>22</sup> and the reduced time spent filing incident reports.<sup>23</sup>

Despite initial savings in administrative costs, storing significant amounts of video footage is extremely costly over the long term, and current methods of storage pose security risks and evidentiary issues as well. New Orleans anticipates that its BWC program will cost \$1.2 million over five years, the “bulk of which will go to data storage.”<sup>24</sup> Whether litigation savings will always offset such costs remains an open question, depending on the scope of storage.<sup>25</sup> Lieutenant Vern Sallee of Chula Vista estimates that even a single daily hour of footage per officer in mid-size Chula Vista would produce *THIRTY-THREE terabytes*

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17. Rory Carroll, *California Police Use of Body Cameras Cuts Violence and Complaints*, GUARDIAN (Nov. 4, 2013), <http://www.theguardian.com/world/2013/nov/04/california-police-body-cameras-cuts-violence-complaints-rialto>.
  18. LINDSAY MILLER ET AL., OFF. OF COMMUNITY ORIENTED POLICING SERVS., U.S. DEP'T JUST., IMPLEMENTING A BODY-WORN CAMERA PROGRAM: RECOMMENDATIONS AND LESSONS LEARNED 5 (2014), <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>.
  19. Allyson Roy, *On-Officer Video Cameras: Examining the Effects of Police Department Policy and Assignment on Camera Use and Activation 6* (May 2014) (unpublished M.S. Thesis), <http://www.urbanaininois.us/sites/default/files/attachments/officer-video-cameras-roy.pdf> (exploring Mesa study from within White Report); WHITE, *supra* note 15, at 23 (discussing two other U.S. programs).
  20. CITY OF PLYMOUTH, POLICE, CAMERA, ACTION . . . HEAD CAMERAS (Aug. 2007), [http://www.plymouth.gov.uk/storyboard\\_head\\_cameras.pdf](http://www.plymouth.gov.uk/storyboard_head_cameras.pdf) (presenting the Plymouth summary discussed in the White Report); WHITE, *supra* note 15, at 22 (discussing two U.K. studies).
  21. See, e.g., MILLER ET AL., *supra* note 18, at 5-6 (quoting chiefs from Topeka and Greensboro, among other officers).
  22. See EUGENE P. RAMIREZ, MANNING & KASS, ELLROD, RAMIREZ, TRESTER LLP, A REPORT ON BODY WORN CAMERAS 10 (2014) [https://www.bja.gov/bwc/pdfs/14-005\\_Report\\_BODY\\_WORN\\_CAMERAS.pdf](https://www.bja.gov/bwc/pdfs/14-005_Report_BODY_WORN_CAMERAS.pdf) (finding a savings of \$4 for every \$1 spent on BWCs in Rialto, including storage).
  23. See WHITE, *supra* note 15, at 24 (noting that a U.K. office shaved, on average, FIFTY minutes off of every NINE-hour shift).
  24. MILLER ET AL., *supra* note 18, at 32.
  25. See Developments in the Law, *Considering Police Body Cameras*, 128 HARV. L. REV. 1794, 1809 (2015) [hereinafter *Developments in the Law*], which briefly discusses costs and raises litigation savings as a possible answer depending on the given department. This piece only mentions two municipalities (Oakland and Chicago) with particularly high litigation costs. See *id.* at 1809 n.97.

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of storage every year,<sup>26</sup> suggesting that internal servers alone cannot serve a fully BWC-outfitted department. Yet many cloud providers may not offer the necessary security to safeguard this information, especially under the strict chain-of-custody evidentiary expectations held by courts and police departments. Put simply, with physical storage, it is easier to assure a judge or jury that no party has tampered with the footage.<sup>27</sup> The Electronic Frontier Foundation has expressed concern that no federal standards exist for the safeguarding of data.<sup>28</sup> In the interim, Evidence.com has become the sole “market leader” competing with in-house storage despite “working out its real-world procedures on the fly.”<sup>29</sup>

## II. PUBLIC RECORDS AND THE LAW ENFORCEMENT EXCEPTION

In addition to the high costs of video storage, broad public disclosure laws regulating BWC footage pose another difficult financial choice: pay for redaction, sacrifice privacy, or cut a program altogether. While individual departments take varied approaches to public disclosure, state and federal laws appear in text to protect the right of law enforcement agencies to keep footage private by providing exceptions to disclosure for ongoing investigation, personal privacy, or general law enforcement needs.<sup>30</sup> The federal Freedom of Information

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26. Sallee, *supra* note 9, at 42. To give the reader a sense of size, desktop-class external hard drives—generally the largest for personal use—top out at six terabytes as of January 2016, meaning over five separate drives for one officer’s minimal use even if the most expensive commercial drives are purchased. See Laarni Almendrala Ragaza & Joel Santo Domingo, *The 10 Best External Hard Drives of 2016*, PC MAG. (Jan. 20, 2016), <http://www.pcmag.com/article2/0,2817,2400958,00.asp> (discussing the capacity for personal use externals).
  27. See, e.g., IACP, *supra* note 10, at 49-50, app. ii-1 (discussing the certification of digital police footage).
  28. Jacob Siegel, *Your Arrest Video Is Going Online. Who Will See It?*, DAILY BEAST (Sept. 11, 2014, 5:55 AM), <http://www.thedailybeast.com/articles/2014/09/11/we-re-giving-police-body-cameras-but-who-s-controlling-their-footage.html>. The International Association of Police Chiefs has since offered “Guiding Principles” on cloud computing that are connected to FBI security policies. INT’L ASS’N OF CHIEFS OF POLICE, GUIDING PRINCIPLES ON CLOUD COMPUTING IN LAW ENFORCEMENT (2015) <http://www.theiacp.org/Portals/0/documents/pdfs/CloudComputingPrinciples.pdf>.
  29. Siegel, *supra* note 28. See also WHITE, *supra* note 15, at 33 (discussing a Department of Justice report that only offers Evidence.com and in-house storage as options for officers).
  30. Martin Kaste, *As More Police Wear Cameras, Policy Questions Arise*, NAT’L PUB. RADIO (Nov. 7, 2014, 12:01 AM), <http://www.npr.org/2011/11/07/142016109/smile-youre-on-cop-camera> (“While police videos are generally considered public records, in practice, they’re often difficult to obtain. Most cities refuse to turn over footage that is part of an investigation, and some are now instituting restrictions based on privacy concerns.”).

Act (FOIA) exempts public disclosure for law enforcement records where disclosure could threaten effective enforcement or cause “unwarranted invasion[s] of personal privacy” or other harms.<sup>31</sup> State freedom of information laws generally copy FOIA’s structure or adopt a blanket exception for law enforcement.<sup>32</sup> The DOJ advises police departments that most BWC footage may also be withheld under state exceptions for materials related to ongoing investigations or private agency personnel files.<sup>33</sup> Yet the strength of these exceptions is dependent on court deference, and as discussed *infra*, not all courts have deferred to law enforcement requests for withholding other surveillance film, such as dashboard or security camera footage.

Police departments vary in their disclosure practices. On the extreme low end of the privacy spectrum, some have posted embarrassing videos of citizens online for public ridicule;<sup>34</sup> on the other end, others have hesitated even to let officers view their own footage.<sup>35</sup> The underlying law alone may not be decisive. For example, Greensboro police have internally interpreted North Carolina law to protect footage from public disclosure unless the filming officer consents,<sup>36</sup> while Charlotte-Mecklenburg police applying the same law allow some defense attorneys access and discretionary “public interest” release.<sup>37</sup>

Even if body camera footage contains *some* information exempt from disclosure, police departments may be required by statute to redact and disclose the resulting product when practicable. Under FOIA, an agency is compelled to release “[a]ny reasonably segregable portion of a record . . . after deletion of the

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31. 5 U.S.C. § 552(b)(7) (2012).

32. *Freedom of Information Laws*, REPORTERS COMM. FOR FREEDOM OF THE PRESS <http://www.rcfp.org/first-amendment-handbook/freedom-information-laws> (last visited Jun. 1, 2016). *See also, e.g.*, CONN. GEN. STAT. § 1-210 (2014) (creating similar freedom of information provisions); N.C. GEN. STAT. § 132-1.4 (2014) (setting out a general exemption).

33. MILLER ET AL., *supra* note 18, at 17-18.

34. Weiner, *supra* note 16 (describing an example from Laurel, MD).

35. Kaste, *supra* note 30 (setting out an example from Oakland, CA).

36. *Police Body Cams Are Public Records in Virginia*, FREE LANCE-STAR (Nov. 25, 2014, 1:57 PM), [http://www.fredericksburg.com/news/foia/police-body-cams-are-public-records-in-virginia/article\\_953cd61e-8608-5f11-acca-bf7ebe5a18d8.html](http://www.fredericksburg.com/news/foia/police-body-cams-are-public-records-in-virginia/article_953cd61e-8608-5f11-acca-bf7ebe5a18d8.html).

37. Yoojin Cho, *Charlotte Mecklenburg Police to Roll Out Body Cameras*, TIME WARNER CABLE NEWS (Apr. 28, 2015, 1:38 PM), <http://www.twcnews.com/nc/north-carolina/news/2015/04/28/charlotte-mecklenburg-police-body-cameras.html>; Cleve R. Wootson Jr., *Questions and Answers on Police Body Cameras*, CHARLOTTE OBSERVER (Dec. 6, 2014), <http://www.charlotteobserver.com/2014/12/06/5366472/questions-and-answers-on-police.html>.

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portions which are exempt.”<sup>38</sup> Many states either mirror that language in relevant part or mandate that exceptions should be construed narrowly.<sup>39</sup>

What constitutes “*reasonably segregable*” with costly editing procedures is unclear, and police departments have taken a variety of approaches to the issue. Placing a high value on privacy and resource constraints, Oakland will not attempt to disclose traffic stop footage where a driver’s license or insurance card is shown, claiming insufficient resources for redaction.<sup>40</sup> By contrast, while professing concern for the same values, Houston will redact and release when possible, in the interest of deferring to cost constraints by limiting storage retention times.<sup>41</sup> Seattle’s police departments almost eliminated the city’s BWC program entirely due to their financial inability to redact and review enough footage to comfortably comply with a single citizen’s broad disclosure request.<sup>42</sup> Though a compromise was reached with the citizen,<sup>43</sup> police expressed their intent to seek legal limits on expansive requests.<sup>44</sup> Chief Dean Esserman of the New Haven Police Department has reported that his department has slowed its rollout of body cameras while it evaluates the “recurring cost” of storage and redaction in light of Connecticut’s “very open” Freedom of Information laws.<sup>45</sup>

A preference for redaction has been echoed not only by law enforcement but also by privacy advocates concerned that private actors could abuse collected footage for the purposes of stalking or identity theft—especially mass collection services like Evidence.com, discussed above.<sup>46</sup> The disruptor in Seattle

38. 5 U.S.C. § 522(b) (2012). The D.C. Circuit has held that non-exempt information must be “inextricably intertwined with exempt portions” to be withheld. *Mead Data Central, Inc. v. U.S. Dep’t of Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977).

39. See, e.g., CAL. GOV’T CODE § 6253(a) (incorporating language similar to that of the Freedom of Information Acts); GA. CODE ANN. § 50-18-72(b) (“This Code section shall be interpreted narrowly . . . .”); R.I. GEN. LAWS § 38-2-3(b) (including the same, but limited to “public inspection” and not release).

40. Kaste, *supra* note 30.

41. MILLER ET AL., *supra* note 18, at 33-34.

42. Jennifer Sullivan & Steve Miletich, *Costly Public-Records Request May Threaten SPD Plans for Body Cameras*, SEATTLE TIMES (Nov. 19, 2014), [http://www.seattletimes.com/html/localnews/2025060346\\_spdcamerasxml.html](http://www.seattletimes.com/html/localnews/2025060346_spdcamerasxml.html).

43. Eric M. Johnson, *Seattle Police Body Cameras Plan Revived By Deal With Anonymous Programmer*, REUTERS (Nov. 21, 2014, 9:15 PM), <http://www.reuters.com/article/2014/11/22/us-usa-washington-police-idUSKCN0J601Q20141122>.

44. Sullivan & Miletich, *supra* note 42.

45. Regarding redaction and retrieval alone, Assistant Chief Anthony Campbell estimated that “best practices” would dictate hiring five new employees to handle FOI requests for 500 officers. Markeshia Ricks, *FOI Complicates Cop Body Cam Rollout*, NEW HAVEN INDEPENDENT (May 2, 2016, 3:27 PM), [http://www.newhavenindependent.org/index.php/archives/entry/foi\\_body\\_cam/](http://www.newhavenindependent.org/index.php/archives/entry/foi_body_cam/).

46. See, e.g., Jesse Campbell, *New Bill Could Change Records Policy on Police Body Cameras*, WATAUGA DEMOCRAT (July 17, 2015, 3:05 PM), <http://www>

claimed concern for “deploying cameras without thought to privacy,”<sup>47</sup> which the American Civil Liberties Union has echoed<sup>48</sup> despite tentative support for body-worn cameras.<sup>49</sup> Concerns about general surveillance by police, heightened in an era of facial recognition technology,<sup>50</sup> would naturally be magnified when any citizen could view the “panopticon” as well.<sup>51</sup>

While no court has yet considered body cameras squarely, courts have examined other forms of police surveillance under FOIA. This body of precedent raises questions about whether the general discretion of officers to limit broad public access will always be respected. State courts in Arizona and New Jersey, for example, have limited municipalities’ ability to withhold security and dashboard camera footage without specific, articulable safety concerns—which might not extend to a generalized privacy concern for the public.<sup>52</sup> At least one trial court has rejected police concerns for privacy on behalf of a third party where a dashboard camera captured a public arrest (along with an invocation of the criminal investigation exception).<sup>53</sup> However, one state appellate court has

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.wataugademocrat.com/news/new-bill-could-change-records-policy-on-police-body-cameras/article\_1a58be46-fd9a-5f5e-9452-067e92bcdb34.html (discussing the problem of identity theft through filmed documents); Tracy Clark-Flory, *The Problem with Sex Workers and Law Enforcement Body Cameras*, FAST COMPANY (Feb. 20, 2015), <http://www.fastcompany.com/3042625/the-problem-with-sex-workers-and-law-enforcement-body-cameras> (discussing the problem of stalking of sex workers caught on body cameras). For concerns about collected surveillance, see generally Travis S. Triano, *Who Watches the Watchmen? Big Brother’s Use of Wiretap Statutes to Place Civilians in Timeout*, 34 CARDOZO L. REV. 389, 412-413 (2012); Siegel, *supra* note 28.

47. Sullivan & Miletich, *supra* note 42.

48. Siegel, *supra* note 28.

49. JAY STANLEY, AM. CIVIL LIBERTIES UNION, POLICE BODY-MOUNTED CAMERAS: WITH RIGHT POLICIES IN PLACE, A WIN FOR ALL 2 (2013), [https://www.aclu.org/files/assets/police\\_body-mounted\\_cameras.pdf](https://www.aclu.org/files/assets/police_body-mounted_cameras.pdf).

50. See Marc J. Blitz, *Video Surveillance and the Constitution of Public Space: Fitting the Fourth Amendment to A World That Tracks Image and Identity*, 82 TEX. L. REV. 1349, 1353 (2004) (primarily discussing CCTV).

51. See Siegel, *supra* note 28 (discussing privacy advocates’ concern with the “modern panopticon”).

52. See *Gilleran v. Twp. of Bloomfield*, 114 A.3d 780, 784-85, 786 n.3 (N.J. App. Div. 2015) (finding a request to withhold footage of a public area on safety grounds insufficiently specific, though noting that body cameras might pose broader privacy concerns); *KPNX-TV v. Superior Court In & For Cty. of Yuma*, 905 P.2d 598, 602 (Ariz. Ct. App. 1995) (rejecting a similar request regarding a crime scene videotape, though upholding the withholding of footage of a nonpublic area found to be a possible burglary target).

53. *Paff v. Ocean County Prosecutor’s Office*, No. OCN-L-1645-14, 2014 WL 5139407 (N.J. Super. Ct. Law Div. Oct. 2, 2014). The court noted that “[the footage] depicts a motor vehicle traffic stop in a public area which militates against any expectation

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indicated that where lengthy footage is reasonably believed to contain material exempt from disclosure, police may be able to withhold the footage altogether rather than undergo an extensive redaction process, based on resource and practicality concerns alone.<sup>54</sup>

In all of these cases, the right to police footage is the exclusive creation of statute and department policy.<sup>55</sup> Unlike constitutional decisions, then, lawmakers have the power to change the conclusions of the courts by changing the underlying public records law. This Comment now offers some suggestions to them.

### III. RECOMMENDATIONS

Based on the above discussion, I now turn to which adjustments may be necessary to allow for affordable BWC programs that serve victims' families and respect privacy. I offer three recommendations for lawmakers and law enforcement officials overseeing BWC implementation.

1: Recognizing victims' rights as the highest value in a BWC program, any department implementing BWCs must make footage available for a reasonable time—including provision of a personal copy—to the citizen who was engaged in the filmed encounter (or his/her representative)—*even if* others in the video, including the officer, do not consent. While privacy—and the treasured “anonymity [of] crowds”<sup>56</sup>—deserves protection, such protections must be circumscribed to the need to avoid mass surveillance, not to allow individual moments of embarrassment to trump victims' rights—even if victims' families choose to publicize their videos once obtained to encourage outcry. However, to reduce the resource burden and address privacy concerns, police departments should

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of privacy,” though it also noted that the face of the woman stopped was not visible. *Id.* at \*6. *See also* Developments in the Law, *supra* note 25, at 1807-08 (discussing *Paff* as an example of courts dismissing the general criminal investigation exception, though noting that all this litigation “is in its early stages”).

54. *Gilleran*, 114 A.3d at 785 (“We view as impractical the position . . . that OPRA required Bloomfield to review the entire fourteen hours of recordings and to specify particular footage that contained confidential material. Such a requirement may not only be unreasonably burdensome, it seems virtually impossible to accomplish without devoting the time and services of multiple employees.”).

55. *See Andrews v. Flaiz*, No. 1:14-CV-623, 2014 WL 4925044, at \*6 (N.D. Ohio Sept. 30, 2014) (finding “no support for a contention that [plaintiffs] had a constitutionally protected property interest in the dashboard camera footage,” even where plaintiffs were recorded, where footage was destroyed in accord with law and department policy).

56. *Blitz*, *supra* note 50, at 1425.

announce and set a reasonable window of time—say, two months—after which unflagged recordings will be deleted.<sup>57</sup>

2: Legislatures should affirm law enforcement discretion regarding broader public access when a) the request comes from parties other than actual complainants or their representatives and b) the department reasonably believes redaction to be costly. Often, police objection to sharing an unredacted recording—for example, footage of officers caring for victims of trauma<sup>58</sup>—is prudent.<sup>59</sup> If public access would require costly redaction, officials may either choose to control the conditions of the viewing (say, in-camera review at the station) or withhold the footage altogether. Alternatively, as suggested by the Yale Media Freedom and Information Access clinic, fee-shifting provisions might be adopted by states to reduce the cost to departments of complex redaction, especially those posed by “abusive requests.”<sup>60</sup>

3: Finally, centralizing hundreds of departments’ file storage with a single private third party increases the risk that employees with that organization—or unscrupulous hackers—may misuse the collected storage for commercial data-mining or worse.<sup>61</sup> State and federal government alike should encourage market competition in the secure storage cloud market to avoid centralized risk.<sup>62</sup>

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57. See STANLEY, *supra* note 49, at 4 (suggesting that footage be stored for times measured in “weeks not years” so long as the retention period is disclosed).

58. Jayne Miller, *Baltimore City May Follow Laurel PD’s Footsteps With Camera Use*, WBAL-TV (Aug. 21, 2014, 7:02 AM), <http://www.wbaltv.com/news/city-may-follow-laurel-pds-footsteps-with-camera-use/27642564>; Sullivan & Miletich, *supra* note 42.

59. Some of these conflicts might be resolved by policies on when cameras should be turned on and off. For further discussion of this question, see Waleska Suero, *Lessons from Floyd v. City of New York: Designing Race-Based Remedies for Equal Protection Violations in Stop & Frisk Cases*, 7 GEO. J. L. & MOD. CRITICAL RACE PERSP. 139, 143-45 (2015), and Howard M. Wasserman, *Moral Panics and Body Cameras*, 92 WASH. U.L. REV. 831 (2015).

60. JOSH DIVINE ET AL., MEDIA FREEDOM & INFO. ACCESS CLINIC, ABRAMS INST. FOR FREEDOM OF EXPRESSION, POLICE BODY CAM FOOTAGE: JUST ANOTHER PUBLIC RECORD 24 (Dec. 2015), [http://isp.yale.edu/sites/default/files/publications/police\\_body\\_camera\\_footage\\_just\\_another\\_public\\_record.pdf](http://isp.yale.edu/sites/default/files/publications/police_body_camera_footage_just_another_public_record.pdf). Divine et al.’s white paper is more bullish on public disclosure than this Comment, for two key reasons. First, it asserts that “the public supported body cams because they expected public access to body cam footage,” which I believe wrongly highlights general transparency over specific justice for victims. *Id.* at 12. Second, it suggests that technological innovation such as “auto-blurring” technology will obviate some of the costs of redaction over time. *Id.* at 23-24. I agree that if such technology becomes widely available, it will change the cost calculus here in favor of disclosure.

61. Siegel, *supra* note 28.

62. Microsoft, for example, has entered the market and has adapted its prior experience with secure cloud computing to meet FBI security requirements. The

**POLICE BODY-WORN CAMERA FOOTAGE: A QUESTION OF ACCESS****CONCLUSION**

Resolving the issues around access to BWC footage, while only dealing with one facet of body-worn camera programs, may help us better focus on the question: *Who is this policy meant to serve?* I have argued for prioritizing future victims of suspected undue police violence as individuals deserving of personal justice, not full public transparency into policing practices broadly. Perhaps our technology will evolve such that our surveillance policies can render that debate obsolete by making redaction available. For now, public servants should first remember the actual injustices that prompted this latest push for accountability.

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company has recently touted the adoption of its storage technologies by the Los Angeles Police Department. See Suzanne Choney, *Microsoft's Cloud is the Only Hyper-Scale Cloud Platform to meet FBI's Criminal Justice Information Services (CJIS) Security Policy*, MICROSOFT (June 24, 2015), <http://www.blogs.microsoft.com/firehose/2015/06/24/microsofts-cloud-is-the-only-hyper-scale-cloud-platform-to-meet-fbis-criminal-justice-information-services-cjis-security-policy>.