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training, and technology shaping law enforcement



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Answering the Tough Questions About BWC Deployment

By Doug Wyllie

Never in the history of law enforcement has the American public so vehemently demanded that police adopt a technology or device as they have in recent years for body-worn cameras. Citizens see the technology as a way to ensure greater visibility into their police force — especially in the case of use-of-force incidents.

There are agency benefits as well; deployment of body-worn camera systems (BWCs) by law enforcement practitioners — patrol, corrections, SWAT, and other tactical responders — offers significant advantages in keeping officers safe, enabling situational awareness, and providing evidence for trial. Agencies that have already begun using body cameras report that they help reduce citizen complaints, lower instances of resistance and use of force, improve police-community interaction, and enrich public safety.

Agencies considering the implementation of BWCs can benefit from their use in many areas, but only if the program is implemented correctly. Agencies that have not yet implemented a body-worn camera initiative must undertake such a project with purpose and intent — it is imperative to give consideration to all the possible factors at stake.

The technology itself — and the many options available on the market — can seem daunting to understand. Issues of data storage, file access and sharing, and automated redaction are just some of the technical concerns. Privacy, Fourth Amendment rights, and Federal Freedom of Information Act (FOIA) requests are just the tip of the legal iceberg.

Body-worn cameras are indisputably the future of law enforcement — there will soon come a day when nearly every cop in America is wearing one. They will be a great addition to officers' duty gear, and will help departments build stronger and more positive relationships with their citizens. However, police must understand and educate the public about what this new technology can and cannot do. We hope that this comprehensive resource will enable your agency to roll out the most effective and well-conceived program possible. ■

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BODY-WORN CAMERAS ARE HERE TO STAY:

What law enforcement needs to know now

From policies and legal issues to storage and technology, body cameras present a multitude of questions. We have the answers.

BY DOUG WYLLIE

Ready or not, the age of body-worn cameras is here. It's safe to say that five or ten years from now there will be such ubiquitous use of body-worn cameras in law enforcement that it will be shocking to see a cop without one. And when we step back to dispassionately think about it, that's a good thing — the benefits of this technology are manifold.

Whether your agency is testing body cameras, sourcing funding for them, has had them for years, or is still skeptical about the technology, there are many things every agency must consider. The cameras' features and capabilities, their limitations, their long-term costs, and what the future holds for them, to name a few.

Body Camera Benefits

Departments that already have body-worn cameras often observe that the mere presence of the camera often improves the conduct of the both subjects and officers. In 2012, the police department in Rialto, California, — in partnership with the University of Cambridge-Institute of Criminology (UK) — examined whether body-worn cameras would have an impact on the number of complaints against officers or on officers' use of force. The study found that there was an 88 percent reduction in the number of citizen complaints in the year the cameras were deployed compared to the prior year.



“DEPARTMENTS ALREADY USING BODY-WORN CAMERAS NOTE THAT THEY ARE USEFUL FOR DOCUMENTING EVIDENCE FOR CRIMINAL PROSECUTION, RESOLVING FALSE ALLEGATIONS OF OFFICER MISCONDUCT, ENHANCING IN-SERVICE TRAINING, AND STRENGTHENING THE PUBLIC’S TRUST IN POLICE.”

Departments already using body-worn cameras note that they are useful for documenting evidence for criminal prosecution, resolving false allegations of officer misconduct, enhancing in-service training, and strengthening the public’s trust in police.

Plus they’re really the only answer to the pervasiveness of cell phone video footage — which can be edited on a bias against police before being posted to social media.

Avoiding Hasty Decisions

Citizens want body cameras for cops, and they want them now, so police executives are under greater pressure to move more quickly in the purchase process than they would for any typical department purchase — no other technology in the history of law enforcement has been so foisted upon them. The cameras are being purchased at such a rapid rate that agencies are risking hasty decision-making without enough data for a complete assessment.

This creates a potential trap for police leaders. If you move too slowly, you may seem unresponsive to public demands for deploying this technology. If you move too quickly, you may end up with a technology partner that is not well suited to your agency’s specific and unique needs.

Complicated Issues

While the benefits of body-worn cameras are indisputable, there are many complications which should be taken into careful consideration before a contract is signed. Police leaders deploying a body-worn camera system need to think about a wide variety of issues — from identifying and including key stakeholders in the process, to writing the policy on how they are to be used, dealing with legal issues known and unknown — and deciding which

vendor’s technology platform is best.

One of the most significant policy questions departments will face is how to identify which types of encounters officers should record. Should policies give officers a certain amount of discretion concerning when to turn their cameras on or off?

That discretion can help officers balance a citizen’s desire for privacy with law enforcement’s mission to solve crimes.

There are legal issues pertaining to the technology that are as yet unresolved. For instance, a police department that deploys a body-worn camera program is essentially stating the actions of its officers are a matter of public record. This can lead to a flood of Freedom of Information Act (FOIA) requests that have to be triaged and treated on an individual basis. How can you reconcile expectations of privacy with a FOIA request?

Educate Yourself

There is an overwhelming volume of information out there on body cameras — from policy creation to storage management and the technology itself — but few have pulled it all together in a single resource for police leaders looking for everything from how to begin the research process to learning what to expect from leaders who have already gone through the process.

PoliceOne’s Body-Worn Cameras in 2016 supplement is an all-in-one resource made up of comprehensive articles from industry experts, technology vendors, and law enforcement leaders that tackles the myriad issue and tough questions brought about by body-worn cameras. We’re confident our expert content will educate law enforcement of all rank and file, resulting in fully-informed, intelligent decision-making about camera purchases, storage management, and policy. ■

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How to Deploy a Smart, Successful BWC Program

BY DALE STOCKTON

The drive to implement body-worn cameras (BWCs) is unlike anything seen in the history of policing. Typically, the rollout of law enforcement technology takes a more tempered approach as needs are identified, issues are addressed, and funding is justified. If anything, departments are usually frustrated by the extent of time it takes to obtain beneficial technology.

BWCs are a totally different animal and the impetus for implementation is being largely driven by external forces — those who either wish to exert a degree of influence over law enforcement or those in elected or appointed positions who are reacting to the demands of their constituencies. In other words, in many parts of

the country, law enforcement isn't asking for BWCs, they're being told to implement them as soon as possible.

Unsurprisingly, many agencies are being caught off guard and are scrambling to catch up. BWC implementation is multi-faceted with numerous potential stakeholders and multiple technology decisions to be made. There are many areas for a misstep — make a wrong turn and you may find yourself losing a lot of time and energy, perhaps having to reset your program by starting over. Make no mistake, technology “do-overs” can be costly in terms of operational capability, money and careers.

Regardless of where you are in the BWC journey, you're well served to pause and objectively assess where you intend to go. For

the sake of this article, we'll start with the assumption that your agency wants to roll out the most effective and well-conceived program possible.

Immerse Yourself in the Issues

Before you jump in the deep end of the pool, get a good handle on the various issues surrounding BWCs and the basics of the equipment. There are a number of good resources available but probably the most comprehensive and unbiased is the [Bureau of Justice Assistance National Body-Worn Toolkit](#). BJA has done a great job of objectively covering the issues, providing evolving resources and even linking to several sample policies from agencies across the country. Once you have a handle on equipment basics and what other agencies have experienced, begin developing a plan for your agency's program.

You'll need a program manager to oversee the effort so find a champion within your agency who understands both the potential benefits and pitfalls associated with rolling out BWCs. It is important to think in terms of how your agency's primary mission can best be advanced with the technology. Remember, tech tools like BWCs should augment and improve your capabilities, not control or constrain them.

Identify Key Stakeholders

There's much more to rolling out a BWC effort than simply buying and issuing hardware. One of the first major tasks will be identifying key stakeholders and seeking their input. This is probably the most important and sensitive part of your BWC rollout. This outreach effort should take place before cameras start rolling and involve multiple segments of the criminal justice community as well as representatives of the media, the public and civil liberties groups.

By proactively and effectively engaging these stakeholders, you're much more likely to head off problems. If you're conscientious and transparent in stakeholder engagement, you're much more likely to be successful. Conversely, if you're arbitrary, secretive, and dogmatic, you're likely to be met with resistance and skepticism from both your agency personnel and many in the community.

"BE PREPARED TO EXPLAIN WHY YOUR AGENCY IS EMBRACING BWC TECHNOLOGY AND THE BENEFITS THAT BWC USE CAN PROVIDE. BE PREPARED FOR TOUGH QUESTIONS ABOUT ACCESS, RETENTION, AND PRIVACY."

There is not a specific checklist when identifying stakeholders in a BWC rollout. Communities vary immensely as does the level of trust and support for law enforcement. First, take a reading on what has taken place and the current climate in your region. Depending on where you are and the type of agency, the size and scope of your "region" will vary. It could mean your entire state all the way down to a portion of your county.

Regardless of what you consider to be your operational region, do your due diligence by looking at any existing or proposed programs. Has there been a competitive procurement process (required in many areas)? Has there been media attention and, if so, what's been the tone of the coverage? Also consider the reaction of past technology rollouts (such as license plate readers) and consider those parties who raised questions or were impacted. This will give you a good starting point. Identify persons or groups with both an interest and a willingness to discuss the issues involved.

Be prepared to explain why your agency is embracing BWC technology and the benefits that BWC use can provide. Be prepared for tough questions about access, retention, and privacy. In some circumstances, it will be beneficial to meet with a group where other situations will be better served by meeting individually or with a small number of people. This is a time to be strategic.

Also essential to the stakeholder discussion are representatives from risk management, the city or county attorney and, perhaps most importantly, the IT folks. Take a moment to reflect on the variety of people involved and the level of engagement that may be necessary. It's probably unrealistic to hope for complete and unlimited support. There will be naysayers. This is why you should thoroughly vet the issues ahead of time so that you are prepared. It also helps to learn from the experiences of others. If another jurisdiction in your area has rolled out a program, take a look at media

and public reaction. Contact that agency's program manager and learn everything you can. Find out where the landmines are likely to be and how they dealt (or wish they had dealt) with them.

The users are the most important part of the program but some agencies minimize this factor, instead choosing to impose a program without sufficiently engaging with their officers. Labor relationships and their level of influence vary significantly across the country. In some, it's a non-issue. In others, nothing is going to happen until the representative labor group has signed off on the plan.

If you want a successful program, you'll be wise to engage early and often. Most departments start with a small group of officers or a single division so that issues that evolve can be addressed while they are still manageable. An even better approach is to actively solicit (even recruit) specific volunteers who will be willing to collaboratively work through issues and provide meaningful feedback.

Remember that those who invest themselves in a program will have a sense of ownership and will want the program to succeed. They'll be your best proponents and can serve as informal trainers when the full rollout begins.

Have a Purpose-Driven Policy

Understanding the intended purpose and the driving force behind your program will help identify priorities that need to be considered as you assemble stakeholders and develop your policy. Speaking of policy, you did intend to have a BWC policy in place before you put cameras in the field, didn't you? For some, this may sound like a ridiculous question but for many, it's a reality check. Policy should be considered the cornerstone of your program.

Think of policy development as being somewhat like developing a good recipe. You'll need to figure out the key ingredients, determine when they should be mixed together, and then estimate how many folks

you're going to be serving. Sounds simple, doesn't it? Well, sometimes recipes — and policies — can be a bit complex and require adjustment.

Policy basics that need to be considered include, but are not limited to:

1. When and under what situations will cameras be utilized?
2. What are the primary and permitted uses of the video?
3. Will officer discretion be allowed or restricted?
4. Will notification of recording be required?
5. Who will have access to the video and how long will it be retained?
6. How will the security of the data be assured?

The [BJA Toolkit](#), the [International Association of Chiefs of Police](#) and the [Police Executive Research Forum](#) have each provided model policies, all of which are highly recommended.

Educate the Public

Departments can gain additional benefit from their stakeholder involvement by listening to the concerns and questions put forth and then sharing those on a broader scale. Public expectations are likely to be quite high because of the high quality of today's media presentations. Not surprisingly, raw police video will often be very different due to the challenging and unpredictable environment of law enforcement. Perspective will be two-dimensional and from one angle.

Audio may be difficult to understand or may not pick up slight but important noises such as a metallic sound when a driver suddenly reaches under his seat. Environmental factors such as heat and smell will be absent. Depending on how the camera is mounted, the view may be obstructed and, although a head mount will point in the general direction, a camera will not always be "looking" where an officer's eyes are directed.



“OPEN AND CANDID DIALOGUE ACCOMPANIED BY CLEAR EXPECTATIONS AND INTENT WILL GO A LONG WAY TOWARDS ENSURING A SUCCESSFUL PROGRAM.”

Consideration should be given to partnering with local media outlets to demonstrate how the cameras work, how they're used, their limitations, and to provide discussion of the overall public safety benefits. Information on an agency's BWC program and policy as well as a candid discussion of their operational limitations should be available on the department's website.

Partner with Prosecutors

Those involved in the prosecution and handling of criminal cases should be part of your stakeholder group but there is more needed than simply seeking their input. BWCs will have a significant impact on the courts and prosecutors in your area. If multiple agencies are rolling them out, the challenges will be exponentially magnified.

Video has long played a key role in the effective prosecution of criminal cases but the proliferation of BWC devices and the resulting increase in video has presented some unique challenges. Prosecutors have an absolute duty to disclose potential evidence, both incriminating and exculpatory. A major incident involving multiple officers could easily result in hours of video, much of it overlapping but viewed from different angles and picking up different audio. If multiple agencies show up on a call, the problem is compounded.

A case could be seriously compromised if it's discovered there is undeclared or un-

documented video from an officer or from another agency that was not made available to the defense. This is something everyone needs to understand and document accordingly. Prosecutors will have to gear up by training and equipping staff to handle the video. Many have found they have to hire additional personnel as a result. Prosecutors will also need the ability to redact segments due to privacy issues unrelated to the criminal case or for other reasons. This is an area where you will be well served to determine expectations and process ahead of time.

Determine Access Parameters

Determining who has access to video evidence — and under what circumstances — is a complex issue and one that agencies have addressed in a variety of ways. In terms of public and media requests for BWC video, state and local laws may dictate a specific procedure. Accordingly, agencies should work collaboratively with their legal counsel.

This is a specialized and evolving area of the law that may have significant impact on your program so make sure you give it adequate consideration. If you're in an area that requires some level of regular release of video with portions redacted, you should expect serious staffing impacts. It takes time to handle the request, locate the video, review it and redact any “sensitive” video or

audio portions. In at least one state (Washington), the laws regarding video release are such that some agencies have deferred or severely limited BWC implementation specifically because of the impact that public and media requests would have on their staff.

Access considerations go well beyond public or media requests. What about using video for training purposes or performance review? Video can prove invaluable in building skills, especially during initial field training. However, if BWC video is used as an ongoing performance evaluation tool, labor representatives will likely express concern that the nature of police work is such that close monitoring of a targeted individual could result in unwarranted discipline.

Officers who feel like they're continually being subjected to critical review often claim a higher level of device malfunction or experience increased operator error. Open and candid dialogue accompanied by clear expectations and intent will go a long way towards ensuring a successful program.

Given the ease of posting videos to the Internet, agencies should specifically prohibit personnel from accessing videos for their own use and from sharing, selling, distributing, or posting videos to the Web. This is a situation where a single incident could result in loss of public trust and possibly compromise an investigation. Policy should clearly state the prohibition and the certainty of sanction.

Plan for File Retention

This requires a combination of due diligence, planning, and strategic consideration. You need to determine if there are existing laws, regulations, or ordinances that may govern or mandate a minimum retention period for digital media evidence. Even the word “evidence” is a key consideration. Keep in mind that there is likely a difference between retaining BWC recordings that are actually evidence in a criminal investigation and BWC recordings of a pedestrian stop where no arrest has been made. These are the types of distinctions that need to be discussed, decisions made and then clear direction given to those responsible for maintaining/retaining the files.

Do the math on the anticipated storage needs. If you're using in-house storage, you'll need to provision accordingly and provide for adequate backup (very, very important). Video takes a lot of space and the 24/7 environment of policing ensures there will be a steady flow of data. It goes without saying that the longer you keep it, the more storage you will need.

If you have an existing in-car video system, don't make the mistake of assuming that you can simply double your storage needs. Most departments find that individual-officer BWCs result in a much greater volume of recorded data. Again, this is an area to check with another agency that is using a similar system and avoid surprises. If you are using vendor-hosted or cloud storage, there will be a fee involved for that storage.

Think strategically when you make decisions regarding retention. How best can your system meet the needs of your agency in terms of evidence, public interaction, training, etc.? And what will be the corresponding staffing impacts or benefits? For instance, if you establish in your policy that video of an evidentiary nature is not to be released and kept for the life of the case while other non-evidentiary video is to be deleted after 30 or 60 days, you will be dealing with fewer requests for public or media disclosure. Don't forget, it's important that your retention schema complies with any legislatively-imposed requirements.

Set a reasonable and appropriate retention period based on:

- Any legal requirements in your jurisdiction
- Operational and investigative needs
- Data storage capabilities along with related costs
- A reasonable balance of the previous areas in light of community expectations

Patiently Train and Deploy

Very few agencies try a single, department-wide roll out and for good reason: there are a lot of moving parts to a BWC program and it makes sense to start small, address issues as they come up, and expand the effort as lessons are learned and prob-



"TRAINING SHOULD CONSIST OF AN IN-DEPTH REVIEW OF POLICY AS WELL AS EQUIPMENT FAMILIARIZATION TO INCLUDE OPERATIONAL PARAMETERS AND LIMITATIONS."

lems are resolved. The most effective approach is to start with a small pilot group of field officers.

Many agencies ask for volunteers because they want officers who are willing to conscientiously engage and provide meaningful feedback. There will be challenges and keeping the scale small and working with officers who are problem-solvers will go a long way towards moving your program forward. Once operational basics are ironed out, expand the program to a specific unit or group for a period of 60-90 days. Not only will this make your training more manageable, this will facilitate resolution of issues related to infrastructure like network storage or bandwidth limitations.

Training needs to incorporate more than just basic operation of the hardware. At a minimum, training should consist of an in-depth review of policy as well as equipment familiarization to include operational parameters and limitations. For instance, if your BWC units have an expected record time of six hours due to battery life, then you need officers to be aware of this so they can plan or monitor accordingly. Another important training consideration is the method and restrictions on accessing the recording and the method of storage or transfer. This will be unique to your system and your agency setup and should be outlined clearly in your policy.

Most departments find that experienced officers are best equipped to instruct other officers on BWC utilization, so if you use the pilot approach, bring those pilot participants into a training role. Consider making them the primary point of contact for reporting issues and serving as liaisons to the program manager. If you're fortunate enough to have a neighboring agency that has experience using the same system and setup, consider "borrowing" staff to ease the learning curve and take away some of the initial mystery.

Be patient with your personnel as the cameras hit the field. It will take a while for officers to have the mental awareness and primed thought process to initiate recording. Be prepared for those times when a recording was not obtained but the public expectation is that it should have been in operation. Encourage your officers to think ahead and consider activating the record function before an encounter begins or before arrival at a call. This approach will head off a lot of problems.

It is important to allow for growing pains as officers adapt to BWCs in the field. Allow time for officers to get used to the change. Many agencies have allowed a period of time where there is no discipline for failing to use the BWC. This can be a good way to mitigate negative sentiment and let officers develop the thought processes that will make the use of BWC part of their routine. Encourage feedback and address issues as they arise. Share success stories - what gets recognized tends to get repeated.

Conclusion

Body-worn cameras have the potential to objectively document the actions of an officer in the field. This can aid in criminal prosecution, help reduce or resolve complaints, and ultimately improve both community interaction and public safety. However, it will take commitment, planning, and ongoing effort to ensure a successful program. Study the issues, listen to your stakeholders, and adapt as lessons are learned.

Even the most well-thought-out implementation plan will hit some bumps. Don't let these events derail your program. Adapt, improvise, and overcome. ■



4 CONCERNS YOUR BWC POLICY MUST ADDRESS

By Dale Stockton

There are several areas of BWC operation where absolutes are difficult to determine and opinions vary, even among the experts. Some of these, such as discretionary recording, incident review, recording advisory, and citizens "opting out" have a degree of potential controversy and potential legislative requirement so you will need to do your due diligence before finalizing your policy.

You should seek input from your stakeholders and set clear expectation in your policy. Many agencies have found the need to modify their policy after real world experiences dictated a need for change. Following are brief discussions of different perspectives on four areas that have proved challenging.

1. DISCRETIONARY RECORDING

Should officers be required to record each and every contact or will they be permitted a degree of discretion? Departments vary from policies that require the recording of virtually every contact made by an officer, regardless of whether it has evidentiary or enforcement relevance, to policies that clearly define when officers can decide to turn the camera off.

The former would require an officer to record someone asking for directions or a victim conveying extremely personal and sensitive information.

The latter allows officers to recognize when it is either unnecessary or counterproductive to record. The trend appears to favor some degree of discretion and few departments have an absolute requirement that all encounters be recorded. To the degree it is practical, policy should give clear direction as to the situations that require recording and under what circumstances officers have the ability to decide whether or not to record. Policy should also clearly delineate any situations where recording would be prohibited or require that a camera be turned off.

If a department's policy has specific requirements as to when cameras should be recording,

the policy should indicate what the ramifications will be if an officer does not follow policy. The intent should be to constructively motivate officers to properly document events that require recording and discourage officers from selectively turning cameras on and off to avoid accountability for their actions. Discretion, by definition, has a degree of subjectivity attached to it. This is an area where appropriate training and discussion of expectations with real-life examples can help avoid problems.

2. POST-INCIDENT REVIEW

Should officers be permitted to review the recording of an incident before writing a report or giving a statement?

An [extensive report](#) on BWC utilization from the Police Executive Research Forum (PERF) states, "The majority of law enforcement executives interviewed by PERF are in favor of allowing officers to review body-worn camera (BWC) footage prior to making a statement about an incident in which they were involved. They believe that this approach provides the best evidence of what actually took place."

On the other side of the issue, some defense attorneys, civil rights advocates, and law enforcement leaders believe that this approach is inappropriate and contend officers may write their report or conform their statement to match the reviewed video rather than providing information based on their own recollection of the events as they unfolded.

There are essentially three general approaches to this issue:

- Officers are permitted to review video and write their report with that knowledge
- Officers are not permitted to review the video and must write reports without benefit of the recorded information
- A hybrid approach where officers are permitted to review video prior to documenting their actions except in critical incidents such as officer-involved shootings where the mindset of the officer may be paramount or where officer wrongdoing is suspected

This is an area where opinions are still being formed and lessons are being learned. There is strong evidence that the emerging trend is to allow review of video before a report is written. However, the ultimate decision should take place at the agency level after due consideration of

input from stakeholders such as prosecutorial and risk management advisors as well as labor representatives.

3. RECORDING ADVISORY

Should officers be required to advise persons being contacted that they are being recorded? When video is known to be in use, human behavior is altered, usually positively. This is why some advocate that officers always advise those being contacted that their actions are being recorded.

Conversely, many police officials feel that the documentation of a subject's "raw" actions and statements are powerful evidence and, more often than not, ultimately prove that an officer's actions were justified. Some departments partially address this issue by using equipment that displays a blinking light or distinctive color when a camera is on. Other departments don't require that officers advise of active recording unless a subject specifically asks if they're being recorded.

A key consideration in this issue is whether there are legislative requirements that require an advisory before recording (video and/or audio) may take place. This is often called two-party consent. Once again, this is an area where significant due diligence is required as well as considering the input of stakeholders. It is recommended that the first consideration be whether or not there is existing law that would dictate a specific action and then develop training and policy accordingly.

4. CITIZEN OPT-OUT

Should citizens have the right to prevent an officer's recording? This is another area where existing legislation may dictate a specific course of action. In some states, an officer may record during public police encounters but must discontinue in certain situations, such as in a private residence, unless permission is granted. Many departments have policy that requires an officer to discontinue recording at the request of a non-detained citizen but permit the continued recording of any subject who is lawfully detained or under arrest, even if they are requesting the recording be stopped.

Find out if there are legislative requirements. After that, it's a matter of listening to input from stakeholders and considering how the direction given to officers will impact both their effectiveness and their relationship with the community. Allowing officer discretion may also be appropriate, such as an accident victim whose clothing is torn off. If a department does permit discontinuation of recording under specific circumstances, a good approach is to have the officer verbalize the reason for the discontinuation prior to turning off the camera. ■



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UNDERSTANDING THE TECH: 10 THINGS TO KNOW ABOUT BWC AND STORAGE

BY TIM DEES

Rapidly advancing technology and social-political forces have made body-worn cameras (BWCs) the hot topic of the day in law enforcement circles. As with other revolutionary products and technologies, many vendors have jumped into the market, hoping to tap some of the billions of dollars that are already being spent on BWCs and their associated accessories and services. In order to make the most well-informed purchasing decisions, command staff must understand how the different cameras operate, what options are out there, and how they plan to use the technology.

Here are 10 of the biggest technological considerations you should understand.

1 DESIGN

The earliest BWCs were typically “lipstick” cameras that were tethered to a recorder/battery module by a cable. Better engineering and the understanding that cops already have enough gear dangling off of them meant that the devices evolved into a single unit, with some variations and options between brands.

The typical design today is a small device about the size of a deck of cards with a camera facing outward in the upper corner or in the middle of the device. The opposite face of the device may have an LCD display for reviewing the video, a clip to hold it in place on the

officer’s body, and/or controls to operate the recorder. Some vendors may also place the LCD display on the outward-facing side, so anyone being recorded can see exactly what is being recorded at all times.

The LCD display can be a nice feature, but it can also add cost, a slight amount of bulk, and can decrease battery life. Some models have the option of sending video to a synced smartphone via a wireless Bluetooth connection. Unless your officers often have a need to review video immediately, choosing a model with no LCD display may be a way to save money and battery.

2 CAMERA PLACEMENT

Some models have provisions for attaching a camera to the officer’s head or shoulder, via an eyeglass frame, helmet, or ball cap clip, or an attachment to the uniform epaulet. A camera coaxially mounted on the officer’s head can provide more information than one on his chest, as it will show where the officer is looking, and may give a better perspective on the environment. It also requires a tethering cable.

In scenarios where you’re considering equipping motorcycle patrol with cameras, consider the fact that helmet-mounted cameras will show whether the officer is checking cross-traffic at intersections before proceeding through. This could be very important in a later accident investigation or personal injury lawsuit.

Because we tend to move our heads more than our torsos, video from a head-mounted camera can be shaky and disorienting. Testing and review of videos from both body and head-mounted cameras makes it clearer which is best suited for your application.

3 PROS AND CONS OF POWER INDICATION

Most BWCs have some type of visual indicator that the recorder is on, often via an LED on the camera or recorder. These are good for transparency in police operations, but can be a tactical hazard. The last thing a cop on a high-risk traffic stop or building search wants is a light to serve as a target. There is usually an option to switch off the activation light, but some are more easily operated than others.

How the BWC attaches to the officer might have the least amount of technology involved, but remains a very important factor. If the attachment isn't secure enough, cameras will be lost and possibly broken frequently. Spring-loaded clips work well on belts, but not so much on shirt fronts. Every vendor seems to approach this problem differently. One employs a vest tailored to look like a sleeveless uniform shirt that is worn over the regular uniform, and also acts as a body armor carrier. The BWC slips into a custom-made pocket under the placket, with a plastic-reinforced hole for the lens. This is a novel and very secure way of carrying the BWC, but also ties you to a single uniform vendor and may require a costly new issue of carrier for every officer who will carry a BWC.

As with uniform fittings and choices, the method of mounting the BWC can be an individual preference. If possible, field test proposed devices and get feedback from the troops to ensure they will work as well as the vendor says they will.

4 BATTERY LIFE

Most BWC models have internal, rechargeable batteries that will power the recorder for three to six hours.

This amount of battery capacity is necessary because the devices are usually powered up for the entire duration of the duty tour, even if they're not in record mode. As with most modern in-car camera systems, BWCs usually have a "pre-event" recording mode, where the last 30-120 seconds of video are saved in buffer memory. When the officer activates the recorder, the contents of that buffer are automatically appended to the front of the recording, though absent sound. Sound is usually not captured by the pre-event buffer for privacy reasons, but some vendors offer the option to record sound at all times.

No battery is 100 percent efficient, and all of them have service lives, usually measured in charge-discharge cycles. For example, after 500 charge-discharge cycles, the battery might have 80 percent of its original storage capacity. The original battery capacity exceeds the time the BWC is likely to run so as to make the battery still usable when its capacity declines.

Most devices recharge their batteries when they are placed into a charging dock, which often also downloads the recorded video into an archive and erases the recordings on the camera, so it's

ready for the next shift. A few may use a micro-USB cable, such as is common in many consumer electronics. A full charge can take anywhere between one and six hours.

5 STORAGE CAPACITY

Most BWCs have internal storage capacities of 16 or 32 gigabytes (GB). Like with all other electronics, the ability to store a lot of data in a very small space has improved dramatically. Most BWC recordings come in around 1 GB per hour, although that can increase substantially if a higher resolution is selected. Standard resolution is what you get on a non-HD TV screen, around 800 MB (0.78 GB) per hour. A 720p resolution quadruples that size, while HD-level 1020p resolution is sixteen times as much information. For most agencies, the standard or mid-level resolution is enough for their needs.

The only time internal storage is likely to be an issue is if you have a situation where an officer has to use the same BWC for multiple shifts without offloading the recorded video to a server. This doesn't happen often, but if it's a possibility, you'll want to choose the largest internal storage capacity you can get.

6 ACTIVATION METHODS

The most common activation method is a user-operated button or switch on the device itself. Every vendor has a different idea of where and how these should work. At least one has a sliding shutter that activates the recorder when it is pulled down, exposing the camera lens. There is also a big colored dot next to the lens, drawing attention to it. This makes it evident to everyone when the camera is recording, and makes covert recording impossible, as the lens is covered when the recorder is off.

When choosing a BWC, keep in mind that the user may be wearing gloves when they need to activate the recorder, or they may be under intense stress, where fine motor skills deteriorate. The activation switch needs to be something the user can hit reliably under adverse conditions.

Some vendors have a provision for voice activation, so the officer can trigger the BWC into record mode just by speaking a command. The voice activation software is "trained" to the user's voice, so the same command spoken by someone nearby won't activate the camera. If that voice system is operating, it also draws power from the battery.

Newer BWC models are increasingly aware of their environment. Some will link to an in-car recorder system, activating when the car system does (or activating the car system when the BWC is triggered), or will power up when the car door opens. Obviously, the in-car and BWC systems need to be compatible to make this work.

Some will start recording if internal accelerometers sense the officer running, if there are violent movements (as would be the case if the officer was struggling with someone) or if he or she goes flat on the ground. It isn't a big reach to expect future generations of BWC will be linked to a fitness bracelet or other device that monitors the user's heart rate or other stress indicator.

7 CREATING A NETWORK

Another innovation is the formation of a network with the patrol car and/or other BWCs in the vicinity. A network and the appropriate infrastructure (such as a strong wide-area data network) allow recordings to be broadcast to the patrol car and streamed to another car or to an operations center in real time. The operations center might also be able to trigger the recorder remotely. If other BWCs are included in the network, activation of one BWC could trigger activation of all the others within a defined perimeter, giving multiple perspectives on the same incident.

8 UPLOADING DATA

There has to be a way of getting the video recordings off of the BWC and into long-term storage. Most vendors use a combination dock and charger where the BWC resides when it isn't in use. On being placed into the dock, a connected server downloads the recorded video and any other data and transfers it to a local server, or the cloud. When the data is downloaded and verified for integrity, the recordings are deleted from the BWC. At the same time, the battery is recharged and the device is made ready for the next user or next shift.

When an officer begins his or her shift, most systems have them log in to a computer connected to the dock. The system assigns a BWC to that officer for the shift, and encodes the officer's name, badge number, and other data onto the internal memory. This "tags" every recording with that officer's ID.

Another method, not often used, is to transfer the video wirelessly via any Wi-Fi connection the system has approved. This could be an opening for a security problem, but the larger issue is the time it takes for a large video file to move over a wireless connection. Hardwired connections are usually a better choice, but your situation may make the wireless option better.



Photo: Rialto PD

"TESTING AND REVIEW OF VIDEOS FROM BOTH BODY AND HEAD-MOUNTED CAMERAS MAKES IT CLEARER WHICH IS BEST SUITED FOR YOUR APPLICATION."

Because of the size of the video files that will accumulate, most vendors have a system that stores the video in the cloud. The cloud is likely one or more servers located at huge server/data "farms" owned by companies like Google and Amazon.

Unless your agency is one in a high-tech locale or some other place with very high-speed internet connections, uploading that video is likely to create a logjam between your agency and the internet. Most of the U.S. makes do with internet connections averaging 11.4 Mbps, or megabits per second. If you have one of those 11.4 Mbps connections, uploading 1 GB of video will take about 14 minutes (there is a useful transfer time calculator [available here](#), and that assumes no other online traffic during that time. Multiply that by however many cops will be using a BWC every day. Keep in mind that your download and upload speeds can be very different. To get an idea of what you're dealing with, visit [SpeedTest.org](#).

If you're adopting a BWC system that uses the cloud, take into account this bandwidth problem. Your internet service provider may be able to suggest some solutions, including a bigger data pipe — for a fee, of course.

One possible alternative is to have officers take the BWCs home with them and use their own internet connections to transfer the video while recharging the devices. This method invites questions of security, as a user could conceivably delete video that was unfavorable to him, and copy it for another use (such as posting it on YouTube). Most of the BWC vendors incorporate safeguards to ensure against this, but it still invites an additional risk.

9 UNDERSTANDING METADATA

Metadata is "data about data." Most of us are familiar with digital photography, but you might not know that nearly all digital cameras encode a significant amount of metadata with each photo file. The metadata can include the model and serial number of the camera, the exposure data, the time and date, and if the camera has a GPS function, the location where the photo was taken.

Video metadata can include all of this information, and much more. As mentioned above, most systems will tag each recording with the officer's name or other identifier. The system might also be able to capture direction of travel, speed, and location sufficient to plot the physical path of the BWC on a moving map. If the BWC is networked with other recorders, it could include what other cameras were in the vicinity and whether they were recording.

10 STORAGE AND ACCESS

Storage and management of video is the elephant in the room for any discussion of a BWC program. Unless you have a very small agency with a short retention policy on recordings, local storage is probably out of the question. Hard drive storage is cheaper than ever before, but a 10-cop department will still fill up a one-terabyte (1 TB) hard drive (\$30-\$50, plus the computer it's connected to) in a bit over six months.

Your retention policy will have a huge impact on your storage requirements. If you decide you need to keep everything indefinitely, multiply the scenario above to fit the size of your operation. Know

that buying new drives will be an infinitely recurring cost, doubled by the need to have backup copies of everything.

Most departments decide eventually to use the cloud. It's usually preferable to use the BWC vendor's video management solution, as opposed to trying a homegrown method. The vendor is going to have a front-end user interface that will be easier to use with more features than you can create locally. It will make the best use of whatever features the vendor has built into its products, and it's probably going to be cheaper than other solutions.

The user interface is the indexing and viewing software you will be using to review videos. It's critically important that this software is something you're comfortable with and that it offers the features you need. If the software is difficult for you to use, you're going to be wrestling with it every time you need to see or copy a video.

Features to look for include:

Search options. How many parameters can you use to locate relevant video clips? These might include an officer's name, ID number, day, time, geo-coordinates, incident or case number, type of incident (field interview, traffic stop, crime report, etc.), length of clip, and others unique to your operation.

Security features. There needs to be several levels of security, each with rights that expand with the level. The basic level might give only the ability to see clips that user had made. A sergeant could have access to clips made by anyone in his squad. Only upper levels of security would permit the user to copy the video to external media.

Chain of evidence. Security should also track every action by every user, so that any change or copying can be tied to the person who did it. Users must be careful about signing in to the software and then walking away from the computer to do other things.

Thumbnail indexing. Many video management packages create a thumbnail, or small still frame, from the video every few seconds. This allows for quick review when you want to get to the portion of the video where the action takes place.

Viewing options. By default, videos usually play in a small viewing window, with the perimeter surrounded by metadata. There should be an option to view the video full screen.

Redaction capabilities. Before a video is released to an outside entity, you'll often want to redact selected information, such as license plate numbers, faces of uninvolved witnesses, children, etc. Absent some automated processes, manually redacting this information, usually by blurring the details, is a tedious and time-consuming process. Some vendors offer auto-redaction features that will follow any object you designate, and redact it throughout the entire video.

Selective overlays. Most viewing software allows the user to overlay text on the screen that provides time and date, officer's name, speed, whether emergency lights are on, etc. You should have the option to include or remove all of that information with every video.



"SOME NEWER BWC MODELS WILL LINK TO AN IN-CAR RECORDER SYSTEM, ACTIVATING WHEN THE CAR SYSTEM DOES, OR WILL POWER UP WHEN THE CAR DOOR OPENS."

A retention policy governs how long you will keep each video recording before it's deleted to save space and storage costs. The vendor will likely have a suggested retention policy, but this is something you will want to discuss with your prosecutor's office and risk manager. If you have a pay-as-you-go storage contract, every retention decision is a compromise between cost and the risk of deleting a record you might need later.

Some vendors offer an "all you can eat" storage plan, often folded into a maintenance and service agreement. The vendor will charge you a fixed fee per month per user, no matter how much video that user might create.

Deciding which option is best will depend heavily on your agency size, your situation and needs, and on your retention policy. Most vendors estimate that each officer/user will generate about 1 GB of video per day, on average. Multiply the number of officer workdays in a month to get an idea of how much video data you will be generating.

For example, say you have a small agency where you field three officers on day shifts, three on evening shifts, and two on the overnight shift. That's eight officer workdays each day, or 240 in a month. It will take you a little over four months to generate 1 TB (1024 GB) of video, assuming a 100 percent retention policy.

Amazon Web Services is the leader in online storage, and serves everyone from Netflix to the U.S. Government. Their standard storage rate is \$0.03 per GB/month, with small price breaks as you start accumulating more video. At four months, storage will cost you about \$30 per month, increasing by around \$7.00 each month. A big advantage in using a massive service like Amazon is that your data is guaranteed to be backed up, with the redundant copies probably existing on different parts of the planet.

Storage is not the only cost associated with online video. You will also pay for bandwidth, which varies by how much you transfer from storage to your local computer. Expect to pay about \$0.09 per GB downloaded.

Adopting a body-worn camera program can be an expensive and complex undertaking, but most agencies that have used the cameras don't want to be without them. It's a worthwhile investment that pays off on several levels. ■



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A black VIEVU LE4 body worn camera is shown in the foreground on the left. The background is a dark, industrial-looking surface with rivets and mechanical components, possibly a safe door. The camera has a lens, a small light, and a microphone grille.

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8 Body Camera Concerns Police and the Public Need to Know

Body-worn cameras — like every other piece of equipment police officers use and carry — have certain limitations, and it is essential to educate the public on what they can and cannot do

BY DOUG WYLLIE

The tendency to think that body-worn cameras are the end-all, be-all solution for police-citizen contacts is a flawed one. Body-worn cameras — like every other piece of police equipment — have certain limitations.

Yes, body-worn cameras are credited with increasing the number of successful prosecutions of subjects who attack police and successful defenses against false allegations of officer misconduct. And candidly, body-worn cameras being used today are strengthening relationships with the communities where they are deployed. But in order to reap the benefits of this technology, its users must also understand its limitations so that expectations can be set — both within an agency and externally.

Consider these eight areas of weakness and recommendations for remediation when necessary and/or possible.

1. Technology Breaks

Police work can be a contact sport, and sometimes during that contact, things get broken. Body cameras are no different. In a knock-down, drag-out fight, radios routinely get jettisoned from duty belts, and body cameras — some of which have fairly flexible mounting mechanisms — could

easily go flying off into the darkness, returning footage of the bushes, not the bruises.

Remind your citizens and officers alike that cameras aren't indestructible, and that in the fray of an encounter that turns violent, the video recording may be compromised by mechanical or other failure. This is something that needs to be communicated to the public before a problem begins, not after, so whenever possible, say things like, "As we review this incident, we are fortunate to see that the body-worn camera equipment did not fail or get broken, so we have the benefit of a video recording of what happened..."

2. Motor Skills Can be Compromised

During a high-stress encounter, an officer's gross motor skills can be compromised, so pressing a small button — especially one he is relatively unfamiliar with because it's new to his uniform — may not be a reasonable expectation. They may simply miss the activation switch or not operate it correctly under stress. The officer's focus should rightly be on his safety and the safety of those around him — he likely won't have time to look down to see if it's activated.

Once cameras are added to your officers' equipment, make sure they're also added to your training regimen. Like every other part of training, the act of turning it on each time in training will become second-nature so that when the real incident takes place, recording isn't another conscious step, but an automatic reaction. As with all tactics, this takes many hundred repetitions to create the neural pathways necessary for that automatic response to occur.

3. Evidence is Only Two Dimensions

Video footage of a police-citizen encounter is a two-dimensional rendition of a three-dimensional event. The human brain processes the movement of people and objects differently than does a digital recorder. People's perception of what is happening in

a given moment can be affected by physiological conditions such as tunnel vision and auditory exclusion — two affects that video isn't going to have the ability to illustrate. This means an officer's memory of the incident may not reflect the story the video tells.

This reinforces the need to write a detailed police report that describes everything the officer has experienced that may not have been caught on camera.

4. Cameras Don't Have Memory Recall

The camera will see only what is happening in the encounter taking place in the moment, but the officer may have had multiple contacts with a subject — perhaps contacts during which the individual was resistive or combative. That experience may have given them insight into what the subject's pre-attack indicators are — minute facial movements or other signs that they are about to assault the cop. The camera has no such database, and can draw no such conclusions.

When an officer makes a decision to use a certain tactic based on seeing a pre-attack indicator they've seen in a past interaction with a subject, that history with the subject should be included in their report.

"ONCE CAMERAS ARE ADDED TO YOUR OFFICERS' EQUIPMENT, MAKE SURE THEY'RE ALSO ADDED TO YOUR TRAINING REGIMEN."





"THE PUBLIC — JURIES IN PARTICULAR — WILL NEED TO BE REGULARLY REMINDED THAT OFFICERS' ACTIONS ARE JUDGED BASED ON THE OBJECTIVELY REASONABLE STANDARD AS SET FORTH IN *GRAHAM V. CONNOR*."

5. Cameras Don't Have Feelings

Similarly, when an officer contacts a subject physically, they can very often tell if the individual is going to be resistive simply by the tension in their muscles and their pulling away or pressing in against the contact. This physical connection may prompt the officer to preemptively use a force option to gain quick compliance, but to the camera's eye it would look entirely unprovoked.

This, too, should be written as descriptively as possible in the police report. The better you describe your reasons for your decisions, the more prepared and confident you'll be if and when your day in court comes.

6. Fields of View Differ

Even when the officer's eyes and the camera's lens are perfectly aligned, the camera and the cop are not "seeing" the same scene. Most cameras offer about a 125-degree field of view. Under optimal, normal stress, most people's useful field of view (UFOV) — the area used to gather and process visual data — is 55 to 60 degrees. During heightened stress — when tunnel vision kicks in — the field of view can get considerably smaller than that 55 degrees. Officers involved in gunfights at close range often report that they "saw nothing but the barrel of the gun" and that it "looked as big as a beach ball." This means that their useful field of view was probably just five degrees or less.

The presence of a single view doesn't

guarantee that all the "action" will be recorded. When there are two, three, or more cameras present, you have a higher probability of seeing what occurred, but there is also a higher probability that one camera will record one version of the truth while another camera records another.

7. Cameras Process Differently

In addition to not having full and complete field of view, cameras do not have the processing power of the human brain. Even at the fastest speeds, a camera cannot pick up on everything that is happening at the scene. Although video seems to be one fluid file, it is actually a series of single images or frames, with tiny pauses in between them. In other instances, the camera may pick up things the human brain might miss during an encounter. For instance, an officer intensely focused on one thing may not see something completely obvious to an observer viewing the video footage of the incident.

8. Lenses Can Get Obstructed

Oftentimes, body-worn cameras are mounted to the chest, usually in the center near the solar plexus. When an officer presents a firearm in the manner they were trained to do, the lens is blocked by the gun and the officer's arms. The camera may capture what happened up to that point, but after that, it essentially becomes an audio recorder.

Further, during a physical confrontation, the bodies of the combatants may be so intertwined that the only "evidence" to be seen on the video is that a fight was happening, not what was happening in the fight.

Conclusion

The public — juries in particular — will need to be regularly reminded that officers' actions are judged based on the objectively reasonable standard as set forth in *Graham v. Connor*. That case decision stated that Court cautioned that "[t]he 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."

As body-worn camera footage is made available and viewed in court, consideration for what the officer was seeing, hearing, and experiencing at the time of the event is what's important, not what the camera recorded. The camera simply cannot record the totality of the circumstances.

Body-worn cameras are indisputably the future of law enforcement — there will soon come a day when nearly every cop in America is wearing one. They will be a great addition to officers' duty gear, and will help departments build stronger and more positive relationships with their citizens. However, while agencies deploy body-worn cameras, they must understand — and educate the public — about what this new technology can and cannot do. ■

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Body-Worn Cameras:

A legal checklist for officers, agencies, and the lawyers who represent them

As more cops are donning cameras, thorny legal issues are pushing from behind the recorded scenes

BY VAL VAN BROCKLIN

Interest in body cameras has catapulted with recent, highly publicized officer-involved shootings, nation-wide protests, and a White House Task Force Report. [About one-third](#) of the nation's police agencies are using body cameras.

In the spring of 2015, the [Justice Department announced](#) a \$20 million grant program for police body-worn cameras. That's just part of an ambitious [\\$263 million program](#) to equip 50,000 officers with the technology. As law enforcement resources rush to provide tips for acquiring the grant money, departments are scrambling to cash in.

However, in the rush to get some of that grant funding, some agencies may be moving so quickly that they aren't giving adequate attention to the legal issues that accompany the technology. Here's a checklist that police, their attorneys, and prosecutors should go through *before* the next lawsuit (possibly by officers against their department) or criminal appeal.

✓ Labor Issues

Not everyone has jumped on the body camera bandwagon. [Some unions](#), officers and brass have legitimate questions about requiring officers to wear cameras.

[Police unions in several cities claim](#) the cameras are a change in working conditions that must be negotiated. Implementing a body camera system is arguably a management prerogative, but it will impact working conditions. Management is well-advised to negotiate the foreseeable impacts.

In a [PoliceOne survey](#), officers said they favor the cameras, but some have expressed concerns that supervisors could use the video for fishing expeditions. Continuous recording might infringe on officers' privacy or in a manner contrary to good public policy. Consider:

- Officers in a patrol car or at the station getting to know each other; letting off steam about work or personal life; going to the bathroom
- Union activism or whistleblower communications

Technology isn't currently able to take the above into account, so even the [ACLU acknowledges](#) officers will need to have some OFF/ON discretion. This needs to be specifically spelled out in policies (see Dale Stockton's column on [page 10](#)) with consequences for non-compliance. That implicates disciplinary actions and their attendant officer rights.

The need to address the labor implications of non-compliance with body camera policies exists. The ACLU says research shows compliance rates with body camera policies are as low as 30 percent. They didn't provide the research. But the Phoenix PD's grant-funded body camera project reported a 50 percent compliance rate.

Other issues include whether officers should be permitted to review video before writing reports or answering IA questions. Proponents argue this would strengthen reliability and avoid a "gotcha" atmosphere. Opponents say we need statements uninfluenced by "do over" reviews. Should video be used to check on officers' work performance or workmen's compensation claims?

✓ Public Records and FOIA Requests

According to the [Reporters Committee](#) for Freedom of the Press, "many police departments are adopting bodycams before creating policies or procedures for compliance with open records laws."

The Federal Freedom of Information Act (FOIA) broadly exempts from disclosure "records or information compiled for law enforcement purposes" if their production:

- A. Could reasonably be expected to interfere with enforcement proceedings
- B. Would deprive a person of a right to a fair trial or an impartial adjudication
- C. Could reasonably be expected to constitute an unwarranted invasion of privacy
- D. Could reasonably be expected to disclose the identity of a confidential source which furnished information on a confidential basis
- E. Would disclose techniques for law enforcement investigations or prosecutions that could reasonably be expected to risk circumvention of the law
- F. Could reasonably be expected to endanger the life or physical safety of anyone



"MUCH MORE THAN DASH CAMS, BODY CAMERAS WILL CAPTURE PEOPLE AT THEIR WORST: UNDER THE INFLUENCE, ABUSIVE, PROFANE, DEVASTATED."

An agency must demonstrate that disclosure "would" cause the harm in only B and E — Congress lessened the standard to "could" in the other subsections.

State and local public records and FOIA requests vary. Thank the Reporters Committee for Freedom of the Press for an interactive, online map charting the body camera policies of more than 100 police departments and laws in nearly every state regarding public [access to police body camera](#) videos.

The resources needed to address not just production but storage, retention, review, retrieval, and redaction under public records laws can be huge. Take a department with 25 officers running body cameras 32 out of every 40 hours, 46 weeks a year. That's 36,800 hours of video potentially subject to public records disclosure requests. There's also the discovery obligations [owed to criminal defendants](#). Do we really want to be addressing these legal requirements after the cameras are rolling?

One solution may be to modify the public records and FOIA legislation that was enacted without body cameras in mind — before saddling officers and agencies with the devices.

✓ Federal Privacy Legislation

18 USC § 2511, the federal Wiretap Act, making it illegal to intercept, disclose, or use the contents of any wire, oral, or electronic communication through the use of a “device”, is a one-party consent law. It’s not illegal if one party to the conversation consents to the interception. Presumably, the officer is consenting to the body camera recording and the persons being recorded know they’re talking to a police officer.

The act also defines “oral communication” as “uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation.” We’re not talking about undercover work here. It’s hard to imagine a court ruling a person has a justifiable expectation of their conversation with a police officer in a public place not being intercepted by the officer (or any number of citizens’ cellphones.) Policies will need to address police wearing the cameras into private areas, especially homes.

✓ State Privacy Legislation

Each state varies in their statutes regarding the recording of conversations. Some states have two-party consent rules. For example, Alaska has one-party consent but Alaska’s state Supreme Court ruled that under the state constitution’s greater privacy protection against government intrusion, law enforcement must get a warrant to surreptitiously record conversations even if an informant participating in the conversation consents to the recording.

Washington’s state privacy law protects only “private” conversations and police need not determine if the conversation is private [if they advise they are recording](#).

The lesson is to determine your state’s privacy, eavesdropping and electronic monitoring statutes and case law about police use of such techniques before using body cameras. The Reporter’s Committee for Freedom of the Press provides a handy [state-by-state guide](#) to recording in-person conversations.

✓ Fourth Amendment Privacy Against Government Intrusion

Those most vocal for monitoring police misconduct are equally vehement that citizen privacy be protected. Much more than dash cams, body cameras will capture people at their worst: under the influence, abusive, profane, devastated. They will be at their most personal moments — in domestic disturbances, as victims of sexual assault or child sexual abuse, in mental health crises and medical emergencies. Body cams may also go into places where people have a reasonable expectation of privacy — like homes.

In *Lopez v. U.S.* (1963), the U.S. Supreme Court extended the “plain view” doctrine to recording, holding that officers may generally record what they can lawfully see or hear without violating the Fourth Amendment.

While the 2012 Supreme Court opinion of *U.S. v. Jones* prohibited law enforcement from using a GPS tracker to collect evidence

they could lawfully see with surveillance, the ruling was based on the physical intrusion of placing the tracker on the suspect’s car, which was deemed unlawful absent a warrant.

There are certain issues that have not been resolved by these cases:

- What if the camera captures something the officer did not see or hear? Would this be more akin to thermal imaging from a public vantage point which the Supreme Court held in *Kyllo v. U.S.* (2001) required a warrant?
- What if something is seen or heard only by reviewing the tape, repeatedly, or in slow motion, or stop frame, or digitally enhancing it? Are these actions a separate search requiring a warrant?
- Speaking of additional searches — what about interfacing body camera footage with facial recognition? Police in the United Kingdom, Dubai, and Canada already wear cameras that can recognize faces to identify suspects and missing persons. Apps for Google Glass allow wearers to automatically connect faces to photos
- Facial recognition interfaced with body camera video could almost immediately give police cause to stop anyone with an unpaid traffic ticket or court fees, behind on their child support, or any other myriad of small infractions. The legal question is whether the facial recognition is a separate search requiring separate justification
- *Lopez* and *Jones* addressed the rights of criminal defendants. What about people who end up not being charged with any crime? What about victims of sensitive crimes like sexual assault or child sexual abuse? What about witnesses or citizens who may fear retaliation if they cooperate with police? We can’t have crime victims or witnesses afraid to call for help or cooperate for fear they will end up the subject of a YouTube video or a reality TV producers’ FOIA request

✓ Equal Protection, Disparate Impact, and Selective Enforcement

The Fourteenth Amendment’s guarantee of equal protection has been used to attack law enforcement that has a disparate impact upon a class of citizens as well as selective enforcement of laws. It has formed the basis of successful challenges by the homeless to loitering and vagrancy laws and their enforcement.

When do body cameras worn to protect citizens from police misconduct and police from false or frivolous accusations turn into disparate surveillance?

With total 36,023 officers, New York City has 118 officers for every square mile according to the most recent [Census of State and Local Law Enforcement Agencies](#). That many body cameras on the street — concentrated in poor, minority, high-crime neighborhoods — pose a very different impact than body cameras worn by officers in a rural area with a small police department.



"WE CAN'T HAVE CRIME VICTIMS OR WITNESSES AFRAID TO CALL FOR HELP OR COOPERATE FOR FEAR THEY WILL END UP THE SUBJECT OF A YOUTUBE VIDEO OR A REALITY TV PRODUCERS' FOIA REQUEST."

Remember the DOJ's report on how the Ferguson police selectively enforced warrants to strong arm revenue out of its poorest, largely minority, residents? [It also found](#) that city officials pressured the department to do just that and the courts were complicit. [Residents described](#) police aggressively pursuing them for offenses as minor as using the wrong trash collection service or rolling through a stop sign. What would happen to community-police relations if, through body cameras interfaced with facial recognition, officers could identify such people with a glance?

And what will happen when municipalities scramble to pay for the less obvious costs of body cameras — training, developing and implementing policies and procedures, storage, retention, review, redaction, and reproduction? Some jurisdictions have decided to help fund the costs through fines. New Jersey legislation levies a \$25 surcharge on convicted drunken drivers that stays in the municipality and can go toward purchasing cameras or data storage and [other body camera expenses](#).

Most would have no gripes about surcharging an equal opportunity crime like drunk driving, but care must be taken to avoid selective enforcement to pay body cameras. And consideration must be given to their potential disparate impact. Even if we win the lawsuit because plaintiffs can't prove discriminatory intent, we lose the police-community trust battle. Let's think before we start the cameras rolling.

✓ Video as Evidence

Body camera video isn't just a report. It can become evidence in court. Proper chain of custody must be maintained. There must be technical controls to protect against tampering, destruction, unauthorized access. If a third-party cloud service is used for storage, encryption may need to be "end-to-end." (This is a system where the only people who can view the information are the people communicating. No one else can access the cryptographic keys needed to decrypt the information—not even a company that runs the messaging service.)

To authenticate the video, the date, time and location of recording will have to be documented. A witness will have to verify the contents and relevant identities of those recorded and provide assurance it hasn't been edited or over-dubbed.

Prosecutors and attorneys representing officers/agencies in civil lawsuits may need expert witnesses who can explain the operational aspects of the camera regarding circumstances like those above.

If video footage becomes trial evidence, it will need to be retained as long as other evidence subject to an appeal and a possible retrial.

The availability of body camera evidence may also entail legal duties. Proposals are already underway for:

- Rebuttable evidentiary presumptions in favor of criminal defendants who claim exculpatory evidence was not captured or was destroyed when an officer failed to record or interfered with the recording
- [Similar presumptions](#) for civil plaintiffs suing the government, a police department or officers for damages based on police misconduct

There is related precedent for excluding evidence that could have been captured on a body camera. In the case of custodial interviews, [some states have gone beyond a rebuttable](#) presumption and determined that such evidence is inadmissible if not recorded, absent a specified exception.

Finally, it is the police's and prosecution's duties under the Supreme Court cases of *Giglio* and *Brady* to turn over evidence to the defense that might be used to impeach the credibility of a prosecution witness, including police officers. This includes body camera evidence.

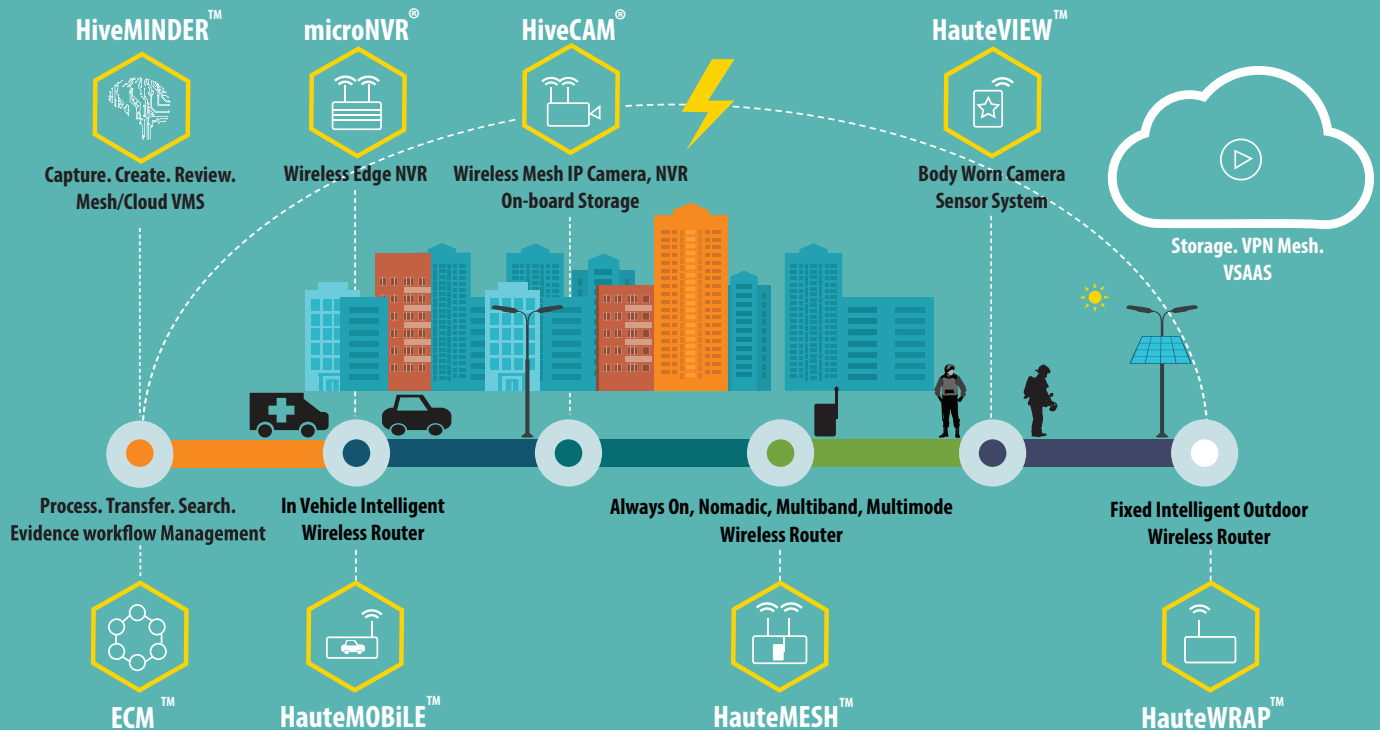
The *Brady* and *Giglio* obligations are not limited to the officer's conduct in that particular case but could extend to any misconduct relevant to a defense or the officer's credibility. Civil litigants may be entitled to even more, under civil rules of procedure.

Unless these legal issues are addressed before the cameras start rolling, the panacea may turn into a Pandora's Box. ■

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A Tale of Two BWC Initiatives:

Leaders tell their stories

Two law enforcement leaders who have gone through the process of implementing a BWC program share what they learned with the hope that agencies following in their footsteps can benefit from their experiences

BY DOUG WYLLIE

Agencies across the country are implementing — or at least contemplating — body-worn camera initiatives. Some agencies are further along in the process than others, so we asked police leaders at two different size agencies — one relatively large, the other small by comparison — about their experiences with body-camera deployment so far. We engaged two law enforcement leaders who have gone through the process with the hope that agencies following in their footsteps can benefit from what they learned along the way.

Meet the Agencies

The Fresno (Calif.) Police Department is authorized for 732 sworn and 275 civilian members. Fresno's 515,000-person population makes it the fifth largest city in the state of California, and spans

110 square miles. The city is a unique mixture of more than 80 different nationalities, creating rich cultural diversity tempered with unique policing challenges.

The Hayward (Calif.) Police Department has 197 total sworn. The agency currently has 101 uniformed officers in patrol, including lieutenants and sergeants. According to the California Department of Finance, the population of Hayward is 147,113 residents consisting of diverse ethnicities and backgrounds living in the city's 62.5 square miles. Some citizens of Hayward live in high-density, low-income apartments while others live in million-dollar homes.

Fresno Police Chief Jerry Dyer and Hayward Lieutenant Eric Krimm spoke on behalf of their departments about their experiences implementing a body-worn camera program.

"TODAY, MANY NAYSAYERS HAVE TURNED INTO BODY CAMERA SUPPORTERS, WITH SEVERAL OFFICERS EXPRESSING GRATITUDE OVER BEING QUICKLY CLEARED OF A COMPLAINT AFTER BRINGING FORTH VIDEO EVIDENCE."

Q: What has the overall impact on policing in your municipality been since deploying BWCs? How long since implementation?

Chief Jerry Dyer: The Fresno Police Department tested various camera systems and conducted a pilot program for almost 18 months to evaluate and prepare for operation prior to implementing a department-wide program. Actual implementation began in late January, 2015. To date, there are over 200 cameras deployed in the field, with a goal of 400 cameras distributed by early February, 2016.

Impacts to the agency include the financial cost of the equipment and video storage, increased bandwidth at the district stations to upload video data, and staff dedicated to the project. Currently one sergeant and one officer oversee the program, which includes training. The cost of the equipment and storage are spread out over five years with 20 percent coming from private funding, 40 percent general funding and 40 percent from a grant.

Another impact is the additional time officers must spend in the field and office reviewing, tagging and uploading video evidence. As officers become more familiar with the system, we hope to minimize this time. There is also a requirement for extra time for detectives to review and include videos with case filings for the DA's office. In time, we will transition to a version of electronic filing which will help shorten the amount of time needed.

Initially, our police association had reservations about a body camera program. Their concerns were minimized after being invited to assist in the development of policy related to body worn cameras. Today, many naysayers have turned into body camera supporters, with several officers expressing gratitude over being quickly cleared of a complaint after bringing forth video evidence.

Lieutenant Eric Krimm: We implemented full deployment the first week of October 2015, so I don't really have a feel yet for what the impact will be. During a recent community meeting where I taught police use-of-force, the attendees seemed to be happy that we were deploying BWCs to all of our uniformed personnel. My belief is that the community has an existing high level of trust of our organization, and this only helps to maintain and improve what we already have established.

Q: What was the one thing you did in the process that you would do differently if you were given a chance to do it over?

Chief Dyer: We tested all docking stations under a medium load before going live. When we went live with the entire system, the docking stations crashed. Fortunately, we had a team of officers and IT support staff standing by in the event of a glitch. They were able to spend the night troubleshooting the issue and quickly correct the problem.

In retrospect, had we tested under a full load instead of a partial load, we would have located the IT anomaly sooner and eliminated the problem before it happened. It is important that agencies minimize problems, particularly when the program is new, to eliminate reasons to not support the change.

Also, officers were initially provided camera mounts that required the officer to wear the camera on their lapel which often times does not allow for the best video. We have since ordered eye glasses for the cameras to be mounted on as that seems to provide the best video and the most accurate perspective of the officer.

Lieutenant Krimm: We could have communicated better with adjacent agencies to compare policy related to usage to better know





"DO NOT FEEL THE PRESSURE TO IMPLEMENT A BODY-WORN CAMERA PROGRAM UNLESS THERE IS A NEED IN YOUR RESPECTIVE COMMUNITY, AND IF YOU DO IMPLEMENT, MAKE SURE YOU SET A REALISTIC TIMELINE."

what each agency policy was in regard to recording an incident or investigation during combined agency operations.

Q: Was there anything that surprised you during the process? For example, did you get unexpected resistance from your officers?

Chief Dyer: There were a lot of questions raised at the onset by the leadership of the Police Officers Association, which was a good thing as it did require us to address these concerns, slow down the implementation, and ensure they were involved in every aspect of the process to include writing a significant portion of the policy. The leadership also suggested we implement with volunteers first which allowed for gradual buy-in from officers.

The biggest surprise the training team has shared with me is how quickly the officers have become reliant on the camera as a virtual backup. The team has trained many officers who were initially reluctant to wear a camera. The officers would make comments such as, "I'm not sure about this thing," and a few weeks later the same officer would contact the team saying, "I love this thing!"

Our officers are still in a learning curve, but the speed at which the officers are adapting to the technology continues to be a pleasant surprise.

Another area that was an initial surprise was the level of IT upgrade needed at each of our substations for the docking stations to be able to communicate and transfer data effectively without compromising other communications.

Lieutenant Krimm: We started with testing different devices and the officers were generally very positive regarding the benefits of having their own recording of an entire event, versus the last 30 seconds caught on a cell phone camera by a passerby. I was surprised that officers by and large seemed to embrace the use of BWC.

Q: Imagine a law enforcement leader is on the other end of the phone, asking for advice in setting up BWCs in a jurisdiction similar to yours; what do you tell them?

Chief Dyer: The public is recording your officers all the time. In this era of police mistrust and allegations that often prove to be

false, this translates to edited versions of an incident being aired on social media that slants the contact or does not show a complete story. A body camera provides a point of view that is much closer to the officer's perspective, and gives the agency an unedited version of the contact. Cameras are not perfect, but they are definitely a helpful tool.

It is important to identify a funding source in advance and allow for adequate time to implement. I recommend extensive evaluation of various BWC systems, research best practices and policies prior to implementation. Prior to the roll out, fully explain the system to the community, elected officials, the District Attorney and your officers. Partners in policy development should include such groups as the city attorney, local district attorney, Police Association, staff members, and end users.

Be prepared for unexpected things such as the DA's office possibly needing transcriptions of videos before trial, and determine ahead of time where that responsibility will reside. Agencies should ensure policy includes information about when cameras should be activated, and plan for the extra time detectives will need to review video related to a case. Lastly, make sure you are well aware of state law that governs retention time and gain an opinion from your city attorney under what circumstance if any, should video be released under the Freedom of Information Act.

Most importantly, do not feel the pressure to implement a body-worn camera program unless there is a need in your respective community, and if you do implement, make sure you set a realistic timeline.

Lieutenant Krimm: We started with a test group of officers to test and evaluate several different BWC devices. These officers were selected based on tenure, experience, and willingness to participate. They were given the opportunity to influence the choice of device they would have to use, and were able to influence policy based on their feedback. Using the feedback, we chose a device, and then deployed it in special units to further test and evaluate to ensure the policy, deployment, and usage would be deployed to all smoothly.

This process was beneficial in ensuring we worked the "bugs" out of the new device before having everyone struggle with it. ■



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EXPERT ROUNDTABLE:

How industry leaders
are proactively
addressing
BWC concerns

We turned to some of the most prominent leaders in the body-worn camera industry to get their take on law enforcement's most pressing issues and how today's technology is stepping up to the plate to help

BY TIM DEES

Police departments are understandably wary when approaching the topic of body-worn cameras — a technology that's becoming increasingly expected across the country and threatens the privacy of officers and communities alike, and has a significant impact on budget no matter the agency's size.

A smart police leader is brimming with questions about privacy, cost, policy concerns, and training — and who better to answer the toughest questions than the manufacturers themselves? We rounded up six of the biggest names in body camera technology to give their take on what the most difficult obstacles are, and what their forward-thinking companies are doing to overcome them.

What do you think is the greatest benefit to police officers (and by extension, their agencies) for wearing a BWC?



Brian Kirkham: Body-worn cameras are helping agencies further their goal of being as transparent as possible to the public they serve.



Chris Lindenau: We've seen ample evidence to suggest that citizen video often portrays only one side of an incident, usually after it has escalated, thereby omitting vital information which indicates under what circumstances use of force was initiated. Citizen video often does not have ample audio either, which is also important to understanding the reason for escalation. An officer's BWC shows the events from their point of view.



Alasdair Field: The primary function of a body-worn camera is to capture video evidence, therefore the number one benefit to the police officer and their agency is a non-biased video account of frontline policing. Implicit in doing this, a whole host of other benefits follow.

"THE KNOWLEDGE OF A VIDEO ACCOUNT OF AN INTERACTION CAN OFTEN DETER CRIMINALS FROM MAKING FALSE COMPLAINTS AGAINST POLICE OFFICERS AND, OVERALL, INCREASES THE NUMBER OF EARLY GUILTY PLEAS."

With the recognition that police officers are collecting video evidence, offenders often alter their behavior, which in turn can protect officers from verbal and physical aggression. Additionally, deescalating scenarios may lead to quicker resolutions, saving time and making police officers more efficient.

Furthermore, the knowledge of a video account of an interaction can often deter criminals from making false complaints against police officers and, overall, increases the number of early guilty pleas. These factors alone can dramatically reduce costs and the time spent by agencies in dealing with prosecutions.



Steve Tuttle: Clearly in this post-Ferguson world, law enforcement has these powerful tools to provide better evidence of the heroic work that they often do to balance the issues of transparency and their split-second decisions constantly under the microscope. It will protect them from unfounded claims, and when mistakes are made, they can be addressed specifically instead of a litany of 'what ifs.'

We have to get trust in the community, and if we want future generations to become the next guardians of America, we have to leverage technology that provides them the missing tools in the toolbox.



Steve Ward: BWCs provide liability protection for officers. When I was a police officer in Seattle, I wanted a tool that would help me demonstrate what really happened in an interaction with the public. BWCs do just that! In today's age of increased scrutiny of police officers around the country, BWCs demonstrate to the public that their police officers are doing a great job which builds trust in communities. They provide an objective

view of police rather than a very narrow portrayal that can be sensationalized by the media.

What is a feature for a BWC that is not yet available that you think should be (or will be) available in the future?



Greg Dyer: There will be more emphasis on moving, storing, and sharing video, auto-activation technologies, and live streaming of video. Many departments are looking for ways to gather and share video from multiple sources. Most of our customers want to be able to quickly and easily build a digital case file with videos from multiple sources.



Using cameras for more than video collection. We treat the camera as a mobile computing device that should enable a whole host of other functions to be served for positive policing, reduced cost of ownership, and better technology lifecycle management, that also consolidate other disparate devices on the uniform and in the car.



With the increasing sophistication of body camera technology, the battery life will be called into question. A device that needs to pre-record an entire 12 hour shift, whilst being tracked by GPS and potentially live streaming high definition video will require advanced battery technology if the products are to remain ergonomic and light.



Accessing databases for LPR [automated license plate readers] and other areas is the next possible glimpse into the future.

MEET THE EXPERTS



Greg Dyer has been the National Sales Manager for **Digital Ally**, makers of the FirstVu HD body camera, since 2011.



Brian Kirkham was appointed Vice President of Marketing in 2015 for **WatchGuard Video**, known for their Vista and CopVu body-worn cameras.



Alasdair Field is CEO of **Reveal Media**, the UK-based manufacturers of the RS2-X2 and RS3-SX body cameras.



Chris Lindenau is Vice President of Sales & Marketing for **Utility, Inc.**, makers of the Gen 2 BodyWorn camera.



Steve Tuttle is Vice President for Strategic Communications at **TASER International**, makers of the Axon Body and Axon Flex cameras.



Steve Ward is a former Seattle cop as well as founder and CEO of **VIEVU**, makers of the LE4, LE3 and LE4mini.

"DEPARTMENTS NEED TO DECIDE IMPORTANT THINGS SUCH AS HOW LONG TO KEEP VIDEOS, WHERE TO STORE THEM, AND IN WHAT SITUATIONS THE CAMERAS NEED TO BE USED."

What are the looming challenges on the horizon for BWCs, and how are manufacturers addressing those issues?



Storage continues to be a challenge, and options such as the cloud, and software systems such as VuVault allow video to be stored and indexed all while providing a cost-effective and complete video solution for agencies. Application software is being developed and utilized so officers can tag events and review video from the BWC on their smartphone or tablet, and put in notes during their shift while it is still top of mind, resulting in less overtime and eliminating busy work.



Since battery life is becoming increasingly important to customers, manufacturers need to continually invest in new technologies to develop effective future products.

However, a balance will have to be struck between shoehorning any and every technology into body cameras — as some companies already attempt — and adding features that add value to the officer and agency. Those companies with real insight into the frontline will be able to produce body cameras that are advanced and effective, yet simple and helpful to use.



The issue of turning cameras on automatically is just coming to light. It's addressed by policy, but in expedited situations they can be left off by accident. We've begun to crack this issue with technology that turns cameras on automatically when a squad car's light bar or siren is activated or whenever a Smart Weapon safety is turned off. We've really just scratched the surface of this auto-activation feature and the future will have more options.



The biggest challenges are from the police department's perspective, not the manufacturers. Departments need to decide important things such as how long to keep videos, where to store them, and in what situations the cameras need to be used. These are all policy issues that departments must address. The good news is that there are great departments out there that have years of experience and they share their expertise with other police agencies. Employing former officers also helps to assist agencies with things like training issues and best practices — situations we've dealt with firsthand.

What is the biggest reason that you encounter from agency command staff for resistance to adopting a BWC program, and what is your response/solution?



Budgets and state/local laws surrounding BWCs as well as police departments being tasked with developing policies and procedures surrounding when and where the body camera is to be turned on and off. Trusted resources like the IACP

provide general guidelines agencies can consider when developing individual agency policies. Pricing plans and programs have been implemented to allow agencies more flexibility when evaluating hardware, software and storage needs.

We're ready to assist agencies with hardware and software to ease the transition and to accelerate integration and adoption of such new and potentially revolutionary technology.



The resistance, where it exists, is more grounded in the uncertainty around deployment and not the physical deployment. Rather, the policies that need to be created, agreed to and managed when the system is in use. Currently, there are no best practices in place and laws vary from state to state. Each agency is essentially clearing its own path. Manufacturers and industry organizations need to help reduce the anxiety level through better education and sharing of lessons learned.



The expectation to release video without the appropriate redaction technology to do so in a cost-effective, efficient manner, while preserving citizen privacy rights [is a point of resistance].

Redaction is one of the many hurdles manufacturers are attempting to overcome to better suit the needs of agencies that are facing FOIA video requests.



Very often the biggest reason for resistance is rooted somewhere in the misconceptions about body-worn video. Whether regarding cost, policy, public perception or the benefits — a real stumbling block to implementing a project can be fear in uneducated decision-makers.

Our solution, as we have found all over the world, is education and partnership. Education, because in most cases, it is likely that a department is starting to use body-worn cameras for the first time. Therefore everything in relation to body worn video is unknown.

Partnership is equally important, because often, if an agency is simply sold cameras and left to get on with their project unsupported, they are less likely to reap the full benefits of BWC and understand how to effectively manage the captured data. Because of our extensive experience in the market and our focus on building strong relationships with our customers, we are able to not only provide solutions, but also to consult and guide clients in all aspects of body-worn video.






I rarely face resistance from police commanders. They inherently understand the benefits of BWCs. Police commanders have been working hard to implement programs across the country. The biggest obstacle that they face in implementing a BWC program is funding, as well as the challenge of developing policies. ■

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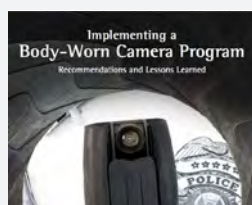
Officers involved in the study district were 18 percent less likely to make an arrest when compared to other Denver cops

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