

Body Worn Cameras Legal Issues and Implementation



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Police Videos

Future of Police Transparency

WEARING A
BADGE AND A
CAMERA



Intro

- This is not a new issue to Police
- Multiple Departments Wearing cameras
- Estimated 80% of all cops will be wired for video in the next 3 years.
- Information being discussed every day across the Country.
- Why do I like the use of cameras?
- [DOJ/ PERF Report](#) – September 12, 2014
- IACP Model Policy/ Concept Paper – 9/14

Benefits v. Challenges

BENEFITS

Body-worn cameras are useful for documenting evidence; officer training; preventing and resolving complaints brought by members of the public; and strengthening police transparency, performance, and accountability.

Rialto PD Study

- ↓ 88% decline in the number of complaints filed against officers
- ✎ Officers with cameras used force 60% less often
- ⚖️ Reduction in lawsuits and related costs

Mesa PD Study

- 👤 Citizens' complaints declined by 50%
- ✎ 75% fewer use of force complaints for officers with cameras during pilot program
- 📄 Wrote about 20% more tickets



CHALLENGES

It is important to maintain the proper perspective. Cameras are not the silver bullet. They will not solve all of your citizen complaint or use of force problems. There are challenges that need to be outlined and discussed. Here are just a few.

- 👁️ Catch officers doing things wrong
- 💰 Cost (estimated \$900 per camera)
- 📁 Storage/capacity (data storage and software costs)
- ⚖️ Union challenges
- 🔦 Leadership (need top down support)
- REC Point of view recording (2D recording, dim light conditions)
- 🕒 1st & 4th amendment privacy rights

Benefits

- Real-time evidence gathering
- Efficiency of prosecution in criminal cases and internal affairs cases
- Civil defense of officers and agencies
- Increased professionalism – officers act better with the camera on
- Impartial eye-witness
- Public Trust

Concerns

- Public privacy issues – particularly when officers enter a home or when interacting with victims and bystanders
- Officer privacy issues – which includes the issue of when recorders may be turned off and on.
- The possibility of the equipment affecting the health and safety of the officer
- The cost associated with the program – including purchase of equipment, policy development, and training – as well as storage costs.

Privacy Issues

- Many organizations are conflicted-
- For the ACLU, the challenge of on-officer cameras is the tension between their potential to invade privacy and their strong benefit in promoting police accountability.
 - Notice to Citizens
 - Recording in the Home – 4th Amendment
 - Retention
 - Public Disclosure



Glik v Cunniffe

- 1stCircuit's ruling (665 F.3d 78 (2011))
- But its persuasive reasoning has been cited by courts and lawyers nationwide
- Charges (All Dismissed)
 - 1.Unlawful audio recording in violation of MA wiretap law
 - 2.Disturbing the peace
 - 3.Aiding in the escape of a prisoner
- In May 2012, the City of Boston settled the case with Glik for an amount of \$170.000

Glik

- “The First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw.”
- “It is . . . well established that the Constitution protects the right to receive information and ideas.”
- “There is an undoubted right to gather news ‘from any source by means within the law.’”

Glik v Cunniffe

- Gathering information about government officials in a form that can readily be disseminated to others serves a cardinal First Amendment interest in protecting and promoting “the free discussion of governmental affairs.”
- Public’s right of access to information is **coextensive** with that of the press.
 - Almost everyone has a cellphone
 - Almost every cellphone has a camera
 - Just as we treat every weapon as being loaded
 - Treat every camera as if it were recording

Glik v Cunniffe

- “In our society, police officers are expected to endure significant burdens caused by citizens’ exercise of their First Amendment rights”
- “The First Amendment protects a significant amount of verbal criticism and challenge directed at police officers.”
- “the same restraint demanded of law enforcement officers in the face of ‘provocative and challenging’ speech must be expected when they are merely the subject of videotaping that memorializes, without impairing, their work in public spaces.”

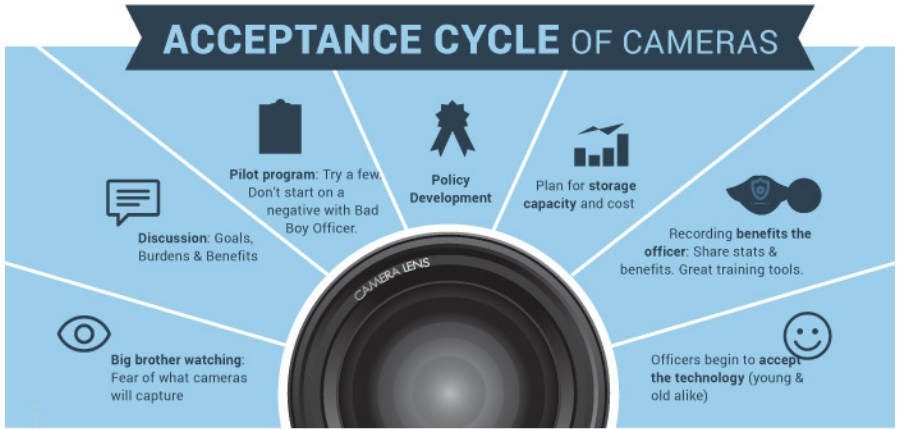
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Glik v Cunniffe

- “Such peaceful recording of an arrest in a public space that does not interfere with the police officers’ performance of their duties is not reasonably subject to limitation.”
- Court also recognized:
 - “the fundamental and virtually self-evident nature of the 1st Amendment’s protections” of the “right to film government officials or matters of public interest in public space.”

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Acceptance Cycle



Implementing a Body-Worn Camera Program

Recommendations and Lessons Learned



COPS
Community Oriented Policing Services
U.S. Department of Justice



U.S. DEPARTMENT OF JUSTICE
RESEARCH & ANALYSIS

Implementation

- When presenting officers with any new technology, program, or strategy, the best approach includes efforts by agency leaders to engage officers on the topic, explain the goals and benefits of the initiative, and address any concerns officers may have.
- PERF's recommendations call for a careful, thoughtful approach to body cameras, in which the community, your officers, and other stakeholders are consulted.
- Departments should consider piloting the program and evaluating the results before implementing it department-wide.

ACLU

- The American Civil Liberties Union said last year that the cameras have the "potential to be a win-win, helping protect the public against police misconduct, and at the same time helping protect police against false accusations of abuse."

ACLU

- “Policies and technology must be designed to ensure that police cannot edit on the fly (i.e., choose which encounters to record with limitless discretion). If police are free to turn the cameras on and off as they please, the cameras' role in providing a check and balance against police power will shrink and they will no longer become a net benefit.”

[A Report on Body Worn Cameras, Eugene P. Ramirez]

PERF/COPS Recommendation

- Officers should be required to activate their body-worn cameras when responding to all calls for service and during all law enforcement-related encounters and activities that occur while the officer is on duty. In order to protect relationships between the police and the community, officers have discretion whether to record informal, non-law enforcement-related interactions with the public.

Watch the Videos



[CLICK HERE TO
WATCH THE VIDEO](#)

Video Review

- The question of the day is do you allow Officers to review a video before being Interviewed of providing a force report
- Two strong positions on the subject:
 - Yes- not allowing officers to review videos is a “Gottcha moment”
 - No- recollection of officer as to facts and circumstances
- Concern if video shows different- for who?

Video—To View or Not To View

- Not enough “science” to definitively answer what viewing may do to memory.
- Circumstances may dictate an approach (evidence of misconduct) making a “one-size-fits-all” answer untenable.
- Defense of an officer is based upon application of *Graham* and a matching story is not necessary (and perhaps not desirable).
- Community standards and unions may necessarily inform a Chief’s approach.
- Factors such as camera angles/viewpoint are relevant and should be considered.
- Community expectations.
- Training to understand the psychological and physiological effects on officers and the limitations of video (i.e. neither is probably complete or definitive and may sometimes reflect differing but valid information. Never employ a “Gotcha” strategy!

Worthy Mention—*Graham v. Connor*

- A law enforcement officer’s actions when using force are analyzed under a standard of whether it was “objectively reasonable, in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.”
- The Court cautions against applying 20-20 hindsight to the analysis of whether a use of force was reasonable from the officer’s perspective.

OFFICER PERCEPTION AT THE TIME THE FORCE WAS USED IS THE KEY ISSUE IN WHETHER THE FORCE WAS REASONABLE.

View Video

- “Officers should not view video of an incident prior to being interviewed. Allowing officers to view video prior to an interview allows them to either subconsciously fill in the blanks where there are no memories of the incident or preplan for alibis for substandard conduct. Either way, allowing officers to view video of the event prior to the interview erodes the public’s faith in the process and unnecessarily impacts the investigation.”
- *Review of BART PD Policies, Practices and Procedures re: New Year’s Day 2009*, page 5.
- Report posted at http://www.bart.gov/docs/Meyers_Nave_Public_Report.pdf

Watch the Video

- In incidents involving an officers use of force (defined in Use of Force Order) from resisted handcuffing to Officer Involved shootings officers shall not review their video of the incident until such time as the officer has completed his force investigation report.
- Once the officer has completed his use of force report he/she may view the video with the Supervisor conducting the force investigation.
- Any discrepancies or additional information determined by the review of the video will be documented and explained by the Supervisor in his evaluation of force report.

Final Thoughts

- Providing adequate policies, training and supervision regarding constitutional policing
- Provide Officers First Amendment Training
- Don't go beyond the Law
- Always consider the reason for the requirements? Chief, Union, Prosecutor, ACLU, etc.

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The End....

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