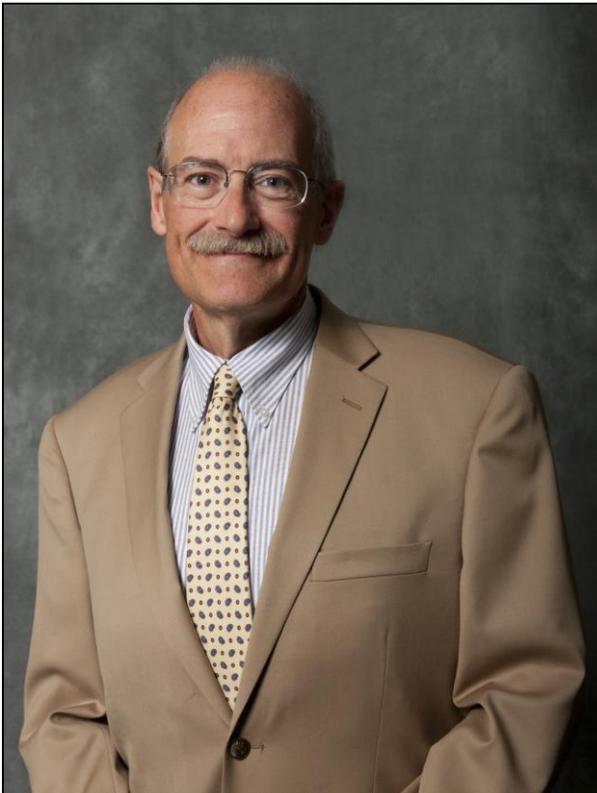




Ken Wallentine presented the following information on Body Worn Cameras at the international conference of the Institute for the Prevention of In-Custody Deaths. For more information about training, conferences and research conducted by the Institute for the Prevention of In-Custody Death, visit their website at

www.IPICD.com



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Ken Wallentine is Vice President and Senior Legal Advisor for Lexipol, the nation's leading provider of public safety risk management policies and resources. Ken is the former Chief of Law Enforcement for the Utah Attorney General, having served over three decades in public safety before his recent retirement. He continues his public safety service as the Chairman of the Peace Officer Merit Commission of Greater Salt Lake County.

Ken formerly served as Bureau Chief of the POST Investigations Bureau and as Administrative Counsel for Utah Department of Public Safety. He consults on use of force issues nationally and has served as an expert witness in a number of police shootings and deaths associated with

electronic control devices. A law enforcement officer since 1982, he has been editor-in-chief of a prestigious law journal, law professor, practicing public attorney and municipal judge. In 2010, Governor Gary Herbert selected Chief Wallentine for the Governor's Award of Excellence for Outstanding Public Service.

As a prosecutor, he led the team that founded the nation's first rural Drug Court. Ken Wallentine served as Chief Deputy County Attorney and has served several times on the adjunct faculty of the National Advocacy Center at the University of South Carolina. Ken Wallentine is a Master of the Inns and Past-President of America's first Inn of Court. His prosecution responsibilities included sex crimes against children, violent crimes and homicides. He has served as the Special Prosecutor in a number of challenging cases, including the murder of a fellow chief of police.

Chief Wallentine was a founding member of the Utah Law Enforcement Memorial Foundation and now serves on its Board of Directors. He is the past-President of the Utah Peace Officers Association. He is a featured writer in law enforcement journals, including *Police Chief*, *POLICE*, *Utah Peace Officer*, *The Municipal Lawyer*, and *The Prosecutor*. He is the editor of the national criminal procedure newsletter, *Xiphos*, and a regular columnist for *PoliceOne.com*.

Ken's deskbook on criminal procedure, *Street Legal: A Guide for Police, Prosecutors & Defenders*, was published by the American Bar Association Publishing Company and is widely used in law schools and criminal justice programs. His most recent book, *The K9 Officer's Legal Handbook*, 2nd Ed., was published by LexisNexis.

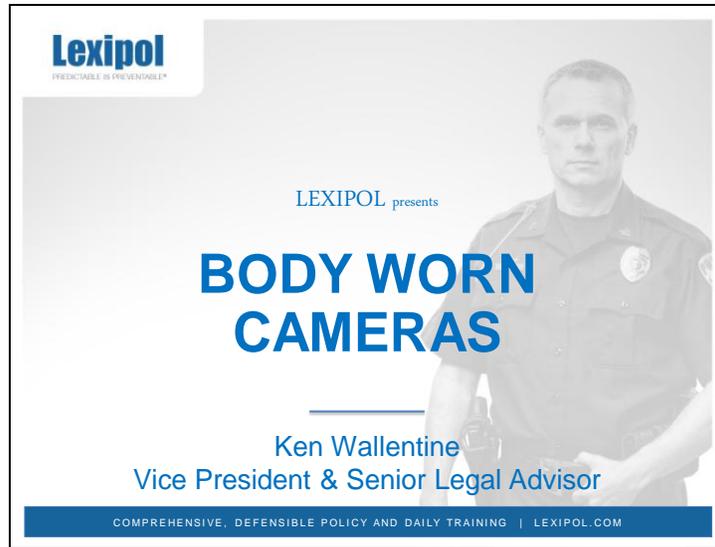
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Would we know all that we need to know about the Michael Brown shooting in Ferguson, Missouri, if the involved officer had been equipped with a body worn camera?

Some agencies question the value of the body worn cameras in relation to their cost. I have attorney defended litigation against an officer accused of excessive force. The \$500 or \$600 cost (perhaps even more) of the camera is miniscule compared to the cost of defending the lawsuit. If the video recording prevents the lawsuit from being filed in the first place, then its value is truly incalculable. Body worn cameras are just a tool to help show that police use other tools properly.

A recent study from the U.S. Department of Justice's Office of Justice Programs reports that:
"Independent research on body-worn camera technology is urgently needed. Most of the claims made by advocates and critics of the technology remain untested. Federal agencies that support research and development should consider providing funding streams for comprehensive research and evaluation of body-worn camera systems. Researchers should examine all aspects of the implementation and impact of the technology—from its perceived civilizing effect, evidentiary benefits, and impact on citizen perceptions of police legitimacy to its consequences for privacy rights, the law enforcement agency, and other outside stakeholders."

Since presenting the first webinar on this topic, we've heard from over 500 police agencies with their thoughts and experiences on body worn cameras. You'll hear many of those comments today. The overwhelming common themes are: we were skeptical, now we love them; public records challenges are compounded; line officers were nervous, now they really like them.



Cameras are everywhere. Recording of police activity is a fact of life. Sometimes those behind the camera lens are trying to goad officers into a reaction. Perhaps that is what happened with [this officer](#) in Ferguson, Missouri.

As the officer approaches the protesters, he says “I will f---ing kill you, get back!” After some crosstalk between protesters, a man asks the officer: “What’s your name, sir?” The officer’s response? “Go f--- yourself.”

Groups such as Copwatch are more and more frequently recording officers. Police agencies don’t have a say in how those recordings are edited and circulated. The ACLU has launched a app for recording police and sending the video.

Remember that television reporters at KTLA in Los Angeles carefully edited the Rodney King video and most of America saw only what KTLA thought would bring in ratings. What was missing in that video and in the infamous Ferguson video? *The preamble, the event that lead to direct police-citizen contact.*



George Holliday [filmed the Rodney King incident](#) from his apartment. Holliday went to KTLA television with his videotape, although the station edited out ten seconds of the video, before the image was in focus, that showed an extremely blurry shot of King charging at the officers; the cut footage would later be cited by members of the jury as essential to the acquittal of the officers. The footage became an instant media sensation.

One quiet, yet powerful, outcome of the video-recorded Rodney King incident was the passage of the federal 1994 Violent Crime Act that is the vehicle taking DOJ's Office of Civil Rights investigation unit to Ferguson. The camera may be objective, but the interpretation is often all too subjective.

Do cameras influence behavior?

- Intuition isn't yet confirmed by research
- Some early indication that body worn cameras, prominently worn, *may decrease assaults* on officers
- Do cameras influence behavior of officers *not wearing a camera?*

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PIONEERING BEST PRACTICES

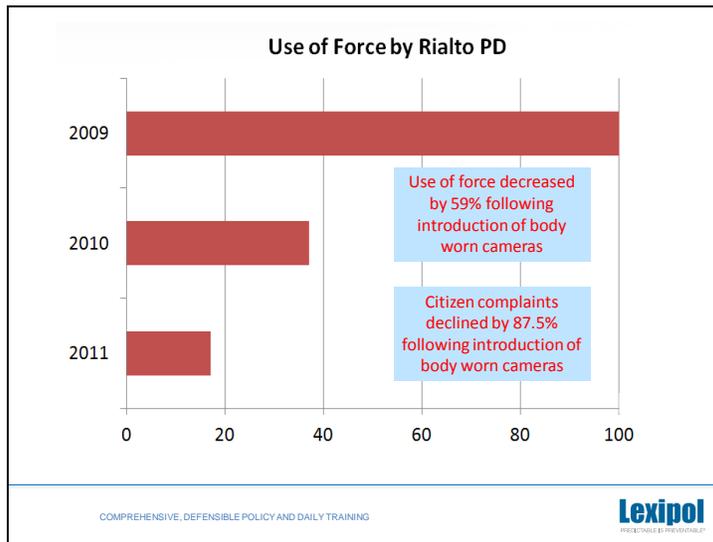
The research is divided on whether body-worn video recording will significantly impact officer behavior. Intuition and anecdote tell me that it does. We recently had this discussion during family dinners (in a family with one deputy sheriff daughter and one federal agent son). My daughter wears a TASER Axon camera and likes having her citizen encounters recorded. My son's federal agency doesn't record at all.

Equally interesting and important is the question of whether body-worn video recording will significantly impact citizen behavior. If citizens know that they are on video, will citizens refrain from behavior that could reasonably require police officers to respond with some measure of force?

Citizens may not only behave better, but they may be less likely to make false claims of police misconduct when they know that there is a video record of their encounter with the police. When there is a video recording, it usually works in the cops' favor. A 2004 study by the International Association of Chiefs of Police showed that in cases where video recordings were available, the recordings exonerated the police 93% of the time. Certainly we want to know about the 93%. We also want to know about the 7%. A video recording may well document misconduct that the agency must address.

We have not seen any widespread impact on criminal prosecution. One might think that the availability of a video recording would prompt more guilty pleas. First, remember that the officer often does not appear on the scene until after the crime is committed. Second, this is another area where we just don't have competent research to provide reliable answers. Some British studies show a positive impact on prosecution, but again, it is too early to draw conclusions.

There is a new study available: When a Control is not in Control: The Effect of Indirect Treatment Exposure in Experimental Research. Using data from a field experiment conducted with Mesa PD, the study measured the indirect treatment exposure of control officers not wearing on-officer video cameras from contact with treatment officers assigned to wear the cameras. They hypothesize that over time the control group behaves increasing like the treatment group because of social contamination. In sum, even officers who are not wearing a camera may behave as if they were.



At Rialto PD, a Lexipol client, Police Chief Tony Farrar studied the impact of his agency’s use of body worn cameras as part of his graduate thesis work at Cambridge University in Great Britain. With support from TASER International, he studied two groups, one equipped with a TASER Axon camera worn on the officers’ eyeglasses and the other group without cameras. Chief Farrar’s published results created a great buzz in the public safety world.

His study showed that use of body worn cameras reduced use-of-force incidents by 59% and reduced citizens’ complaints by an astonishing 87.5%.

Mesa PD experienced similar results. There were nearly three times more complaints against officers without body worn cameras, eight months after camera deployment. On the flip side, there were 40% fewer total complaints for officers with body worn cameras during pilot program and 75% fewer use of force complaints for officers with cameras during pilot program

Practical issues



- Involve stakeholders in the process
- Costs to deploy and train for use
- Server space
- Public disclosure requests

COMPREHENSIVE, DEFENSIBLE POLICY AND DAILY TRAINING

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POLICE TRAINING & TECHNOLOGY

We're hearing some of the same objections that we heard about dash cams in the early 90s. Now few question the benefit of in-car video systems.

We have seen some police unions assert that use of body worn cameras constitute a change in working conditions that must be negotiated in the collective bargaining process. Labor arbitrators generally agree that using cameras is a point of labor bargaining. Even if you don't have a collective bargaining obligation, implementation will be much smoother with participation from line officers. Officers who wear cameras need to be trained in their use, from recording and downloading video to proper equipment maintenance. Officers who understand the technology and who see the benefits may be used as early-adopter ambassadors within the agency.

As you introduce body worn cameras into the community, reach out through the media to explain the reasons, deployment costs, benefits, *and the limitations* of the technology. Consider using the agency's social media outlets to educate the community.

Body worn camera video generates an enormous amount of electronic data. Major vendors offer a cloud-based solution, or agencies can rely on their IT department to figure out the storage challenge. Mesa PD has added three FTEs to its detective bureau to help with the cataloging and storing tasks.

Beyond looking for storage, durability, ease of operation and mounting options, consider the field of view. How broad is the angle of capture for the particular camera?

Body worn camera use may bring an avalanche of public disclosure and media requests. The media quickly will have an expectation that incidents are recorded and that they should quickly get a copy to help them sell their product. Consider whether a particular system has an easy-to-use editing or blurring tool.

In Poulsbo, Washington, a Youtube channel pushed local police agencies to reconsider their use of body-mounted cameras. Despite considering officer accountability a top priority, police say records requests from that new website may make the programs too expensive and too invasive. The department figures it will take three years to fill that request. Poulsbo Police Chief Al Townsend believes it is a huge privacy

concern, as officers often see people on their worst days. “People with mental illness, people in domestic violence situations; do we really want to have to put that video out on YouTube for people? I think that’s pushing it a little bit,” he said. Now the city of Poulsbo says it may have to suspend or even end its police body cam program.

Let’s also consider that body worn cameras could hold tremendous potential for training and for coaching new recruits.

Practical issues



- Eyeglass, shoulder, chest mount? Gun side?
 - When to turn it off
- Documents “knock and announce” and entry method
- Caution: video may inadvertently disclose tactics
- Audio alone may be helpful



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Shown here is a very fine deputy sheriff, my daughter, who began her career as a corrections deputy (after a few years as a firefighter). Many corrections agencies are finding the value of body cameras inside custody institutions. For example, the Stephenson County (Illinois) Sheriff’s Office just equipped all of its jail officers with body worn cameras. They record during security checks and any physical encounters with inmates. In McHenry County (also in Illinois), corrections officers have worn cameras for several years. The Louisville (Kentucky) Metro Detention Center has had great success with them as litigation prevention tools. If body worn cameras are used in a jail, there must be policy provision for restricting recording in strip searches, showers and other areas of personal privacy. That said, there may be situations where a recording of a strip search would be helpful.

Documenting the knock-and-announce portion of a warrant execution, and documenting how officers make entry and complete the search creates a valuable record in the event of litigation or a suppression motion.

One police chief noted: “The videos have been beneficial in investigating use of force by officers. Although sometimes the camera may be obstructed during a physical struggle, the audio recording proves to be very useful.”

Policy considerations

- Activation triggers?
 - Discretionary?
 - When to turn it off
 - Worn only by uniformed officers?
 - Document non-recording



COMPREHENSIVE, DEFENSIBLE POLICY AND DAILY TRAINING

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POWERED BY INTELLIGENCE

In Mesa, Arizona, PD, body worn camera use declined by 42 percent when officers had discretion to activate them, or not. Research in Mesa also showed that officers who volunteer to wear body worn cameras are more likely to record encounters than officers who are *required* to wear them.

Officers should have some discretion to turn off the recorder. Experienced investigators know that some folks just won't talk openly when a recorder is running. The Mesa (Arizona) Police Department spokesman noted, "We have definitely seen people being more reluctant to give information when they know that they are being videotaped."

Agencies may fall victim to over-reliance on recording. I frequently serve as an expert witness in police shootings and TASER-associated deaths. I just returned from a trial in a major US city where the police/citizen encounter that led to the citizen's death was recorded. This encounter, like many police/citizen encounters, happened at night in low light conditions and the participants were moving quickly, making the focus fuzzy, turning the camera from the action, and creating a marginally-useful recording. The jury expects to see a video of the same quality and field of view that they see on television police shows. Remember to help citizens understand that the body worn camera system comes with significant limitations.

A camera equipped with infrared technology may well "see" in the dark when an officer cannot. Remember, too, that a point of aim camera may not reach peripheral vision, may not have quickly transition from light to dark and vice versa and may not capture images at the same speed of the human eye. What the camera "sees" is merely a piece of evidence for an investigation. It is not the beginning and the end of collecting all the available facts and all the available statements.

Video may not lie, but it does mislead and often tells a very incomplete story.

Policy considerations

- Ability to flag a recording for preservation
- Retention, review access and storage
- Consistency with policies for First Amendment activities, dash cams, etc.



COMPREHENSIVE, DEFENSIBLE POLICY AND DAILY TRAINING

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POLICE AND PUBLIC SAFETY

Be sure to involve your agency legal counsel in the discussion of how body worn camera recordings will be stored and made available for court use. Also be sure that the recordings are listed in your agency's record retention schedule, as provided for by Lexipol records maintenance and release policy.

Lexipol's law enforcement policy manual also provides related policies addressing a Public Safety Video Surveillance System and Mobile Audio Video system (in-car cameras). Our First Amendment Assemblies policy also addresses vital issues of citizen recording. Obviously, it isn't just the police increasing video and audio recording. Nearly every citizen carries a video recorder in the form of a smart phone.

A related issue is the concern expressed by officers that citizens are recording police/citizen encounters. One agency recently paid \$200,000 to settle the claim that an officer had improperly seized the camera of the citizen recording the officer in action. Lexipol was far ahead of the curve for our client agencies, creating and distributing the First Amendment Assemblies policy.

Policy considerations

- Policy should require
 - Wear camera conspicuously
 - Activate
 - Enforcement/investigative contacts
 - Traffic contacts
 - Self-initiated activity
 - Activity that becomes adversarial



COMPREHENSIVE, DEFENSIBLE POLICY AND DAILY TRAINING

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PROTECTABLE • PREVENTABLE

Lexipol policy is custom-tailored to your state's legal recording requirements. We recommend that where lawful, officers activate the recorder any time he or she believes it would be appropriate or valuable to record an incident. Specifically, Lexipol recommends that the recorder *should* be activated in any of the following situations:

- (a) All enforcement and investigative contacts including stops and field interview situations
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all interdiction stops
- (c) Self-initiated activity in which an officer would normally notify the Communications Center
- (d) Any other contact that becomes adversarial after the initial contact

Officers should remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the officer that privacy interests may outweigh any legitimate law enforcement interest in recording. Requests by members of the public to stop recording should be considered using this same criterion.

***At no time* is an officer expected to jeopardize his/her safety in order to activate a recorder or change the recording media.**

Policy considerations

- Policy should prohibit
 - Personal use or copies of agency recordings
 - Use of personal recorder
 - Use for embarrassment, intimidation
 - Surreptitious recording of officers
- Address all party consent states

COMPREHENSIVE, DEFENSIBLE POLICY AND DAILY TRAINING

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When preparing written reports, officers should review their recordings as a resource. However, officers should not retain personal copies of recordings. Officers should not use the fact that a recording was made as a reason to write a less detailed report. Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct, reports of meritorious conduct or whenever such recordings would be beneficial in reviewing an officer's performance.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department/Office who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.
- (b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- (c) By media personnel with permission of the Chief of Police/Sheriff or the authorized designee.
- (d) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release Policy.

More on all-party (not just two party) consent issues in a moment.

Use of Audio/Video Recorders

424.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices by members of this department while in the performance of their duties.

This policy does not apply to surreptitious interception of electronic communications for lawful authorized investigative purposes or to mobile audio video recordings (see Mobile Audio Video Procedure Policy).

424.2 POLICY

The [Anytown Police Department] may provide members with access to portable recorders, either audio or video or both, for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department by accurately capturing contacts between members of the Department and the public.

Note the related Public Safety Video Surveillance System and Mobile Audio Video policies and the vital issues addressed in the First Amendment Assemblies policy. Obviously, it isn't just the police increasing video and audio recording. Nearly every citizen carries a video recorder in the form of a smart phone. A related issue is the concern expressed by officers that citizens are recording police/citizen encounters. One agency recently paid \$200,000 to settle the claim that an officer had improperly seized the camera of the citizen recording the officer in action. Lexipol was ahead of the curve for our client agencies, creating and distributing the First Amendment Assemblies policy that addresses citizen audio/video recording rights protected by the First Amendment.



Legal questions

- All party consent states
 - May be an exemption for investigations
- Officer review prior to report preparation?
- Officer review in critical incidents and deaths?

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POLICING BY EXPERIENCE

Any agency using body worn cameras must be prepared to address the legal issues. One of the more obvious issues is the question of citizens' privacy.

Some states have all (not just two)-party consent laws that may limit police/citizen encounter recording. There have been efforts to carve out an exception for body worn cameras on police officers. For example, in February 2014, Pennsylvania enacted a law waiving the two-party consent requirement for police using body-worn cameras. California law also has a provision that exempts police recording from two-party consent restrictions. The Washington Attorney General recently opined that the all-party consent law does not apply to body cameras (though there is slim legal precedent for his position). Nonetheless, when reasonably possible it still is often a good idea, and just fundamentally polite as well as a provision of Lexipol policy, to tell a citizen that the encounter is being recorded.

Some believe that it is good practice for officers to inform people when they are recording, even if such disclosures are not required by law. In Greensboro, North Carolina—a single party consent state—officers are encouraged to inform persons when they are recording. Chief Ken Miller believes that the knowledge that cameras are running can help defuse potentially confrontational situations and improve behavior from all parties.

I spoke last year to an international conference on an increasingly common, yet still unsettled, question of whether an officer should be able to review a video recording of a critical incident (such as a shooting) before he/she completes a statement or interview. Lexipol recommends that officers be allowed to review recordings prior to preparing a report. Some attorneys or investigators may have a different preference. Consult with your legal counsel on this issue.

This brings in practical concerns, too. Will the officers take unreasonably more time to write reports? Will that generate overtime?

Don't forget that the *Graham v. Connor* standard prescribes that officers be judged on the reasonableness of what the officer perceived, not what the body worn camera captured.

Legal questions

- Civil liberties advocates are divided
 - Some want widespread recording
 - Others fear “tech creep”
- Future DOJ requirement?



COMPREHENSIVE, DEFENSIBLE POLICY AND DAILY TRAINING

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POLICING BY MEANS OF POLICY

Civil liberty advocates raise concerns over recording in homes and other places where citizens may wish to retain privacy. Some activists even raise the question of capturing images and cataloging them for use in facial recognition software programs. One advocacy group recently called for a step back until agencies develop a sensible policy that protects individual rights. Obviously that’s an issue of concern for you, and one that your Lexipol policy squarely addresses.

The ACLU is a cautious supporter of increased body worn camera use. According to the ACLU’s Jay Stanley, “The challenge of on-officer cameras is the tension between their potential to invade privacy and their strong benefit in promoting police accountability. Overall, we think they can be a win-win—but only if they are deployed within a framework of strong policies to ensure they protect the public without becoming yet another system for routine surveillance of the public....”

Lexipol policy addresses privacy concerns and addresses consent issues in all-party consent states. We also take another important step in prohibiting officers from making personal copies of captured audio or video. Lexipol policy also provides that video that unreasonably violates a person’s privacy or sense of dignity should not be publicly released unless disclosure is required by law or a court order. This may include a video of an unclothed person, a celebrity’s field sobriety tests or other situations with a high likelihood of significant embarrassment or public ridicule.

The federal judge who held that the New York Police Department stop-and-frisk practices violated the Fourth and Fourteenth Amendments ordered the institution of a program requiring certain officers to wear cameras. The district court order in *Floyd v. City of New York* was recently resolved when the city withdrew its appeal to the Second Circuit Court of Appeals. Just a couple of weeks ago, the NYPD launched a pilot program with 60 body worn cameras.

In *United States v. City of Portland*, the court asked the parties to consider including a requirement for body worn cameras in the consent decree. Will this be a future trend? Will the DOJ take note and require their use as part of consent decrees?

“Within six months, the Albuquerque PD agrees to revise and update its policies and procedures regarding on-body recording systems”

United States v. City of Albuquerque

“If the City utilizes body cameras, the City must carefully govern their use to protect the rights of subjects and bystanders, *e.g.*, providing *Miranda* warnings when appropriate and respecting reasonable expectations of privacy.”

United States v. City of Portland

Thank you!

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