

THE POLICE-IE: A NEW KIND OF SELFIE
THE IMPLEMENTATION OF POLICE BODY-WORN CAMERAS
IN NEW YORK

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In today's day in age, technology has found its role as the driving force behind innovative procedures aimed to deter crime. From surveillance cameras to dash-mounted video cameras, technological innovation has continually shaped law enforcement policies and procedures. Body-worn camera (BWC) systems serve as the most recent technological innovation with the capacity to reshape policing. BWCs can serve as a tool to aid in the reduction of exposure to litigation and unwarranted citizens' complaints by promoting transparency and accountability. Both law enforcement and local communities stand to benefit from the deployment of BWCs.

This Article first examines the American Civil Liberties Union's (ACLU) report entitled, "Police Body-Mounted Cameras: With Right Policies in Place, a Win For All." This ACLU report outlines, in great detail, various privacy concerns that may be raised by both citizens and police officers in light of the potential widespread deployment of BWCs.

This Article then examines the current existing usage of BWCs in the state of California through the lens of the Rialto study conducted by Tony Farrar, arguing that BWCs were responsible for both reduced citizen complaints and cases of necessary use of force by police.

The Article then focuses in on New York state penal law sections criminalizing the recording of audio and unlawful surveillance, including but not limited to Stephanie's Law and a person's reasonable expectation of privacy while at home. A statistical comparison between Albany, New York, the state's capital, and Rialto, California is included to support the suggestion that Albany's Police Department deploy BWCs.

This article lastly addresses recent events pointing to the necessity of immediately BWC employment—a brief discussion of Michael Brown, Eric Garner, and Tamir Rice's cases is included.

Ultimately, this article supports the implementation and deployment of BWCs by police departments by emphasizing the benefits of recording interactions with police, while remaining neutral, yet aware of the downfalls. It is human nature to behave when you are on camera and this article aims to illustrate that BWCs will promote both police and citizen good behavior by holding subjects accountable for their actions.

I. INTRODUCTION

In recent times there has been notable advancements in technology used by law enforcement agencies.¹ Technologies such as “automated license plate readers, gunshot detection systems, facial recognition software, GPS applications, and social media”² have all become part of many officers’ daily routines while on duty. Police executives find themselves balancing a variety of factors when deciding whether or not to adopt a new technology; factors range from jurisdictional crime problems to available funding. In order to begin balancing these factors, a thorough understanding of each type of technology is necessary.

Arguably the latest police-based technology is the body-worn camera. “Body-worn cameras [hereinafter BWCs] are small video cameras—typically attached to an officer’s clothing, helmet, or sunglasses—that can capture, from an officer’s point of view, video and audio recordings of activities, including traffic stops, arrests, searches, interrogations, and critical incidents such as officer-involved shootings.”³

Police leaders using BWCs note the technology’s usefulness in “documenting evidence; officer training; . . . and strengthening police transparency, performance, and accountability.”⁴ Given the aforementioned positives yielded by the deployment of BWCs, the “lack of technical [] and operational standards for protocols and procedures” stands as a major issue.⁵ This issue prevents

¹ POLICE EXECUTIVE RESEARCH FORUM, IMPLEMENTING A BODY-WORN CAMERA PROGRAM: RECOMMENDATIONS AND LESSONS LEARNED 1 (2014) [hereinafter IMPLEMENTING A BODY-WORN CAMERA PROGRAM], <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>.

² *Id.*

³ *Id.*

⁴ *Id.* at n.1.

⁵ NATIONAL INSTITUTE OF JUSTICE & SURVEILLANCE SENSOR, A PRIMER ON BODY-WORN CAMERAS FOR LAW ENFORCEMENT 1 (Sept. 2012) [hereinafter A PRIMER ON BODY-WORN CAMERAS], <https://www.justnet.org/pdf/00-Body-Worn->

law enforcement agencies from obtaining the information necessary to aid in their selection of the proper BWC system in accordance with jurisdictional requirements and courtroom standards.⁶

The decision to deploy BWCs by police agencies can be viewed as deploying an extension of the use of dash-mounted cameras and audio recorders. However, the decision to adopt this technology is most certainly not without controversy. This article aims to illustrate that BWCs can serve as a tool to aid in the reduction of exposure to litigation and unwarranted citizens' complaints by promoting transparency and accountability amongst police departments around the country.

II. WHY USE BWCs?

In an attempt "to mitigate the lack of procedural and technical standards," the National Institute of Justice (hereinafter NIJ) Sensor, Surveillance, and Biometric Technologies (hereinafter SSBT) Center of Excellence⁷ published a primer for law enforcement agencies on the implementation, deployment, and standard operational use of BWCs.⁸ The NIJ primer focuses on four reasons as to why a police agency would choose to deploy BWCs: judicial process, officer safety, professionalism, and use cases.⁹

Judicial Process: As reported in the Primer, a study conducted by the International Association of Chiefs of Police, in collaboration with the National District Attorneys Association and the American Prosecutors Research Institute, "found that of

Cameras-508.pdf.

⁶ *Id.* at 1.

⁷ *See id.* at 2.

The NIJ SSBT [Center of Excellence] is a center within the National Law Enforcement and Corrections Technology Center (NLECTC) System. The [Center of Excellence] provides scientific and technical support to NIJ's research and development efforts. The Center also provides technology assistance, information, and support to criminal justice agencies. The Centers of Excellence are the authoritative resource within the NLECTC System for both practitioners and developers in their technology area(s) of focus. The primary role of the Centers of Excellence is to assist in the transition of law enforcement technology from the laboratory into practice by first adapters.

Id.

⁸ *Id.* at 1.

⁹ *Id.* at 3.

the prosecutors surveyed, an overwhelming number (91 percent) [reported using] video evidence in court that was captured [by police] from an in-car camera” system.¹⁰ The surveyed prosecutors also reported that the use of video evidence both “enhances their ability to obtain convictions and increases the number of guilty pleas prior to going to trial.”¹¹

Officer Safety: BWCs have the potential to deter violence and/or negative behavior towards police officers.¹² Video footage captured by BWCs can help promote accurate convictions of persons who attack officers and may also reveal pertinent information that would not normally be recorded by officers through police reports, e.g., footage of attacker compared to a written description.¹³

Professionalism: “The use of cameras has been said to help improve the accountability of police officers as well as reduce the number of complaints of police misconduct.”¹⁴ Using in-car camera as the representative system, there are several reports where camera footage has cleared officers of alleged misconduct, as opposed to only five percent of complaint cases being sustained.¹⁵

Use Cases: In-car video systems have been successful in recording very limited officer-citizen interactions, e.g., traffic stops.¹⁶ When deployed, BWCs could further support officers when engaging in “self-initiated public contacts/foot patrol, bicycle/motorcycle patrol, emergency response/first responders, site and vehicle searches, SWAT operations, and corrections duty.”¹⁷

¹⁰ *Id.*

¹¹ A PRIMER ON BODY WORN CAMERAS, *supra* note 5, at 3; INT’L ASS’N OF CHIEFS OF POLICE, THE IMPACT OF VIDEO EVIDENCE ON MODERN POLICING: RESEARCH AND BEST PRACTICES FROM THE IACP STUDY ON IN-CAR CAMERAS 21 [hereinafter THE IMPACT OF VIDEO EVIDENCE ON MODERN POLICING], <http://www.theiacp.org/portals/0/pdfs/IACPIn-CarCameraReport.pdf>.

¹² IMPLEMENTING A BODY-WORN CAMERA PROGRAM, *supra* note 5, at 1.

¹³ *See generally id.* at 3.

¹⁴ A PRIMER ON BODY WORK CAMERAS, *supra* note 5, at 3; *see generally* Nancy Dillon, *Police Body-Worn Cameras Stop-and-Frisk Judge Suggested Have Helped Rialto Police Department*, NEW YORK DAILY NEWS (Aug. 13, 2013, 7:52 PM), <http://www.nydailynews.com/news/national/cameras-proposed-stop-frisk-judge-ca-police-article-1.1426025>.

¹⁵ THE IMPACT OF VIDEO EVIDENCE ON MODERN POLICING, *supra* note 11, at 15.

¹⁶ A PRIMER ON BODY-WORN CAMERAS, *supra* note 5, at 3.

¹⁷ *Id.* at 4.

III. THE AMERICAN CIVIL LIBERTIES UNION REPORT ON BWCs

In October 2013, The American Civil Liberties Union (ACLU) released a report entitled, “Police Body-Mounted Cameras: With Right Policies in Place, a Win For All.”¹⁸ In this report, the ACLU took the position that while it does not support the increased use of video cameras monitoring American citizens, it does recognize that such surveillance can lead to holding law enforcement more accountable to the communities they serve.¹⁹ As stated by 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. Overall, we think they [BWCs] 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, and maintain public confidence in the integrity of those privacy protections. Without such a framework, their accountabilities benefits would not exceed their privacy risks.”²⁰

The ACLU recommended several policies to be implemented for the sake of the deployment of BWCs by police forces.²¹ I have outlined said policies in detail in sections A and B below:

A. Control over recordings

The ACLU expresses concern over the possibility of unbridled editing discretion being placed in the hands of officers. As stated by the ACLU, “[p]olicies 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.”²² The ACLU believes that in order to eliminate the possibility that an officer could evade the recording of abuses committed on duty, the ideal policy for BWCs would entail continuous recording through a

¹⁸ JAY STANLEY, POLICE BODY-MOUNTED CAMERAS: WITH RIGHT POLICIES IN PLACE, A WIN FOR ALL (Oct. 2013) [hereinafter POLICE BODY-MOUNTED CAMERAS].

¹⁹ *Id.* at 1.

²⁰ *Id.* at 1–2.

²¹ *Id.* at 2.

²² *Id.*

police officer's shift.²³ It is without question that this "ideal" policy would impinge on police officers' own rights to privacy—from personal conversations to using the restroom, continuous recording may feel as stressful and oppressive as it would for any employee subject to constant recording by his supervisor or employer.²⁴ Moreover, the ACLU points out the danger that the technology could potentially "be misused by police supervisors against whistleblowers or union activists—for example, by scrutinizing video records to find minor violations to use against an officer."²⁵

On the same note, the ACLU is troubled by the possibility of officers being under complete control of BWCs if continuous recording is not attainable. The ACLU hinges support for their concern on two unnamed and uncited cases: (1) a Seattle, Washington case in which "two [] men filed a claim for excessive force and wrongful arrest. Parts of the arrest were captured by dashcam, but parts that should have been captured were mysteriously missing", and (2) an Oakland, California case in which police officers were disciplined after one of the officers' BWCs was turned off during an incident.²⁶ To eliminate the dismissal of its argument for continuous recording, the ACLU recognizes that a balance needs to be struck to ensure that officers are unable to manipulate the video record, "while also ensuring that officers are not subjected to "a relentless regime of surveillance without any opportunity for shelter from constant monitoring."²⁷

The report suggests the development of some form of effective automated trigger "that would allow for minimization of recording while capturing any fraught encounters—based on, for example, detection of raised voices, types of movement, etc."²⁸ While this concept may sound futuristic and unfounded, the report points out that dashcams "are often configured to record whenever a car's siren or lights are activated, which provides a somewhat (though not entirely) non-discretionary measure of when a police officer is engaged in an encounter that is likely to

²³ *Id.*

²⁴ POLICE BODY-MOUNTED CAMERAS, *supra* note 18, at 2.

²⁵ *Id.* at 2.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

be a problem.”²⁹ With that being said, this possibility is not yet (key word being yet) applicable to BWCs because there is no equivalent to flashing light or siren activation on a police officer’s uniform. Aside from additional technological developments, the ACLU recommends associating some “teeth” with the implementation of a control policy.³⁰ The report suggests the risk of disciplinary action and an exclusionary rule for any evidence obtained in an unrecorded encounter for police officers who have been issued BWCs (within reason, of course); or, alternatively, that an evidentiary presumption against the officer be created where an officer failed to record an incident while wearing a camera.³¹

B. Limiting the threat to privacy from BWCs

The ACLU points out that much of the discussion regarding BWCs is focused on its oversight potential.³² The possibility of widespread implementation of BWCs means that many instances of entirely innocent behavior on the part of both officers and the public will be recorded. The report points to “examples of DUI stops of celebrities and ordinary individuals whose troubles and/or intoxicated behavior has been widely circulated and subsequently immortalized online.”³³ Because the ACLU is troubled by the potential for such embarrassing releases of video being increased by BWCs, it stands by its view that any deployment of BWCs be accompanied by sufficient privacy policies so that the benefits of the technology are not outweighed by invasions of privacy.³⁴ The ACLU’s core elements of a “sufficient policy” follow.

In terms of providing notice to citizens, the ACLU points out that “most privacy protections will have to come from restrictions on subsequent retention and use of the recordings.”³⁵ The following are the ACLU’s recommendations regarding notice:

1. Recording should be limited to uniformed officers and marked vehicles, so people know what to expect. An

²⁹ *Id.* at 3.

³⁰ POLICE BODY-MOUNTED CAMERAS, *supra* note 18, at 3.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

exception should be made for SWAT raids and similar planned uses of force when they involve non-uniformed officers.

2. Officers should be required, wherever practicable, to notify people that they are being recorded (similar to existing law for dashcams in some states such as Washington). One possibility departments might consider is for officers to wear an easily visible pin or sticker saying “lapel camera in operation” or words to that effect.
3. Although if the preceding policies are properly followed it should not be possible, it is especially important that the cameras not be used to surreptitiously gather intelligence information based on First Amendment protected speech, associations, or religion.³⁶

Due to the “uniquely intrusive nature of police recordings made inside private homes,” the ACLU recommends that officers be required to provide notice of the use of a BWC when entering a home, with the exception of circumstances such as emergencies and raids.³⁷ In non-exigent circumstances, the report suggests, “officers ask residents whether they wish for a camera to be turned off before they enter a home.”³⁸

The report states that “retention periods should be measured in weeks not years, and video should be deleted after that period unless a recording has been flagged.”³⁹ If a recording is flagged, it should be retained for a longer period of time, “such as the three-year period currently in effect in Washington State.”⁴⁰ The ACLU recommends that the policies be posted for public viewing and review on the department’s website, “so that people who have encounters with police know how long they have to file a complaint or request access to footage.”⁴¹

In terms of flagging police video footage, the report outlines incidents “involving a use of force”, incidents that “lead[] to detention or arrest,” or those “where either a formal or informal complaint has been registered” should be automatically flagged.⁴² “If any useful evidence is obtained during an authorized use of a recording, the recording would then be retained in the same

³⁶ POLICE BODY-MOUNTED CAMERAS, *supra* note 18, at 4.

³⁷ *Id.* at 4.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² POLICE BODY-MOUNTED CAMERAS, *supra* note 18, at 4.

manner as any other evidence gathered during an investigation.”⁴³

While the ACLU supports the use of BWC to promote police accountability and oversight,⁴⁴ its report states that use of recordings should be limited to only include internal and external investigations of misconduct and when police “have reasonable suspicion that a recording contains evidence of a crime.”⁴⁵

As for subject access to BWC footage, the ACLU recommends that citizens that are subjects of recordings “have access to, and the right to make copies of,” footage during the period in which the government possesses copies of them.⁴⁶

The balance between the need for government oversight and the privacy rights of citizens presents a difficult issue for the public disclosure of police video recordings.⁴⁷ The report suggests that subjects of such records give consent before footage is made available to the public.⁴⁸ When feasible, all video records should be redacted by “blurring or blacking out of portions of video and/or distortion of audio” to protect the identity of subjects.⁴⁹ If and when recordings are redacted, they should be made available for public disclosure.⁵⁰ On the other hand, unredacted, unflagged recordings, i.e., footage of an incident “where there is no indication of police misconduct or evidence of a crime,” should not be publicly disclosed without consent of the subject.⁵¹ The ACLU states that they should look into how such a redaction and disclosure policy could potentially conflict with their state open records laws.⁵² With that being said, in all cases, the need for government oversight should be balanced against the privacy rights of citizens.⁵³

Because an officer or police department that has been accused of or engaged in abuse or any other wrongdoing may have an incentive to destroy video footage of such actions, the ACLU

⁴³ *Id.*

⁴⁴ *Id.* at 5.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ POLICE BODY-MOUNTED CAMERAS, *supra* note 18, at 5.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

believes that it is imperative that “close attention be paid to the systems that handle the video data generated by these cameras.”⁵⁴ For the aforementioned reason, any employed technology system should be able to prevent tampering with stored video footage, e.g., immutable audit log features and properly maintained data retention and destruction schedules.⁵⁵ These systems should also have the ability to ensure that only those with proper permission access stored footage and that all who have access cannot make copies of footage.⁵⁶ For example, “officers should not be able to [] pass around video of a drunk city council member, or video generated by an officer responding to a call in a topless bar, or video of a citizen providing information on a local street gang.”⁵⁷

In addition to proposing the aforementioned policies, the ACLU stressed the importance of maintaining public confidence in the integrity of BWC protections.⁵⁸ The report uses the example of crime victims becoming afraid to call for help due to fears that video of their officer interactions may become public or reach the wrong party; confidence can only be created if good policies backed by good technology are put in place.⁵⁹ The ACLU concludes its report on BWCs by reiterating both its support for the widespread deployment of BWCs and its position that if the recording, retention, access, use and technology policies it recommended are followed, BWCs will provide an important protection against police abuse for citizens.⁶⁰

IV. THE RIALTO STUDY

The City of Rialto, located in Southern California, was the first known police department to conduct a thorough study on the effects of BWCs.⁶¹ Rialto police is a mid-sized police department;

⁵⁴ POLICE BODY-MOUNTED CAMERAS, *supra* note 18, at 5.

⁵⁵ *Id.* at 6.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ POLICE BODY-MOUNTED CAMERAS, *supra* note 18, at 6.

⁶¹ See Tony Farrar, *Self-Awareness to Being Watched and Socially-Desirable Behavior: A Field Experiment on the Effect of Body-Worn Cameras on Police Use-of-Force*, POLICE FOUNDATION 2–5 (2013), <http://www.policefoundation.org/publication/self-awareness-to-being-watched-and-socially-desirable-behavior-a-field-experiment-on-the-effect-of-body-worn->

it employs 115 sworn police officers and has jurisdiction over 28.5 square miles, servicing a population of 100,000 residents.⁶² The department handles approximately 3,000 property crimes and 500 violent crimes per year.⁶³ Rialto's Police Chief, Tony Farrar, conducted the Rialto Study during his studies at Cambridge University in the United Kingdom. The study's leading hypothesis was that "rational beings, including police officers, are unlikely to embrace socially *undesirable* behavior when videotaped."⁶⁴

The study analyzed the use of BWCs amongst two study groups of on-shift police officers: Experimental-Shifts and Control-Shifts.⁶⁵ Members of the Experimental-Shift group were required to wear a high definition (HD) BWC during shifts; the Control-Shift group was instructed not to use BWCs during shifts.⁶⁶ The experiment ran for 12 months, beginning on February 13, 2012; Shifts were randomly allocated to experimental and control shift groups.⁶⁷ TASER International, Inc. provided HD BWCs to Rialto's front-line officers.⁶⁸ The BWCs, weighed only 108 grams, making them small enough for officers to place the cameras on their shirt pockets, hats, collars, shoulders or specially designed sunglasses.⁶⁹ Collected data was collated using a web-based computerized video management system developed by EVIDENCE.com—the software tracked and inventoried all evidence captured by the BWCs—videos were automatically uploaded at the end of each officer's shift.⁷⁰ A confidential research team was given full-access to the data, which encompassed over 50,000 hours of police-public interactions.⁷¹

Farrar noted in this study that "Police General Orders require all officers to document any instance of use-of-force, which encompasses physical force more than a basic control or "compliance hold", including use of OC spray, baton, Taser,

cameras-on-police-use-of-force/.

⁶² *Id.* at 5.

⁶³ *Id.*

⁶⁴ *Id.* at 4.

⁶⁵ *Id.* at 5.

⁶⁶ *Id.*

⁶⁷ Farrar, *supra* note 61, at 5.

⁶⁸ *Id.* at 6.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

canine bite or firearm.”⁷² During the 12-month experimental period, twenty-five (25) incidents of police use of force were recorded; seventeen (17) of the twenty-five (25) incidents occurred during control shifts and eight (8) occurred during experimental shifts.⁷³ The results of the study detected a significant treatment effect on use of force: “shifts without cameras experienced twice as many incidents of use of force as shifts with cameras.”⁷⁴ Moreover, “the rate of use of force incidents per 1,000 public contacts was reduced by 2.5 times compared to the 12 months prior to the experimental period.”⁷⁵

In addition to the above-mentioned reduction in police use of force, Rialto also noticed a sizable reduction in the number of citizen complaints against its officers. Because the overall reduction was so vast, Farrar was unable to compute a treatment effect in terms of complaints against officers. There were not enough complaints to conduct any meaningful analyses, i.e., only one complaint was lodged for an incident that occurred during control conditions and two complaints were lodged for incidents that occurred during treatment conditions.⁷⁶ Most notable is the “overall reduction from 28 complaints lodged in the 12 months prior to the experimental period to the three during the experimental period - or 0.70 complaints per 1,000 public contacts compared to .069 per 1,000 contacts.”⁷⁷

The summarized, comprehensive results of the Rialto Study are as follows:

- Utilization of BWCs reduced use-of-force incidents by 59 percent⁷⁸
- Utilization of BWCs reduced citizen complaints by 87.5 percent⁷⁹

The Rialto Study makes sure to distinguish Closed Circuit Television (CCTV) from the use of BWC systems.⁸⁰ The study mentions the moral argument in the societal case against CCTV: the hidden social and ethical costs to the “inescapable

⁷² *Id.*

⁷³ Farrar, *supra* note 61, at 11.

⁷⁴ *Id.* at 8.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at 11.

⁷⁹ Farrar, *supra* note 61, at 11.

⁸⁰ *Id.* at 4.

panopticonic gaze” itself.⁸¹ This moral argument is not in the same arena when it comes to BWCs; CCTV surveillance captures the daily and routine behavior of all citizens—BWCs would capture only the behavior of both police and citizens when engaged in an encounter.

The Rialto Study findings can easily be extended to other law enforcement agencies because it provides law enforcement agencies with a method and framework to substantially reduce any sort of force response. The study concludes that “if one is not interested in the causal mechanism behind a 90 percent reduction in citizens’ complaints and 59 percent reduction in any form of official use-of-force, this behavioral modification is of real practical significance to the police []. We therefore envisage that body-worn cameras will dramatically change police-public encounters.”⁸² The Rialto Study recognized and outlined the overall benefits to recording police encounters with the public and has found its place as the poster child for the use of the BWCs.⁸³

V. A FOCUS ON NEW YORK

A. *One-Party Consent Laws*

When it comes to recording audio, it is important to note that New York is a “one-party consent” state.⁸⁴ In other words, under New York’s wiretapping law (New York Penal Law §§250.00, 250.05), it is a crime to record or eavesdrop on an in-person or telephone conversation unless one party to the conversation consents. Therefore, a person in New York may record a conversation or phone call if he is a party to the conversation or he receives permission from one party to the conversation in advance.⁸⁵ With that being said, sections 250.00 and 250.05 do not apply to video recordings.

⁸¹ *Id.* at 10.

⁸² EUGENE P. RAMIREZ, A REPORT ON BODY WORN CAMERAS 9 (2014) (citing Farrar, *supra* note 61, at 10).

⁸³ See generally Taylor Hill, *Can Body Cameras Protect the Public and Police? First-Ever Study Says So*, TAKEPART (Dec. 27, 2014), <http://www.takepart.com/article/2014/12/27/can-body-cameras-protect-public-and-police-first-ever-study-says-so>.

⁸⁴ N.Y. PENAL LAW §§ 250.00, 250.05 (McKinney 2003).

⁸⁵ *Id.*

B. Unlawful Surveillance and Stephanie's Law

In 2003, the New York legislature enacted six statutes (New York Penal Law sections 250.40, 250.45, 250.50, 250.60, and 250.65) as part of a group of laws targeting video voyeurism; collectively, these statutes are commonly referred to as “Stephanie’s Law,” in recognition of a woman who promoted the law after being secretly videotaped by her landlord in her bedroom through a hidden camera (hidden in the smoke detector above her bed).⁸⁶ Stephanie’s Law makes it a crime to surreptitiously surveil someone via mechanical, digital, or electronic device(s) without his or her knowledge or consent in a “place and time when a person has a reasonable expectation of privacy.”⁸⁷ Section 250.40 defines a place and time when a person has a reasonable expectation of privacy as “a place and time when a reasonable person would believe that he or she could fully disrobe in privacy.”⁸⁸ With this being said, it can be safely and surely assumed that a reasonable person would believe that he or she could fully disrobe in privacy in his or her home—more on this later.

New York Penal Law section 250.65 has an express exemption for law enforcement. Section 250.65 clarifies the exception by emphasizing that the provisions of §§ 250.45, 250.55, and 250.60 of the Penal Law do not apply with respect to law enforcement personnel engaged in the conduct of their authorized duties.⁸⁹ In other words, if an officer is legally allowed to be where he is, there is no state law in New York that prohibits said officer from video recording his interaction(s). This notion is supported by case law that explains a person has no expectation of privacy when he is engaged in a lawful interaction with police (i.e., there is no expectation of privacy in the back of a police car, in a jailhouse or prison, etc.).⁹⁰

⁸⁶ See generally 2003 N.Y. Laws 69; see also Memorandum in Support of Legislation from N.Y.S. Assemb. (May 16, 2014), http://assembly.state.ny.us/leg/?default_fld=&bn=A%209695&term=2013&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y.

⁸⁷ N.Y. PENAL LAW § 250.40(1) (McKinney 2003).

⁸⁸ *Id.*

⁸⁹ N.Y. PENAL LAW § 250.65(1)(a) (McKinney 2003).

⁹⁰ See, e.g., *People v. Burns*, 540 N.Y.S. 2d 157 (Sup. Ct. 1989) (noting that when an arrest is made on the basis of probable cause, the search incident thereto is reasonable and thus constitutional under the Fourth Amendment).

C. Reasonable Expectation of Privacy in One's Home

Back to the concept of the reasonable expectation of privacy in a person's home: what if a police officer, equipped with a BWC, enters a home—does a person maintain his or her reasonable right to privacy? Based on the aforementioned New York laws, the answer should be no. If the officer has probable cause to enter the home due to the obtaining of a warrant, the occupant's consent, or exigent circumstances, (e.g., audible gunshots), then all persons inside the home have no reasonable expectation of privacy.⁹¹

[T]here does not appear to be any case that specifically addresses Federal Constitutional privacy concerns with a camera worn by a police officer, the Ninth Circuit has held, "Video surveillance does not in itself violate a reasonable expectation of privacy. Videotaping of suspects in public places, such as banks, does not violate the Fourth Amendment; the police may record what they normally view with the naked eye."⁹²

According to Ramirez, "[t]he cases where courts *have* found a constitutional violation when police videotape" all have a common seam: 24-hour monitoring of a home with surveillance equipment or hidden camera.⁹³ It can be said that "[a] person would not have the same expectation of privacy in the presence of an officer, nor would a recording be as intrusive."⁹⁴

D. Rialto, California vs. Albany, New York: A Statistical Comparison

Section IV of this article explained the success of the Rialto, CA police department's deployment of BWCs. Albany, New York's statistical composition is eerily similar to that of Rialto, California:

- The Albany Police Department (APD) is also a mid-sized police department, employing approximately

⁹¹ RAMIREZ, *supra* note 82, at 5.

⁹² *Id.* at 6 (quoting *United States v. Taketa*, 923 F.2d 665 (9th Cir. 1991)).

⁹³ *Id.* (citing *United States v. Cuevas-Sanchez*, 821 F.2d 248, 251 (5th Cir. 1987) ("the installation of a surveillance camera on a power police to videotape activities in a suspect's backyard constitutes a 'search' within the meaning of the Fourth Amendment" and "raises the spectre of the Orwellian state.")).

⁹⁴ *Id.*

530 employees, including both sworn and non-sworn personnel;⁹⁵

- APD has jurisdiction over approximately 21.4 square miles;⁹⁶
- APD services a population of approximately 100,000 residents; and⁹⁷
- Annually, the department handles 804 violent crimes and 3,940 property crimes.⁹⁸

According to a City of Albany Citizens' Police Review Board Annual Report from 2013, use of force complaints accounted for twenty percent (20%) of the misconduct alleged (13 of the total 66 complaints).⁹⁹ Furthermore, in nine of these thirteen complaints the use of force allegations were identified as excessive.¹⁰⁰ As the results of the Rialto Study showed a 59% decrease in use of force incidents,¹⁰¹ BWCs would most likely yield an even more substantial decrease due to the greater number of employed officers. For this reason, along with the nearly identical crime statistics, Albany County's Police Department would benefit from the deployment of BWCs.

VI. 2014 ONWARD

The police officer conduct has come under especially intense scrutiny in 2014.¹⁰² Both “the police shooting of unarmed black teenager Michael Brown in Ferguson, [Missouri] and the death of Eric Garner following a police chokehold in Staten Island, [New York] [] sparked protests and unrest around the nation.”¹⁰³ The “grand jury in each case declined to indict the officers involved”,

⁹⁵ ALBANY POLICE DEPARTMENT, 2016 PROSPECTUS, at 8 (2016), http://www.albanyny.org/Libraries/APD/APD2015_102715_finalreview.sflb.ashx.

⁹⁶ *Quickfacts Albany City, New York*, UNITED STATES CENSUS BUREAU, <http://www.census.gov/quickfacts/table/PST045215/3601000> (last visited May 13, 2016).

⁹⁷ *Id.*

⁹⁸ *Crime Rates for Albany, NY*, NEIGHBORHOOD SCOUT, <http://neighborhoodscout.com/ny/albany/crime> (last visited May 10, 2016).

⁹⁹ THE GOV'T LAW CTR. OF ALBANY LAW SCH. ON BEHALF OF THE CITY OF ALBANY CITIZENS' POLICE REVIEW BD., ANNUAL REPORT 2013, at 8–9 (2013).

¹⁰⁰ *Id.* at 8.

¹⁰¹ *Infra* note 74.

¹⁰² Stav Ziv, *Study Finds Body Cameras Decrease Police's Use of Force*, NEWSWEEK (Dec. 28, 2014, 2:31 PM), <http://www.newsweek.com/amidst-debate-study-finds-body-cameras-decrease-polices-use-force-295315>.

¹⁰³ *Id.*

even though in the Garner case, a bystander had captured the entire incident on video.¹⁰⁴ A BWC could have caused a different result due to the fact that the “[p]olice weren’t aware of the camera and didn’t have to tell the suspect that he, and therefore they, were being filmed,” therefore, the amateur cell phone video did not have the same “deterrent message” as a BWC could have had.¹⁰⁵

On November 22, 2014, 12-year-old Tamir Rice was shot by a police officer in Cleveland, Ohio who mistook a toy gun Rice was holding for a real one.¹⁰⁶ In early December, Attorney General Eric Holder announced that a U.S. Department of Justice investigation that began in March 2013 found that “the Cleveland Police Department systematically engages in excessive use of force against civilians.”¹⁰⁷

In response to public outcry and in an effort to reconcile police-citizen relations, President Obama “proposed an investment of \$263 million into community policing.”¹⁰⁸ This investment would fund increased police training and resources, with \$75 million of those funds to be used for the deployment of BWCs.¹⁰⁹ In October, The Justice Department published its own findings on BWCs, highlighting concerns regarding privacy rights, changing perceptions between police and the community and expectations over how information from the video recordings should be shared.¹¹⁰ Despite its concerns, the Justice Department ultimately found that the “perceived benefits that body-worn cameras offer—capturing a video recording of critical incidents and encounters with the public, strengthening police accountability, and providing a valuable new type of evidence—largely outweigh the potential drawbacks.”¹¹¹

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Reuters, *Cleveland Police Use Excessive Force: Justice Department*, NEWSWEEK (Dec. 4, 2014, 2:14 PM), <http://www.newsweek.com/cleveland-police-use-excessive-force-justice-department-289284>.

¹⁰⁸ *Ziv supra* note 102.

¹⁰⁹ *Id.*

¹¹⁰ IMPLEMENTING A BODY-WORN CAMERA PROGRAM, *supra* note 1, at vii.

¹¹¹ *Id.* at 5.

VII. CONCLUSION

“Some people are thinking this is literally a magic bullet and it’s going to solve all our communities’ problems’. . . ‘It’s not going to address the fundamental, underlying problems within a community that take time to address.’” –Charles Katz, criminologist.¹¹²

The above sentiment calls for both police and communities to come together in reestablishing trust in one another. Recent events have caused citizens to compare today’s police to those of the 1970s— police prior to the community policing initiative of the 1980s. Accountability must be the driving force in order for trust to be reestablished and it is my, along with the agencies and departments mentioned in this article, belief that BWCs have the potential to serve as the first step towards mending community-police relations.

Ultimately, this article supports the implementation and deployment of BWCs by police departments by emphasizing the benefits of recording interactions with police, while remaining neutral, yet aware of the downfalls. In the end, it is human nature to behave when you are on camera; BWCs will promote both police and citizen good behavior by holding subjects accountable for their actions—actions that have the potential to follow an individual for years to come.

¹¹² Ziv, *supra* note 102.