

March 2016

## Hands up, Don't Shoot: Police Misconduct and the Need for Body Cameras

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### Recommended Citation

Iesha S. Nunes, *Hands up, Don't Shoot: Police Misconduct and the Need for Body Cameras*, 67 Fla. L. Rev. 1811 (2016).

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## “HANDS UP, DON'T SHOOT”: POLICE MISCONDUCT AND THE NEED FOR BODY CAMERAS

*Iesha S. Nunes*\*

### Abstract

The 2014 shooting of Michael Brown in Ferguson, Missouri is probably the most notable of the many recent cases in the media involving police officers' use of excessive force. After Officer Darren Wilson shot and killed Brown, varying accounts of what transpired between the two men surfaced. Officer Wilson claimed he was defending himself against Brown when he fired the fatal shots; however, other witnesses claimed Brown had his hands raised above his head in a position of surrender when Officer Wilson killed him. This case highlights the need for police officers to wear body cameras because the extremely different eyewitness accounts of the incident make it nearly impossible to conclude with certainty what actually happened. Did Officer Wilson perjure himself to avoid liability for killing Brown? Did eyewitnesses change their stories, or were they never actually sure of what occurred during the encounter? If Officer Wilson had been wearing a body camera, these questions would have easy answers. In fact, if Officer Wilson had been wearing a body camera, Brown may still be alive today.

This Note explores the effectiveness of body cameras and argues for the use of body cameras by all law enforcement officers. This Note also examines how body cameras can benefit the court system by increasing its efficiency in processing § 1983 claims that often arise from law enforcement officers' use of excessive force. Part I discusses the endemic problem of police misconduct by highlighting notable cases. It also discusses how courts analyze § 1983 claims and the effect that faulty eyewitness testimony has on such claims. Moreover, Part I addresses the commonality of police perjury and the need for forced accountability of police officers. Part II examines studies concerning the effectiveness and benefits of body cameras. It also discusses how many agencies currently use body cameras and ways to increase the technology's use nationwide. Part III considers and dispels various concerns regarding the use of body cameras, including cost, privacy rights of law enforcement officers, and

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the threat of misuse of the stored recordings. This Note concludes that body cameras are an effective means of protecting civilians’ constitutional rights and that the benefits outweigh the costs associated with using the devices. Body cameras are the future of policing and are necessary to aid in the fair administration of justice.

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## INTRODUCTION

On August 9, 2014, a county police officer fatally shot an eighteen-year-old unarmed black man named Michael Brown.<sup>1</sup> This incident led to the start of what many termed an “uprising” in Ferguson, Missouri.<sup>2</sup>

Multiple witnesses came forward in the hours and days following the shooting with their own accounts of what occurred during the incident.<sup>3</sup> As expected, many conflicting stories surfaced regarding what actually happened<sup>4</sup> between Brown and Officer Darren Wilson.<sup>5</sup> Several witnesses claimed that Officer Wilson shot Brown as he was running away.<sup>6</sup> An autopsy of Brown’s body, however, proved that theory to be impossible because Brown sustained six gunshots to the front of his body.<sup>7</sup> Other witnesses claimed Brown had his hands raised in a position of surrender as Officer Wilson shot him multiple times.<sup>8</sup> Ultimately, the pathologist hired by the Brown family to perform a second autopsy

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1. Elizabeth Chuck, *The Killing of an Unarmed Teen: What We Know About Brown’s Death*, NBC NEWS (Aug. 13, 2014, 5:03 AM), <http://www.nbcnews.com/storyline/michael-brown-shooting/killing-unarmed-teen-what-we-know-about-browns-death-n178696>; *Dueling Narratives in Michael Brown Shooting*, CNN (Sept. 16, 2014, 6:19 AM), <http://www.cnn.com/2014/08/19/us/ferguson-michael-brown-dueling-narratives/>.

2. See, e.g., Caleb Maupin, *The Global Context of the Ferguson Uprising*, NEW EASTERN OUTLOOK (June 12, 2014), <http://journal-neo.org/2014/12/06/the-global-context-of-the-ferguson-uprising/>.

3. Frances Robles & Michael S. Schmidt, *Shooting Accounts Differ as Holder Schedules Visit to Ferguson*, N.Y. TIMES (Aug. 19, 2014), <http://www.nytimes.com/2014/08/20/us/shooting-accounts-differ-as-holder-schedules-visit.html>.

4. *Id.*

5. Tanzina Vega, Timothy Williams & Erik Eckholm, *Emotions Flare in Missouri Amid Police Statements*, N.Y. TIMES (Aug. 15, 2014), <http://www.nytimes.com/2014/08/16/us/darren-wilson-identified-as-officer-in-fatal-shooting-in-ferguson-missouri.html> (“Chief Jackson said at a news conference that the officer who shot Mr. Brown was Darren Wilson . . .”).

6. Robles & Schmidt, *supra* note 3 (“Many witnesses also agreed on what happened next: Officer Wilson’s firearm went off inside the car, Mr. Brown ran away, the officer got out of his car and began firing toward Mr. Brown . . .”).

7. Frances Robles & Julie Bosman, *Autopsy Shows Michael Brown Was Struck at Least 6 Times*, N.Y. TIMES (Aug. 17, 2014), <http://www.nytimes.com/2014/08/18/us/michael-brown-autopsy-shows-he-was-shot-at-least-6-times.html>.

8. *Dueling Narratives in Michael Brown Shooting*, *supra* note 1. This led to many protestors assuming the same position during their protests while chanting, “Hands up, don’t shoot!” See Emanuella Grinberg, *Why ‘Hands Up, Don’t Shoot’ Resonates Regardless of Evidence*, CNN (Jan. 11, 2015, 9:43 AM), <http://www.cnn.com/2015/01/10/us/ferguson-evidence-hands-up/>. Whether Brown actually had his hands up in a position of surrender when the officer shot him is not entirely clear, but the “Hands up, don’t shoot” mantra has become a staple in the current protests against police misconduct and excessive force. *Id.* (“‘Hands up, don’t shoot’ has become shorthand for police mistreatment of minorities, one that’s spreading beyond traditional protest scenes. . . . A review of thousands of pages of grand jury documents, however, does not definitively support the conclusion that Brown had his hands raised above his head when he [was shot].”).

concluded, “From a scientific point of view, we can’t determine which witness is most consistent.”<sup>9</sup>

Since the incident, continued nights of violent protests have resulted in the arrests of many protestors.<sup>10</sup> Ferguson police protected themselves with military-grade weapons, and they fired tear gas and rubber pellets into the crowds of protestors.<sup>11</sup> These riots left both police officers and protestors injured.<sup>12</sup> Protests only worsened when a grand jury decided not to indict Officer Wilson.<sup>13</sup>

The event that occurred in Ferguson is only one of many that law enforcement’s use of body cameras could have prevented, or, at the very least, easily cleared up. Because eyewitness testimony is inherently unreliable,<sup>14</sup> federal legislation should encourage states to pass their own legislation requiring all law enforcement to use body cameras. The use of body cameras will not only increase the accountability of law enforcement, but it will also help courts discover the truth in cases of excessive force where “he said, she said” currently rules the day.

Part I of this Note examines the pervasiveness of police misconduct in America and the need for police to use body cameras by discussing the inherent unreliability of eyewitness testimony and the prevalence of police perjury. Part II explains how a body camera works in the context of policing and discusses studies examining their effectiveness. This Part also proposes ways to encourage the use of body cameras by federal, state, and local law enforcement agencies. Finally, Part III addresses and

9. Emily Brown, *Timeline: Michael Brown Shooting in Ferguson, Mo.*, USA TODAY (Dec. 4, 2014, 7:37 PM), <http://www.usatoday.com/story/news/nation/2014/08/14/michael-brown-ferguson-missouri-timeline/14051827/> (internal quotation marks omitted).

10. Monica Davey, John Eligon & Alan Blinder, *National Guard Troops in Ferguson Fail to Quell Disorder*, N.Y. TIMES (Aug. 19, 2014), <http://www.nytimes.com/2014/08/20/us/ferguson-missouri-protests.html> (“Two men were shot in the crowd, officials said in an early-morning news conference, and 31 people . . . were arrested.”).

11. *Id.* (noting that state and local law enforcement took to the streets in “military-style vehicles and riot gear”).

12. Alan Blinder & Tanzina Vega, *Violence Flares in Ferguson After Appeals for Harmony*, N.Y. TIMES (Aug. 17, 2014), <http://www.nytimes.com/2014/08/18/us/ferguson-missouri-protests.html> (“[O]ne man was critically wounded in an overnight shooting, apparently by another protester.”); Davey et al., *supra* note 10 (“Two men were shot in the crowd . . .”); Casey Nolen & Brandie Piper, *5 Arrested, 2 Officers Injured in Brown Memorial Unrest*, USA TODAY (Sept. 24, 2014, 2:37 PM), <http://www.usatoday.com/story/news/nation/2014/09/24/break-in-reported-protesters-gather-in-ferguson/16138611/> (“Capt. Ron Johnson with the Missouri State Highway Patrol said two St. Louis County police officers were injured during the unrest.”).

13. See Monica Davey & Julie Bosman, *Protests Flare After Ferguson Police Officer is Not Indicted*, N.Y. TIMES (Nov. 24, 2014), <http://www.nytimes.com/2014/11/25/us/ferguson-darren-wilson-shooting-michael-brown-grand-jury.html> (“Word of the decision [not to indict Officer Wilson] set off a new wave of anger among hundreds who had gathered outside the Ferguson Police Department.”).

14. *E.g.*, United States v. Wade, 388 U.S. 218, 228 (1967) (“The vagaries of eyewitness identification are well-known . . .”).

dispels the concerns surrounding the use of body cameras, including qualms about privacy, cost, and the threat of misuse of the recordings. Despite these reservations, the potential benefit to the public from the use of body cameras is great. As this Note discusses, body cameras will not only help to increase accountability on behalf of law enforcement, but will also increase the public's trust in those whose duty it is to protect and serve.

## I. CASES OF POLICE MISCONDUCT EXPLAIN THE NEED FOR BODY CAMERAS

Part I features an in-depth discussion of earlier and more recent cases of police misconduct as well as the related issue of federal excessive force lawsuits. This Part also attempts to determine how body camera footage can assist triers of fact by providing objective accounts of police-civilian encounters that may help to counteract the negative effects of falsified or inaccurate testimony.

### A. *Notable Cases*

Accusations of police brutality and accompanying lawsuits have been around for ages. A Bureau of Justice Statistics survey found that “[a]n estimated 84% of individuals who experienced force or the threat of force felt that the police acted improperly.”<sup>15</sup> A few notable cases are discussed below.

#### 1. Earlier Cases

Perhaps one of the most infamous cases of police misconduct is that of Rodney King. Following a high-speed chase on March 3, 1991, four Los Angeles Police Department (LAPD) officers brutally beat Rodney King.<sup>16</sup> A civilian bystander recorded the entire ordeal.<sup>17</sup> The video that later circulated in the news revealed what many thought to be vicious and obvious evidence of police misconduct.<sup>18</sup> The four officers (Laurence Powell, Timothy Wind, Theodore Briseno, and Stacey Koon) were tried

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15. *Use of Force*, BUREAU OF JUSTICE STATISTICS, <http://www.bjs.gov/index.cfm?ty=tp&tid=703> (last visited Aug. 2, 2015). Only 14% of said individuals actually filed a complaint against the police involved. *Id.* In 2002, 26,556 complaints were filed. MATTHEW J. HICKMAN, U.S. DEP'T OF JUSTICE, CITIZEN COMPLAINTS ABOUT POLICE USE OF FORCE 1 (June 25, 2006), available at <http://www.bjs.gov/content/pub/pdf/ccpuf.pdf>.

16. *Rodney King*, BIO, <http://www.biography.com/people/rodney-king-9542141> (last visited Aug. 2, 2015).

17. *Id.*

18. See Seth Mydans, *Los Angeles Policemen Acquitted in Taped Beating*, N.Y. TIMES (Apr. 30, 1992), [http://www.nytimes.com/learning/general/onthisday/990429onthisday\\_big.html](http://www.nytimes.com/learning/general/onthisday/990429onthisday_big.html).

for various criminal offenses, including assault with a deadly weapon.<sup>19</sup> After a controversial change of venue from Los Angeles to the predominantly white suburb of Simi Valley, the court acquitted the officers of all charges.<sup>20</sup> Much like in Ferguson, there was massive outrage over what many viewed as a clear case of police brutality. Riots, looting, and arson ensued.<sup>21</sup> In 1992, the U.S. Department of Justice (DOJ) stepped in and filed federal civil rights charges.<sup>22</sup> Two officers were acquitted, and two were found guilty.<sup>23</sup> King received \$3.8 million in damages in a civil trial related to the incident.<sup>24</sup>

Although the Rodney King incident is probably one that resonates most with Americans because of the rioting and racial issues attached, many other similar cases of police misconduct exist. Prior to King's beating by police officers, there was the case of Adolph Archie.<sup>25</sup> In 1990, Archie was involved in a shootout with New Orleans police officers in which he shot and killed Officer Earl Hauck.<sup>26</sup> After Archie killed Officer Hauck, police officers shot Archie in the arm before finally detaining him.<sup>27</sup> Rather than transporting Archie to the hospital, where some say a mob of police officers stood, they took him to a precinct house.<sup>28</sup> According to Archie's family attorney, this is where police fatally beat Archie.<sup>29</sup>

Discrepancies existed as to the full extent and cause of Archie's injuries. According to an independent autopsy performed at his family's request, Archie suffered not only a cracked skull, but also a crushed larynx and a shattered face.<sup>30</sup> The New Orleans coroner's autopsy report was inconsistent with the independent autopsy report.<sup>31</sup> The coroner's report failed to mention injuries to Archie's "chest, abdomen[,] and

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19. *King*, *supra* note 16.

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. Kevin McGill, *Death of a Cop Killer Prompts Local, Federal Investigations*, ASSOCIATED PRESS (Apr. 14, 1990, 6:38 PM), available at <http://www.apnewsarchive.com/1990/Death-Of-A-Cop-Killer-Prompts-Local-Federal-Investigations/id-e39c5bdec45b1690f509175acd01560c>.

26. *Id.*

27. *Id.*

28. *Id.*; Bob Herbert, Op-Ed., *In America; Disgracing the Badge*, N.Y. TIMES (Sept. 18, 1995), <http://www.nytimes.com/1995/09/18/opinion/in-america-disgracing-the-badge.html>.

29. See McGill, *supra* note 25.

30. *Id.*

31. *Id.*

testicles.”<sup>32</sup> It also mentioned only one skull fracture even though the independent autopsy report noted two.<sup>33</sup> Moreover, the police claim that after arriving at the police station, Archie hit his head on the floor as he reached for a gun.<sup>34</sup> They provided no statement as to how Archie suffered his other injuries.<sup>35</sup> The police also claimed that Archie was taken to the hospital forty-five minutes later, where he died the next morning after he forcibly removed the tracheal tube that was keeping him alive.<sup>36</sup> Hospital reports and the coroner’s autopsy support this story;<sup>37</sup> however, the coroner himself admitted to favoring the police’s account of incidents resulting in Archie’s death.<sup>38</sup> Unlike in the King incident, there was no video recording of what actually happened to Archie while he was in police custody. Only the police could tell the tale, apparently with the coroner on their side.

Other claims of police misconduct have also arisen across the United States, some of which also show the value in capturing the incident on camera through the recordings used in the resolution of the matter. In Mississippi, a detention officer excessively and brutally beat Jessie Lee Williams.<sup>39</sup> He later died of resulting brain trauma.<sup>40</sup> Security cameras mounted within the detention center captured the incident.<sup>41</sup> The video shows Officer Ryan Teel assaulting Williams.<sup>42</sup> According to the complaint filed by Williams’ estate, Officer Teel uncuffed Williams shortly after he arrived at the facility and began to repeatedly punch and kick Williams in the head.<sup>43</sup> Officer Teel also sprayed an entire can of pepper spray into a sack later placed over Williams’ head, in addition to shooting Williams in the back with a taser numerous times.<sup>44</sup> After

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32. *Id.* (“Minyard’s staff autopsy lists many of the injuries Sperry found, but makes no specific references to injuries of Archie’s chest, abdomen and testicles . . .”).

33. *Id.* (“[W]hile Minyard reported a single fracture to the skull, Sperry’s report lists two fractures, beginning on opposite sides of Archie’s head and extending to the back of the skull.”).

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.* (“The coroner said he believes police accounts of Archie’s handling. He also admitted to a bias in favor of the police. ‘I mean, we had two murders this morning,’ he said. ‘Every day I work with homicide. And if I don’t believe them, I mean, the whole system breaks down. I have to believe what they tell me.’”).

39. *See* First Amended Complaint at 2, *Estate of Williams v. Harrison Cnty.*, No. 1:06cv196LG-RHW (S.D. Miss. Apr. 6, 2006).

40. *See id.*

41. *See* *Jessie Lee Williams Jr. Incident in the Harrison County Jail Booking Room*, SUN HERALD, <http://www.sunherald.com/static/video/jail.video.2.main/> (last visited Aug. 2, 2015).

42. *Id.*

43. First Amended Complaint, *supra* note 39, at 5.

44. *Id.* at 5–6.

another officer “hog-tied” Williams,<sup>45</sup> and Officer Teel repeatedly slammed Williams into the ground, face first,<sup>46</sup> officers finally placed Williams in a restraining chair where Officer Teel continued to choke and beat him.<sup>47</sup>

In the end, Williams was taken to the hospital where he died two days later as a result of severe injuries he sustained from the beating.<sup>48</sup> His estate sued in federal court under 42 U.S.C. § 1983.<sup>49</sup> Officer Teel was also tried in federal court and sentenced to two life terms plus twenty years after the court convicted him of civil rights violations and using excessive force against Williams.<sup>50</sup> There is no doubt that the security video recording helped bring Williams’ family justice in this case. Without it, this would have been an additional case of “he said, she said.”

Another notable case involved correctional officers at a county booking center in Tampa, Florida on January 29, 2008.<sup>51</sup> A video recording from security cameras in the facility showed a detention deputy dumping Brian Sterner, a quadriplegic arrestee, from his wheelchair prior to booking.<sup>52</sup> Sterner sued the Hillsborough County Sheriff, David Gee, alleging violations of his Fourth Amendment rights under the U.S. Constitution as well as other civil rights violations.<sup>53</sup> The Hillsborough County Sheriff’s Department suspended the deputy who dumped Sterner from his wheelchair and three supervisors as a result of the incident.<sup>54</sup> Without the security camera video recording, Sterner may have had a difficult time proving that officers intentionally dumped him from his wheelchair. These incidents show just how valuable video evidence can be in a case of officer misconduct.

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45. *Id.* at 5.

46. *Id.* at 6.

47. *Id.*

48. *Id.* at 2.

49. *Id.* at 15.

50. *Former Jailer Ryan Teel Sentenced to Life in Prison*, WLOX 13, <http://www.wlox.com/story/7298144/former-jailer-ryan-teel-sentenced-to-life-in-prison> (last visited Aug. 2, 2015).

51. *Sheriff Apologizes to Man Dumped from Wheelchair*, CNN (Feb. 13, 2008, 9:33 PM), <http://www.cnn.com/2008/CRIME/02/13/wheelchair.dumping/>.

52. *Id.*

53. Howard Altman, *Mediation Ordered in Wheelchair Lawsuit*, TAMPA TRIB. (Mar. 21, 2013, 1:39 PM), <http://tbo.com/news/mediation-ordered-in-wheelchair-lawsuit-341896>.

54. *Sheriff Apologizes to Man Dumped from Wheelchair*, *supra* note 51 (“The deputy responsible for dumping Sterner from the chair has been suspended without pay, Gee said in his statement. The three supervisors who were on duty during the incident have also been suspended, but with pay. . .”).

## 2. Recent Cases

More recently, social media and news outlets have exposed cases of police brutality and misconduct. In 2014, three incidents (including the shooting of Michael Brown discussed above) gained widespread attention.

On March 2, 2014, police officers stopped Victor White III after suspecting him of being involved in a fight that occurred at a local gas station.<sup>55</sup> Police discovered marijuana and what they believed to be cocaine in White's pocket during a pat down of his person.<sup>56</sup> The officers then took White into custody and brought him to the police station.<sup>57</sup> According to state police, upon arriving at the police station, White "refused to exit the patrol car."<sup>58</sup> White then allegedly took out a handgun and fired a shot into his own back while still handcuffed, killing himself.<sup>59</sup> A coroner ruled that White's death was a suicide.<sup>60</sup> According to the coroner's report, however, White died from a self-inflicted gunshot wound to the chest rather than to the back as the police originally claimed.<sup>61</sup>

Because of the curious facts of this case, news reports termed the death a "Houdini handcuff suicide."<sup>62</sup> There is still no explanation as to how White was able to shoot himself in the chest while handcuffed behind his back. Moreover, police searched White before placing him in the patrol car.<sup>63</sup> How was it that police officers found a small bag of marijuana and cocaine but did not locate a handgun on him? Had these police officers been wearing body cameras, most of the questions surrounding White's death would probably have answers.

Another case that drew widespread media attention is that of Eric Garner.<sup>64</sup> On July 17, 2014, police stopped Garner in Staten Island, New

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55. Elliott C. McLaughlin, *Father Seeks Closure in Son's 'Houdini Handcuff Suicide,'* CNN (Sept. 10, 2014, 10:57 AM), <http://www.cnn.com/2014/09/10/us/louisiana-victor-white-handcuff-suicide/>.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *See, e.g., Medical Examiner Rules Eric Garner's Death a Homicide, Says He Was Killed by Chokehold,* NBC NEWS N.Y. (Aug. 21, 2014, 7:20 AM), <http://www.nbcnewyork.com/news/local/Eric-Garner-Chokehold-Police-Custody-Cause-of-Death-Staten-Island-Medical-Examiner-269396151.html>. The media has recently highlighted even more cases of alleged police brutality and misconduct. For example, police officers arrested Freddie Gray on April 12, 2015 in Baltimore, Maryland, for possessing what they believed was an illegal switchblade. *Freddie Gray*

York and accused him of selling untaxed cigarettes.<sup>65</sup> A witness who recorded the subsequent arrest attempt stated that Garner had actually just helped break up a fight before police began to question him about selling the cigarettes.<sup>66</sup> Garner argued with the police about the accusations and an officer then placed Garner in a chokehold.<sup>67</sup> Even though the New York Police Department (NYPD) bans chokeholds,<sup>68</sup> the officer held fast in his grip.<sup>69</sup> Several officers also helped subdue Garner on the ground.<sup>70</sup> The video recording captured Garner repeatedly stating, “I can’t breathe,”<sup>71</sup> yet the officers refused to let loose of their hold on him.<sup>72</sup> Garner died shortly after.<sup>73</sup>

The NYPD later ordered the officer who placed Garner in the chokehold to turn in his badge and gun, and restricted another officer to desk duty.<sup>74</sup> Five months after the incident, a grand jury decided not to indict the officer who placed Garner in the chokehold.<sup>75</sup> The jury found

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*Death Ruled Homicide; Officers Charged*, CNN (May 1, 2015 11:13 PM), <http://www.cnn.com/2015/05/01/us/freddie-gray-baltimore-death/index.html>. At some point during Gray’s transport, Gray slipped into a coma after suffering spinal injuries and he died about a week later. *Id.* The officers involved currently await trial on related formal criminal charges. *Id.* Another interesting case involves a woman named Sandra Bland. Ray Sanchez, *What We Know About the Controversy in Sandra Bland’s Death*, CNN (July 22, 2015 10:00 AM), <http://www.cnn.com/2015/07/21/us/texas-sandra-bland-jail-death-explain/index.html>. During a questionable (and recorded) traffic stop, a Texas police officer arrested Bland for allegedly assaulting him. *Id.* Three days later, Bland was found dead in her cell hanging from a makeshift noose fashioned from a trashcan liner. *Id.* Although jail officials have characterized her death as a suicide, the County District Attorney has stated that her death will be treated like a murder investigation. *Id.* Had the officers involved in both of these cases been outfitted with body cameras, there may be video accounts detailing not only the initial stop, but also the subsequent events that led up to both Freddie Gray and Sandra Bland’s death. Even if both Gray and Bland contributed to their own death, video footage of such would assist in the accompanying investigations.

65. *Medical Examiner Rules Eric Garner’s Death a Homicide, Says He Was Killed by Chokehold*, NBC NEWS N.Y. (Aug. 21, 2014, 7:20 AM), <http://www.nbcnewyork.com/news/local/Eric-Garner-Chokehold-Police-Custody-Cause-of-Death-Staten-Island-Medical-Examiner-269396151.html>.

66. *Id.*

67. *Id.*

68. *Id.*

69. *See id.* (describing Garner’s plea for release from the chokehold).

70. *Id.*

71. *Id.*

72. *See id.* (describing how the officers held Garner down as he pleaded for release).

73. *Id.*

74. *Id.*

75. *See, e.g.,* Andrew Siff, Jonathan Dienst & Jennifer Millman, *Grand Jury Declines to Indict NYPD Officer in Eric Garner Chokehold Death*, NBC NEWS N.Y. (Dec. 4, 2014, 1:59 PM), <http://www.nbcnewyork.com/news/local/Grand-Jury-Decision-Eric-Garner-Staten-Island-Chokehold-Death-NYPD-284595921.html>.

that there was no probable cause to charge the officer even though they had an amateur video recording of the encounter.<sup>76</sup> Despite the grand jury decision, the DOJ has stepped in and will conduct its own investigation<sup>77</sup> to review all of the information compiled during the New York investigation.<sup>78</sup> Even if the grand jury found the recording insufficient to establish probable cause, the availability of the video surely clarified what actually occurred during this event. Had a body camera worn by one of the police officers recorded the video, the outcome may have differed. A body camera may have recorded more of the encounter, which would have provided additional context. Without this context, one cannot say the recording by the witness was useless to the case.

The cases described above are only a few cases involving claims of excessive force, police brutality, or both. These cases show the endemic problem of police misconduct over a twenty-four-year time period.<sup>79</sup> With advances in handheld camera and cell phone technology, bystanders are beginning to record police–civilian encounters with greater frequency.<sup>80</sup> Although these bystander videos have proven useful, law enforcement agencies should hold themselves accountable by requiring officers to wear body mounted cameras with video and audio recording capabilities. These self-recorded videos would help to clarify even the most curious of cases better than bystander recordings and perhaps provide incentive for officers to always remain on their best behavior. As previously mentioned, eyewitness testimony is inherently unreliable.<sup>81</sup> Body cameras would provide an unbiased, third party perspective in all encounters with law enforcement, which will aid in the fair administration of justice.

### B. 42 U.S.C. § 1983 and Excessive Force Claims

Cases of excessive force often arise under what is colloquially termed “§ 1983.” 42 U.S.C. § 1983 allows for a private right of action for

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76. *Id.*

77. *Id.*

78. *Id.*

79. An ancillary, yet important, issue that this Note does not cover is the aspect of race and its tie to law enforcement’s use of excessive force. Many researchers have studied the topic of minority encounters with police. For an interesting discussion on the racialization of the traffic stop, see Nancy Leong, *The Open Road and the Traffic Stop: Narratives and Counter-Narratives of the American Dream*, 64 FLA. L. REV. 305, 338–39 (2012) (discussing the realities behind and significance of popular comedian Chris Rock’s comedic monologue “How Not to Get Your Ass Kicked By Police” to the black community).

80. Rene Stutzman, *Police Seizing Cellphones: A Civil-Rights Dispute*, ORLANDO SENTINEL (Mar. 19, 2014), [http://articles.orlandosentinel.com/2014-03-19/news/os-police-seize-phone-civil-rights-20140318\\_1\\_officer-peter-delio-dispute-law-enforcement-officers](http://articles.orlandosentinel.com/2014-03-19/news/os-police-seize-phone-civil-rights-20140318_1_officer-peter-delio-dispute-law-enforcement-officers).

81. *See supra* note 14 and accompanying text.

individuals who believe that another person or entity violated their constitutional rights.<sup>82</sup> 42 U.S.C. § 1983 reads:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . .<sup>83</sup>

When an officer makes a proper arrest, he has “the right to use some degree of physical coercion or threat thereof to effect it.”<sup>84</sup> When civilians sue police officers under § 1983, the police may pursue the defense of qualified immunity.<sup>85</sup> This defense allows a court to consider whether an officer’s actions were in good faith.<sup>86</sup> Essentially, “[i]f the court grants the officer qualified immunity, the officer is immune from suit, and the plaintiff’s claim is essentially defeated.”<sup>87</sup> Courts must engage in a “two-pronged inquiry” to determine whether the qualified immunity defense applies.<sup>88</sup> First, courts must consider “whether the facts ‘[t]aken in the light most favorable to the party asserting the injury, . . . show the officer’s conduct violated a [federal] right.’”<sup>89</sup> Courts must next consider “whether the right in question was ‘clearly established’ at the time of the violation.”<sup>90</sup> If the court determines that the officer’s conduct did not violate a federal right or that the right was not clearly established at the time of the violation, then the defense of qualified immunity stands.<sup>91</sup>

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82. See 42 U.S.C. § 1983 (2012).

83. *Id.*

84. *Graham v. Connor*, 490 U.S. 386, 396 (1989).

85. Jeff Fabian, Note, *Don’t Tase Me Bro!: A Comprehensive Analysis of the Laws Governing Taser Use by Law Enforcement*, 62 FLA. L. REV. 763, 769 (2010).

86. See Greg Wiley, *Excessive Force Claims: Disentangling Constitutional Standards*, 68 BENCH & B. MINN., July 2011, at 27, 28 (quoting *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973)) (noting that good faith is one of three factors a court should consider when determining whether police used excessive force), available at <http://mnbenchbar.com/2011/07/excessive-force-claims-disentangling-constitutional-standards/>.

87. Fabian, *supra* note 85, at 769.

88. *Tolan v. Cotton*, 134 S. Ct. 1861, 1865 (2014) (per curiam) (“In resolving questions of qualified immunity at summary judgment, courts engage in a two-pronged inquiry.”).

89. *Id.* (quoting *Saucier v. Katz*, 533 U.S. 194, 201 (2001)).

90. *Id.* at 1866 (quoting *Hope v. Pelzer*, 536 U.S. 730, 739 (2002)).

91. See *id.* at 1865–66 (ruling that the first prong is met if the Fourth Amendment’s right against unreasonable seizures was not violated, and the second prong is met if, at the time of the incident, the officers did not provide the defendant with fair warning that their conduct was unconstitutional).

In cases involving the qualified immunity defense, the plaintiff must first identify which constitutional right that the officer violated.<sup>92</sup> Many different constitutional amendments apply in cases of excessive force.<sup>93</sup> “[T]he constitutional standards for permissible force depend entirely upon the custodial status [of] the alleged victim of force . . . .”<sup>94</sup> The Fourteenth Amendment protects pretrial detainee’s (those who are confined in a jail prior to trial) right to substantive due process, and the officer’s conduct must be “conscience shocking” to violate this right.<sup>95</sup> Additionally, the Eighth Amendment protects incarcerated convicts from cruel and unusual punishment.<sup>96</sup> Here, an officer must use force “maliciously and sadistically for the very purpose of causing harm” to violate this Eighth Amendment right.<sup>97</sup> Finally, the Fourth Amendment protects a free citizen from illegal search and seizure.<sup>98</sup> To violate this right, an officer’s use of force must not be “objectively reasonable.”<sup>99</sup> Because of the various standards applied to cases of excessive force, it is important to scrutinize not only the level of force applied, but also the custodial status of the person asserting a claim under § 1983.

As part of the proceedings involving § 1983 litigation, eyewitnesses and arresting officers give testimony about the respective incident. Either party, to strengthen her case or weaken the opponent’s case, can use this testimony, as a large part of the adversarial process involves hearing the “facts” from both sides. If the witnesses involved are unable or unwilling to provide accurate accounts of the event in question, then it is difficult for either side to make a compelling argument to jurors. Moreover, a court must hear an accurate account of the facts associated with the police–civilian encounter to engage in a proper analysis under § 1983. The next Sections of this Note consider the reliability of eyewitness and police testimony.

### C. “*He Said, She Said*” and the Unreliability of Eyewitness Accounts

Justice William J. Brennan, Jr., in *United States v. Wade*, wrote, “The vagaries of eyewitness identification are well-known; the annals of

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92. See *Graham v. Connor*, 490 U.S. 386, 396 (1989) (“In addressing an excessive force claim brought under § 1983, analysis begins by identifying the specific constitutional right allegedly infringed . . . .”).

93. See *Wiley*, *supra* note 86, at 27.

94. *Id.*

95. See *id.* at 27–28.

96. *Whitley v. Albers*, 475 U.S. 312, 318 (1986) (indicating that the Cruel and Unusual Punishments Clause of the Eight Amendment was intended to protect those convicted of crimes).

97. *Id.* at 320–21 (quoting *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973)) (internal quotation marks omitted).

98. *Graham v. Connor*, 490 U.S. 386, 388 (1989).

99. *Id.* at 397 (internal quotation marks omitted).

criminal law are rife with instances of mistaken identification.”<sup>100</sup> He attributed this phenomenon to a “degree of suggestion inherent in the manner in which the prosecution presents the suspect to witnesses for pretrial identification.”<sup>101</sup> Although in this case the U.S. Supreme Court only highlighted the unreliability of eyewitness identification, eyewitness accounts of events are also often faulty.<sup>102</sup> Human memory and perception is untrustworthy<sup>103</sup> and subject to the same suggestive influences mentioned by Justice Brennan.

Since the 1970s, psychological researchers have “consistently articulated concerns about the accuracy of eyewitness identification.”<sup>104</sup> Characteristics of the witness, the event, and the testimony all impact the reliability of eyewitness testimony.<sup>105</sup> Young children and the elderly are more likely than younger adults to be mistaken and produce errors regarding their testimony.<sup>106</sup> Witnesses are also “better able to recognize faces of their own race or ethnic group than faces of another race or ethnic group.”<sup>107</sup> Moreover, the characteristics of the event can negatively impact the validity of eyewitness testimony.<sup>108</sup> Many factors impact the reliability of eyewitness testimony including the amount of time a witness saw the culprit, the lighting, the presence of a disguise, “the distinctiveness of the culprit’s appearance,” and “the presence or absence of a weapon.”<sup>109</sup> A simple disguise, such as covering the hair, can significantly impair eyewitness identification.<sup>110</sup> Even more chilling, eyewitnesses that mistakenly describe the facts of an event may hold strong certainty in their testimony.<sup>111</sup>

Because eyewitness testimony is incredibly unreliable, a need exists for appropriate solutions to assist the court system in its role of obtaining justice for parties involved. The use of body cameras on law enforcement and corrections officers can help to push the system in the right direction toward only allowing the truth to enter the courtroom. What better way is

100. 388 U.S. 218, 228 (1967).

101. *Id.*

102. See, e.g., Fredric D. Woocher, Note, *Did Your Eyes Deceive You? Expert Psychological Testimony on the Unreliability of Eyewitness Identification*, 29 STAN. L. REV. 969, 976–89 (1977) (describing the multitude of obstacles to accurate memory recall).

103. *Id.* at 969 (recognizing Justice Felix Frankfurter’s belief that identifying strangers is “proverbially untrustworthy” (quoting *Wade*, 388 U.S. at 228)).

104. Gary L. Wells & Elizabeth A. Olson, *Eyewitness Testimony*, 54 ANN. REV. PSYCHOL. 277, 277–78 (2003).

105. See *id.* at 280.

106. *Id.*

107. *Id.* at 280–81.

108. *Id.* at 281–82.

109. *Id.* at 281.

110. *Id.*

111. *Id.* at 283 (noting a certainty-inflation effect that is greater for witnesses who make inaccurate identifications than it is for those who make accurate identifications).

there to support or refute eyewitness testimony than to play a recording of an event from a body camera worn by a police officer for the jury or judge to review?

#### D. *Cops Don't Tell on Cops: The Need for Forced Accountability*

A civilian's account of an encounter with police is not the only testimony that may deviate from the truth. Police may also alter or purposefully fabricate their testimony to paint a misleading picture of an event. Police perjury has long been a subject of debate and scholarship. This phenomenon also indicates why a need for forced accountability exists. If civilians cannot trust the police to be honest on their own accord, then the legislature must give them no choice but to be truthful.

##### 1. Testilying

One of the main ways that police engage in perjury is through "testilying"—the term associated with the phenomenon of police committing perjury while providing their eyewitness testimony during court proceedings.<sup>112</sup> This practice is so common and accepted in various jurisdictions that the police themselves came up with the term.<sup>113</sup> In fact, a survey performed in Chicago in the early 1990s revealed that attorneys and judges believed that police perjury occurred in 20–50% of suppression hearings.<sup>114</sup>

Arguably, the police have a multitude of reasons for testilying.<sup>115</sup> Superiors or peers may encourage officers to fabricate their testimony in hopes of ensuring that the court will not suppress certain evidence.<sup>116</sup> The testilying phenomenon was, in part, birthed after the Supreme Court's decision in *Mapp v. Ohio*.<sup>117</sup> The Court in *Mapp* helped create the "exclusionary rule,"<sup>118</sup> which forbids the admittance of illegally obtained evidence in court proceedings.<sup>119</sup> Thus, police officers most often engage

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112. Amir Efrati, *Legal System Struggles with How to React When Police Officers Lie*, WALL ST. J. (Jan. 29, 2009, 12:01 AM), <http://www.wsj.com/articles/SB123319367364627211>.

113. See, e.g., Christopher Slobogin, *Testilying: Police Perjury and What to Do About It*, 67 U. COLO. L. REV. 1037, 1040 (1996).

114. *Id.* at 1041 (citing to a study conducted by Myron W. Orfield, Jr.).

115. *Id.* at 1044–45.

116. See *id.* at 1042–43 & n.27 (stating that supervisors selected the officers "most skilled in perjury" to seek false search warrants and that testilying usually occurs at times most suitable to cover up evidence).

117. 367 U.S. 643 (1961).

118. See, e.g., Nick Malinowski, *Testilying: Cops Are Liars Who Get Away with Perjury*, VICE (Feb. 3, 2013), <http://www.vice.com/read/testilying-cops-are-liars-who-get-away-with-perjury> (reporting that *Mapp* helped develop methods that limited what methods for police to gather evidence used at trial).

119. *Id.*

in testilying in the form of “post hoc fabrication of probable cause.”<sup>120</sup> In other words, an officer will twist or create his own version of events to ensure that the court will find that he had probable cause to perform some action. The exclusionary rule is a judicially created remedy designed to operate as a powerful check against police misconduct.<sup>121</sup> Despite the Court’s benevolent purpose in creating the exclusionary rule, police officers have attempted to circumvent the force of the rule by engaging in testilying and other forms of police perjury. At least one critic has highlighted this “perverse incentive[]” created by the exclusionary rule.<sup>122</sup>

Benjamin J. Robinson argues that the Supreme Court’s insistence that the appropriate remedy for the violation of constitutional rights in the course of police encounters is § 1983 creates “adverse effects.”<sup>123</sup> Knowing that a citizen has the right to sue under § 1983 encourages officers “to minimize personal liability, not misconduct.”<sup>124</sup> Thus, officers hide information and lie about violations.<sup>125</sup>

Notwithstanding the exclusionary rule’s role in encouraging police perjury, police perjure themselves for a more obvious reason that has roots in the theory of utilitarianism.<sup>126</sup> For police officers who engage in testilying, the overriding belief may be that the ends justify the means.<sup>127</sup> Essentially, engaging in this practice maximizes social benefit to the public-at-large with minimal negative effect. Even if an officer has to tell a lie to create an air of probable cause or to avoid accountability for excessive force, the officer may strongly believe that the victim or defendant was truly a criminal. In other words, it does not matter how the person was brought to justice, all that matters is that she is off the streets. “[T]he officer ‘lies because he is skeptical of a system that suppresses truth in the interest of the criminal.’”<sup>128</sup> Former NYPD Detective Carlton Berkley stated that in many cases the prosecuting attorney is responsible for pressuring a police officer to testilie. “[T]he pressure is put on the

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120. Slobogin, *supra* note 113, at 1043.

121. Benjamin J. Robinson, Comment, *Constitutional Law: Suppressing the Exclusionary Rule*, 59 FLA. L. REV. 475, 478 n.38 (2007).

122. *Id.* at 484.

123. *Id.*

124. *Id.*

125. *Id.*

126. BLACK’S LAW DICTIONARY 1686 (9th ed. 2009) (defining “utilitarianism” as a “philosophical . . . doctrine [which promotes] that the best social policy is that which does the most good for the greatest number of people”).

127. See Slobogin, *supra* note 113, at 1044 (“The most obvious explanation for . . . this lying is a desire to see the guilty brought to ‘justice.’”).

128. *Id.* (quoting Jerome H. Skolnick, *Deception by Police*, CRIM. JUST. ETHICS, Summer/Fall 1982, at 40, 42).

arresting officer, because you always want an airtight case, you are supposed to win, and the cop is supposed to come out looking like the good guy.”<sup>129</sup>

Even though testilying may be a common practice, more than one police officer has been caught in the midst of a lie. In November of 2012, a judge acquitted Greg Allen when the judge realized that two officers who served as witnesses had lied about the event.<sup>130</sup> The officers alleged that Allen engaged in disorderly conduct and obstruction of government administration.<sup>131</sup> Video evidence of the encounter proved their accusations false,<sup>132</sup> but the officers stuck to their original story. The judge sided with the video evidence and acquitted Allen of the charges.<sup>133</sup>

In *Ligon v. City of New York*, U.S. District Court Judge Shira A. Scheindlin found police testimony “not credible.”<sup>134</sup> *Ligon* involved claims that the NYPD engaged in misconduct when utilizing its “stop and frisk” practices.<sup>135</sup> Judge Scheindlin wrote in her ruling that

[the officer] claimed that he was able to see [the plaintiff’s] suspicious behavior even though he was inside a police van parked across the street, twenty to thirty feet from the front door, separated from [the plaintiff] not only by the street but by the windows of the front door, a vestibule, the windows of an inner door, and the hallway.<sup>136</sup>

Even though these courts discredited the officers’ accounts, it is probably safe to assume that in most cases testilying goes unnoticed or, at the very least, ignored.

## 2. The “Blue Wall of Silence”

Similar to the notion of testilying is the “blue wall of silence.” The blue wall of silence is an unwritten code that precludes an officer from testifying that another officer has committed perjury or engaged in other misconduct.<sup>137</sup> In the early 1990s, New York City Mayor David N. Dinkins created the Mollen Commission to investigate New York police

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129. See Malinowski, *supra* note 118.

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. 925 F. Supp. 2d 478 (S.D.N.Y. 2013).

135. *Id.* at 483.

136. *Id.* at 499.

137. Gabriel J. Chin & Scott C. Wells, *The “Blue Wall of Silence” as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury*, 59 U. PITT. L. REV. 233, 237 (1998).

misconduct.<sup>138</sup> The Mollen Commission found that there was a strong code of silence in NYPD.<sup>139</sup> The Christopher Commission, appointed in Los Angeles after the beating of Rodney King, found that the same was true there.<sup>140</sup> The Christopher Commission found that the code of silence was “perhaps the greatest single barrier to the effective investigation and adjudication of complaints” against the LAPD.<sup>141</sup> Although these commissions only highlight the code in these two cities, New York and Los Angeles are the two largest metropolitan areas in the United States.<sup>142</sup> This code of silence probably exists elsewhere as well,<sup>143</sup> especially considering that the culture of policing is likely similar everywhere.

The blue wall of silence results in police perjury that goes uncorrected. It is difficult to protect the right of a defendant or party to have a fair trial where police perjury and the code coexist. In fact, jurors often afford greater weight to police testimony and find it more persuasive.<sup>144</sup> “[O]fficers have special credibility. In a confrontation between a civilian and a ‘blue knight,’ a clear-eyed uniformed police officer, jurors may well bend over backwards to believe the person in blue.”<sup>145</sup> This phenomenon makes it extremely difficult for a party to convince a jury to believe his side of the story, even if the officer is perjuring himself.

Even honest police officers fall prey to the blue wall of silence because of what may happen otherwise.<sup>146</sup> Officers that break the code of silence face severe retaliation by other officers.<sup>147</sup> The police culture “supports norms of internal solidarity, or *brotherhood*.”<sup>148</sup> This is in part because law enforcement officers everywhere engage in dangerous situations regularly.<sup>149</sup> Often they must balance their authority with “the mandate to use coercive force” in various circumstances.<sup>150</sup> An officer

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138. *Id.* at 234; see also Selwyn Raab, *New York’s Police Allow Corruption, Mollen Panel Says*, N.Y. TIMES (Dec. 29, 1993), <http://www.nytimes.com/1993/12/29/nyregion/new-york-s-police-allow-corruption-mollen-panel-says.html> (revealing findings of the Mollen Commission).

139. Chin & Wells, *supra* note 137, at 240.

140. *Id.*

141. *Id.*

142. See *Large Metropolitan Statistical Areas—Population: 1990–2010*, U.S. CENSUS BUREAU (2012), <http://www.census.gov/compendia/statab/2012/tables/12s0020.pdf> (ranking metropolitan areas based on population and finding New York as the largest metropolitan area and Los Angeles as the second largest).

143. Chin & Wells, *supra* note 137, at 234–35.

144. *Id.* at 245.

145. *Id.*

146. *Id.* at 241.

147. *Id.*

148. *Id.* at 251 (quoting JEROME H. SKOLNICK & JAMES J. FYFE, *ABOVE THE LAW: POLICE AND THE EXCESSIVE USE OF FORCE* 92 (1993)).

149. Chin & Wells, *supra* note 137, at 251.

150. See *id.*

needs the support of his fellow officers to ensure personal security.<sup>151</sup> Violating the code of silence may result in an officer finding himself physically and mentally alone on the streets without any protection from other officers.<sup>152</sup> Moreover, retaliation for breaking the code is not only limited to the officer's current location. The Mollen Commission found that a "police supervisor who disciplined his subordinates for misconduct . . . had to be relocated *thirty-eight times*."<sup>153</sup> The supervisor had his locker burned and tires slashed, and he received numerous threats of physical harm.<sup>154</sup> The message was clear: "Cops don't tell on cops."<sup>155</sup>

The police culture of silence and the desire to protect even a corrupt "brother" of the law further evinces the need for forced accountability. Body cameras worn by police officers may not end the phenomenon of police perjury, but they can certainly help to diminish a dishonest police officer's credibility on the stand. If impeachment is the only way to ensure that a party receives a fair and honest trial, then it is the legislature's duty to do everything in its power to allow for video evidence by way of body cameras to do just that. This is especially true in cases of excessive force where the alleged victim is no longer available for trial because video evidence can help to crack the code of silence and provide jurors with accurate testimony of what occurred during an encounter between an officer and a civilian. Without such video evidence, officers will continue to provide falsified testimony, chipping away at the court's ability to keep its promise to administer justice to all.

## II. BODY CAMERAS: WHAT ARE THEY AND HOW TO ENCOURAGE POLICE TO USE THEM?

Part II discusses how body cameras are used and the type of footage that such cameras produce. It also discusses the positive effects of body cameras and suggests recommendations for the implementation of the use of body cameras.

### A. Introduction to the Technology

With society's increasing reliance on advancements in technology in everyday life, it is not far-fetched to apply such advanced technology to help protect the civil and constitutional rights of those who face encounters with law enforcement. The original studies on the use of body-mounted cameras originally focused on the use of head cameras by law

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151. *Id.* ("[O]fficers rely upon their companions for protection.").

152. *See id.* at 254.

153. *Id.* at 258 (emphasis added).

154. *Id.*

155. *Id.* at 256.

enforcement.<sup>156</sup> However, improvements in technology have led to new body cameras that officers can mount on a shirt pocket, zipper shirt, button-down shirt, or even a utility belt.<sup>157</sup> Officers can use these body cameras in addition to the camera systems currently installed in the majority of patrol cars.<sup>158</sup> This Section focuses on how the technology works.

### 1. Early Studies

Experiments with body-worn cameras first began in the United Kingdom where some police officers wore “head cameras.”<sup>159</sup> These cameras had audio and video recording capability, and officers mounted the cameras on themselves similar to how people use cellphone earpieces.<sup>160</sup> British police departments conducted a limited number of field tests to determine the effectiveness of the body cameras around 2005.<sup>161</sup> After extending and broadening the studies (300 officers tested the body cameras over a seventeen-month period),<sup>162</sup> the U.K. Home Office conducted an independent assessment of the data.<sup>163</sup> In the final report, the U.K. Home Office wrote that the studies “demonstrated that police received significant benefits from the use of [body-worn cameras].”<sup>164</sup> The body-worn cameras allowed officers to accurately “record evidence in real time.”<sup>165</sup> Additionally, “officers could quickly make and keep records.”<sup>166</sup> Moreover, because the public knew that the officers were wearing the body cameras, the number of public order offenses decreased.<sup>167</sup> The use of the recordings from the body cameras also quickly resolved issues involving public order offenses.<sup>168</sup> Overall, this study found that body cameras were beneficial to police departments and officers alike.

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156. David A. Harris, *Picture This: Body-Worn Video Devices (Head Cams) as Tools for Ensuring Fourth Amendment Compliance by Police*, 43 TEX. TECH L. REV. 357, 360–61 (2010).

157. *AXON Body On-Officer Video*, TASER INT’L, INC., <http://au.taser.com/products/on-officer-video/axon-body-on-officer-video> (last visited Aug. 2, 2015).

158. Harris, *supra* note 156, at 360 (“By now, most people know that police often have camera systems installed in their vehicles.”).

159. *Id.* at 360–61.

160. *Id.* at 360.

161. *Id.* at 361.

162. *Id.*

163. *Id.* The U.K. Home Office is similar to the DOJ. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

## 2. How It Works

In America, in light of the media's focus on recent notable cases of excessive force by police officers, many agencies have started looking into the use of body cameras. Many companies have also begun selling and marketing body cameras for use by law enforcement.<sup>169</sup> These advanced cameras have a wide-angle lens and record incidents with more clarity than the typical bystander videos that often appear in the media.<sup>170</sup> For example, TASER International (TASER), a leading company in the production of body cameras, claims that its body camera features a "130-degree wide-angle lens."<sup>171</sup> TASER also claims that its body cameras "capture[] more than any other body camera available" and that the camera has "unparalleled low-light capabilities" that allow for accurate night recordings.<sup>172</sup>

One such video made by a TASER device shows the amount of evidence and the clarity with which a body camera can record.<sup>173</sup> In the video, a police officer approaches two suspects and conducts a body search.<sup>174</sup> The officer is able to locate a knife on one suspect and what appears to be an illegal drug that the other suspect threw on the ground.<sup>175</sup> The camera also captured a third suspect who was not subject to the police officer's search.<sup>176</sup> It even captured the conversation between the officer and the suspects with surprising clarity.<sup>177</sup>

Another video shows what begins as an ordinary traffic stop.<sup>178</sup> Police stop a woman because she is driving on the wrong side of the road.<sup>179</sup> The police officers then stand on either side of the car as they wait for the driver to produce her license and registration.<sup>180</sup> They repeatedly ask her for the documents as she slowly ruffles around in the glove department.<sup>181</sup> The officers then ask her to put the car in park and hand the car keys to

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169. One such company is TASER International, Inc. *AXON Body On-Officer Video*, *supra* note 157.

170. *Id.*

171. *Id.*

172. *Id.*

173. TASER Int'l, *TASER AXON Body Camera Comparison*, YOUTUBE (Aug. 1, 2013), <https://www.youtube.com/watch?v=xBx09u2DqXo>.

174. *Id.*

175. *Id.*

176. *Id.*

177. *See id.*

178. TASER Int'l, *MD Laurel PD AXON Flex Drunk Driver*, YOUTUBE (Sept. 20, 2013), [https://www.youtube.com/watch?v=0DYcxF\\_Yd70](https://www.youtube.com/watch?v=0DYcxF_Yd70).

179. *Id.*

180. *Id.*

181. *Id.*

the officer standing to her left.<sup>182</sup> Rather than putting the car in park, she revs up the engine and speeds off.<sup>183</sup> The officers then jump into their patrol car, turn on the siren, and proceed to chase the apparently drunk driver, who subsequently crashes her car.<sup>184</sup> She attempts to flee the scene of the accident and officers chase her before firing what appears to be a taser into her back and restraining her.<sup>185</sup> This video again shows the remarkable clarity that body cameras bring to a situation where the driver may have attempted to pursue a § 1983 claim of excessive force after being tased by officers. The video would go a long way to helping factfinders decide whether either of the police officers violated a clearly established right through their use of force.

Body cameras with these capabilities can easily and quickly resolve most cases without the hassle of the “he said, she said” debate that is often a central feature of the American adversarial system. In cases of excessive force, these cameras will help judges and juries alike gain a better sense of what occurred during and after police encounters. The recordings will provide invaluable context to the fair administration of justice. The ability to watch an encounter as it happened, rather than merely hearing secondhand accounts of the incident that may not even be accurate, would be unmatched and would greatly increase the efficiency of the court system.

### 3. A Recent Study

A recent study has also highlighted the effectiveness of body cameras. In Rialto, California, Police Chief William Farrar teamed up with the Institute of Criminology at the University of Cambridge and Hebrew University to conduct a study involving the use of body cameras by police officers.<sup>186</sup> During every week of the study, half of the uniformed patrol officers were randomly assigned body cameras made by TASER.<sup>187</sup> The officers turned on the devices any time they left their patrol car to interact with civilians.<sup>188</sup> The study ran from February 2012 to July 2013.<sup>189</sup>

In the first twelve months of the study, the department experienced an “88 percent decline in the number of complaints filed against officers.”<sup>190</sup>

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182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

186. Randall Stross, *Wearing a Badge, and a Video Camera*, N.Y. TIMES (Apr. 6, 2013), <http://www.nytimes.com/2013/04/07/business/wearable-video-cameras-for-police-officers.html>.

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

The officers also used force “nearly 60 percent less often.”<sup>191</sup> Interestingly enough, officers that *did* use force were twice as likely to have gone *without* body cameras during that shift.<sup>192</sup> Although the location of this study has a small population of only 100,000 people,<sup>193</sup> the results support the notion that using body cameras benefits police officers and departments alike. Body cameras are currently undergoing numerous tests across the country to further determine their efficiency.

These cameras increased the accountability of the police department, which in turn may also increase the public’s trust of law enforcement. Imagine if law enforcement all over the nation used these body cameras. Not only would uniformed patrol officers use this technology, but so would correctional and detention officers. The use of body cameras could change the processing and litigation of § 1983 claims. Gone will be the days of locating multiple witnesses (who oftentimes are not credible) and having long, drawn-out trials to determine whether the force used by an officer was excessive. Courts could instead rely heavily on a simple video recording that shows the incident as it occurred. This would remove the potential for bias and corrects the inherent unreliability of eyewitness testimony. Unlike eyewitnesses, the body camera is not susceptible to suggestion that can alter the perception and memory of the event. The camera only records and reports what happened. Thus, the factfinder will have no extraneous variables to weigh and to assign value. Moreover, there would be fewer complaints and frivolous § 1983 claims if body cameras clearly showed that an officer was within his exercisable power. Body cameras would also encourage officers to limit their use of force because they know that their actions are easily reviewable. This would go a long way to increasing the efficiency of the federal court system by lightening its caseload. In sum, there are many proven benefits associated with the use of body cameras by law enforcement.

Courts may see an additional benefit from the use of body cameras. Because the “lack of specificity in federal excessive force jurisprudence makes it difficult to determine ahead of time what type and how much force a court would likely consider reasonable,”<sup>194</sup> the use of body cameras will help to clarify what a court considers reasonable force by a law enforcement officer. If a court can actually see what occurred during various encounters, it can create a better set of guidelines as to what level of force is acceptable for various sets of facts. Thus, clear videos of actual police–civilian encounters will dramatically enhance federal excessive force jurisprudence.

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191. *Id.*

192. *Id.*

193. *Id.*

194. Fabian, *supra* note 85, at 765.

### B. *Who Currently Uses Body Cameras?*

Not many law enforcement agencies currently employ body camera technology. According to the 2008 U.S. Census report, there are approximately 17,895 law enforcement agencies.<sup>195</sup> Of the 254 agencies that responded to a 2013 survey conducted by the Police Executive Research Forum (PERF) in connection with the DOJ, over 75% reported that their agencies did not use body cameras for police officers.<sup>196</sup> Only 63 of the 254 respondent agencies reported using body cameras.<sup>197</sup> Some police departments have tinkered with the idea of body cameras for years; however, in light of the Ferguson case and ensuing riots, more and more municipalities have begun to experiment with body cameras on police officers. For example, various counties in Florida have initiated their own studies and tests on the effectiveness of body cameras with the apparent support of the states' constituents.<sup>198</sup> Change is even more likely in this state, where Representative Shevrin Jones has filed a bill in the Florida House of Representatives to require the use of body cameras on all law enforcement officers.<sup>199</sup> Florida has also passed a statute regarding the public record status of body camera recordings.<sup>200</sup> This is in addition to recent efforts in the state's most populous county, Miami-Dade,<sup>201</sup> to fund the purchase of body cameras for county police officers.<sup>202</sup> Despite the

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195. BRIAN A. REAVES, U.S. DEP'T OF JUSTICE, CENSUS OF STATE AND LOCAL LAW ENFORCEMENT AGENCIES, 2008 2 (2011), available at <http://www.bjs.gov/content/pub/pdf/cslllea08.pdf>. To break it down further, there were 12,501 local police departments, 3063 sheriff's offices, 50 primary state law enforcement agencies, 1733 special jurisdiction agencies, and 638 other agencies. *Id.*

196. *Guidelines to Help Formulate Model Policy for an Evolving Technology: Body-Worn Cameras*, POLICE EXEC. RESEARCH FORUM, [http://www.policeforum.org/assets/docs/Free\\_Online\\_Documents/Technology/presentation%20-%20guidelines%20to%20help%20formulate%20model%20policy%20for%20body-worn%20cameras%202013.pdf](http://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/presentation%20-%20guidelines%20to%20help%20formulate%20model%20policy%20for%20body-worn%20cameras%202013.pdf) (last visited Aug. 2, 2015). PERF sent the survey to 500 agencies total. *Id.*

197. *Id.*

198. *Sachs Poll: FL Supports Cameras on Police*, SACHS MEDIA GRP. (Sept. 13, 2014), <http://sachsmedia.com/news/floridians-support-policy-requiring-body-mounted-cameras-on-police-officers/>. According to a recent poll surveying 625 likely Florida voters, 68% of voters support the use of body cameras for police officers. *How the Poll Was Conducted*, SACHS MEDIA GRP., <http://sachsmedia.com/wp-content/uploads/2014/09/SMG-Poll-Results-9-10-14.pdf> (last visited Aug. 2, 2015).

199. H.B. 57, 2015 Leg., Reg. Sess. (Fla. 2015).

200. FLA. STAT. § 119.071(2)(l) (2015).

201. BUREAU OF ECON. & BUS. RESEARCH, FLORIDA ESTIMATES OF POPULATION 2014, at 30 (Apr. 1, 2014), available at <http://edr.state.fl.us/Content/population-demographics/data/PopulationEstimates2014.pdf>.

202. *But see Miami-Dade Legislative Item File Number: 150159*, MIAMI-DADE CNTY., FLA. (2015), available at <http://www.miamidade.gov/govaction/matter.asp?matter=150159> (resolution directing the mayor of Miami-Dade County to delay purchasing body cameras until the mayor conducts a cost-benefit analysis of doing so and promulgates guidelines for the use of video obtained from body cameras).

efforts in Florida, it is apparent that few agencies nationwide employ the use of body cameras.

*C. Recommendations for Effective Legislation to Encourage the Use of Body Cameras by Law Enforcement*

To increase the use of body cameras by law enforcement officers, the federal government should step in and enact legislation to encourage states to use this technology. The language of the legislation should be broad enough to allow states *some* discretion in how they implement the technology; however, there should be some incentive to adhere to various guidelines set forth by executive department recommendations.<sup>203</sup> To persuade states to pass their own legislation requiring the use of body cameras, the program should tie the receipt of some other federal funding to a requirement that states require the use of body cameras.

In December 2014, President Barack Obama proposed a “three-year \$263 million investment package that will increase use of body-worn cameras [and expand] training for law enforcement agencies.”<sup>204</sup> The initiative would include the “Body Worn Camera Partnership Program.”<sup>205</sup> As part of this program, the federal government would “provide a 50 percent match to States” to assist in the purchase of body cameras and required storage.<sup>206</sup> This program specifically sets aside \$75 million to match state funding<sup>207</sup> and would help purchase 50,000 body cameras for police officers across the country.<sup>208</sup> A federal program encouraging the use of body cameras could greatly increase the use of body cameras by local and state law enforcement agencies.

South Carolina is the first state in the United States to mandate all law enforcement agencies to acquire and use body cameras.<sup>209</sup> However, this

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203. A prime example of guidelines is the DOJ’s report on body cameras. *See generally Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, CMTY. ORIENTED POLICING SERVS. (U.S. DEP’T OF JUSTICE) & POLICE EXEC. RESEARCH FORUM, [http://www.policeforum.org/assets/docs/Free\\_Online\\_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf](http://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf) (last visited Aug. 2, 2015) (providing law enforcement agencies with guidance on the use of body-worn cameras).

204. *Fact Sheet: Strengthening Community Policing*, THE WHITE HOUSE: OFFICE OF THE PRESS SEC’Y (Dec. 1, 2014), <http://www.whitehouse.gov/the-press-office/2014/12/01/fact-sheet-strengthening-community-policing>. The DOJ has begun implementing this program. *Justice Department Announces \$20 Million in Funding to Support Body-Worn Camera Pilot Program*, U.S. DEP’T OF JUSTICE (May 1, 2015), <http://www.justice.gov/opa/pr/justice-department-announces-20-million-funding-support-body-worn-camera-pilot-program>.

205. *Fact Sheet: Strengthening Community Policing*, *supra* note 204.

206. *Id.*

207. *Id.*

208. *Id.*

209. Rich Williams, *South Carolina First State to Require Body-Worn Police Cameras*, NAT’L CONFERENCE OF STATE LEGISLATURES (June 10, 2015), <http://www.ncsl.org/>

law is far from perfect. In enacting the law, the South Carolina legislature attempts to aid law enforcement agencies in the implementation and acquisition of body cameras as well as the storage and protection of video recordings.<sup>210</sup> Rather than imposing statutory guidelines, the legislature defers to the state's "Law Enforcement Training Council" (Council) and mandates the Council to create guidelines that specify who must wear body cameras, when they must be worn and activated, restrictions on the use of the cameras, the process to obtain consent of witnesses and others to record them during encounters, retention and release of the recordings, and access to the recordings.<sup>211</sup> The statute also establishes a public fund to help agencies acquire body cameras and maintain the storage of the recordings.<sup>212</sup>

Although at first glance the statute appears to be a valiant attempt at answering the recent call to action to require police to use body camera technology, the statute falls short in a few areas. First, even though the statute requires guidelines for implementation and use,<sup>213</sup> the statute gives the Law Enforcement Training Council wide discretion in creating these guidelines.<sup>214</sup> The Council is an eleven-member body composed of chiefs of police, county sheriffs, a detention director, the state attorney general, and directors of various law enforcement related agencies.<sup>215</sup> On its face it seems like a great idea to have members from the law enforcement community create the guidelines upon which agencies must rely. However, allowing law enforcement officials to create these guidelines does not help solve the problem of public mistrust in police because this practice essentially results in the police continuing to police themselves. It is necessary to have an outside, unbiased body create guidelines to help restore community relations between civilians and law enforcement.

Moreover, the South Carolina statute requires each law enforcement agency to submit its own self-created guidelines to the Council for approval.<sup>216</sup> These guidelines must be based on the guidelines set forth by the Council, but the statute impliedly allows for deviation from these guidelines.<sup>217</sup> In some circumstances, it may be necessary for one agency's rules related to body cameras to differ from those of another agency, but overall, there should be some uniformity in regulating the use of body cameras and the storage of recordings. Discord amongst various

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blog/2015/06/10/south-carolina-first-state-to-require-body-worn-police-cameras.aspx.

210. See S.C. CODE ANN. § 23-1-240 (2015).

211. *Id.* at § 23-1-240(C).

212. *Id.* at § 23-1-240(E)(1).

213. *Id.* at § 23-1-240(C).

214. See *id.*

215. *Training Council*, S.C. CRIMINAL JUSTICE ACAD., <http://www.sccja.sc.gov/Council.html>.

216. S.C. CODE ANN § 23-1-240(D) (2015).

217. See *id.*

agencies regarding their own rules will only result in issues in the future. For example, suppose Town *A* requires officers to begin recording at the point at which a conflict ensues, but Town *B* (the next town over) requires officers to record the entirety of their shift. If an officer uses excessive force to detain a party in both towns, the arrested party in Town *A* may arguably be at more of a disadvantage than the arrested party in Town *B* because the recordings in Town *B* may contain more context and may have captured more of the encounter. Uniformity in the guidelines across the state in this case would allow for the fairer administration of justice.

Additionally, although the statute effectively designates the body camera recordings as confidential by stating that the recordings are “not a public record,”<sup>218</sup> the statute does carve out a right for certain parties to obtain access to the recordings.<sup>219</sup> However, exercising this right may prove difficult. A party who wishes to access the recordings may only be able to do so if she is entitled to the recording pursuant to (A) the state’s rules of civil or criminal procedure or (B) a court order.<sup>220</sup> If these rules do not allow for a streamlined process to access the recordings, parties who have a right to access such data may be deterred. This deterrent effect does not further one of the underlying purposes of requiring police to use body cameras—to assist the public and re-instill a sense of trust in not only police agencies but also the justice system. It is hard to trust a system that makes it difficult for a party to view evidence that she has a right to view.

Even further, the South Carolina statute does not provide any guidance to courts to help judges decide when to grant a party access to stored recordings.<sup>221</sup> A recently enacted Florida law does just that.<sup>222</sup> The Florida statute does not mandate the use of body cameras by law enforcement but instead provides guidance for agencies that do utilize body cameras.<sup>223</sup> The statute requires courts to weigh various factors when deciding whether to order the release of stored recordings to a party.<sup>224</sup> Some of these factors include whether: “Disclosure is necessary to advance a compelling interest; the recording contains information that is otherwise . . . confidential . . . ; [or] disclosure would reveal information regarding a person that is of a highly sensitive personal nature; disclosure may harm the reputation or jeopardize the safety of a person depicted in the recording; . . . .”<sup>225</sup> These considerations provide courts with a

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218. *Id.* at § 23-1-240(G)(1).

219. *Id.* at § 23-1-240(G).

220. *Id.* at § 23-1-240(G)(5).

221. *See id.*

222. FLA. STAT. § 119.071(2)(l)(4)(d)(I) (2015).

223. *See id.* § 119.071(2)(l).

224. *Id.* § 119.071(2)(l)(4)(d)(I).

225. *Id.*

somewhat uniform way to regulate the issuance of court-ordered access to the recordings. Certainly this will assist with ensuring that courts carefully take the privacy rights of civilians into account before granting a release of the data. The South Carolina legislature should have included guidelines to assist their courts in the same way and impose some limit or restraint on the vast discretion it has given to its courts in granting access to stored recordings.

Even though the Florida statute does help protect civilian privacy while limiting some of the courts' discretion, the statute still has its own problems. The Florida legislature designates body-camera recordings as confidential if they take place within a private residence, a health-related facility, or any place "that a reasonable person would expect to be private."<sup>226</sup> As such, these recordings are not subject to public records requests.<sup>227</sup> A large number of police encounters probably occur within these locations, which makes a great many recordings unavailable to the public. This practice defeats the point of using the technology. The recordings must be accessible in order for the positive effects of body cameras to be seen.

The Florida law also only mandates that agencies retain recordings for 90 days.<sup>228</sup> An agency is free to destroy recordings after just three short months.<sup>229</sup> This is hardly enough time for the public to properly access and review recordings. Recordings should be available for much longer. The higher cost is justified by granting the public fairer access to the footage.

If other states take the same approach to body cameras as South Carolina and Florida, the public may not see the same benefits of the use of body cameras as the Rialto study showed.<sup>230</sup> These state statutes further evince the need for federal regulations on how body cameras should be used and how the recordings should be stored. Although it may be wise to give states some discretion as to how they use the technology, overall this discretion should be limited to specific circumstances. Rather than allowing agencies to submit their own guidelines for approval based on the federal guidelines, agencies should be required to adhere to federal guidelines and instead submit a supported and well-founded request for variance. A high level of uniformity is necessary for the proper implementation of body camera technology and the only way to have such concordance is to have federal regulations.

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226. *Id.* § 119.071(2)(l)(2).

227. *Id.*

228. *Id.* at § 119.071(2)(l)(5).

229. *See id.*

230. *See* Randall Stross, *Wearing a Badge, and a Video Camera*, N.Y. TIMES (Apr. 6, 2013), <http://www.nytimes.com/2013/04/07/business/wearable-video-cameras-for-police-officers.html>; *supra* Subsection II.A.3.

### III. DISPELLING THE CONCERNS SURROUNDING THE USE OF BODY CAMERAS BY LAW ENFORCEMENT

The public policy reasons to increase the use of body cameras by law enforcement officers outweigh the many arguments against their use. This Part focuses on dismissing various reservations regarding the use of body cameras, including privacy and cost concerns. It also addresses the threat of misuse of recordings. Despite these reservations, body cameras will prove to be extremely beneficial in increasing the fair administration of justice.

#### A. *Police Are Citizens Too: Privacy and Civil Rights Concerns*

Law enforcement officers are often skeptical of using body cameras at first. In Rialto, California, Police Chief Farrar claimed the officers initially questioned “why ‘big brother’ should see everything they do.”<sup>231</sup> This concern highlights the potential privacy issues related to the use of body cameras. Not only are civilians constantly recorded when they come into contact with law enforcement officers, but officers must also record themselves.

Privacy rights are based on the doctrine of substantive due process.<sup>232</sup> Substantive due process rights are rights implied in the word “liberty” in the Due Process Clause of the Fourteenth Amendment.<sup>233</sup> The Supreme Court in various cases has said that the Court must strictly scrutinize certain concepts of privacy if the right is fundamental.<sup>234</sup> In *Griswold v. Connecticut*, the Court held that the Constitution creates various zones of privacy.<sup>235</sup> Relevant to the discussion here, the Fourth and Fifth Amendments protect against all governmental invasions of a person’s home and private life.<sup>236</sup>

Although law enforcement officers serve an official, governmental function, they still retain the right to privacy in some respect. However, the argument that an officer has the right to protection against self-

231. Stross, *supra* note 186.

232. ERWIN CHERMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 840 (4th ed. 2011) (discussing Justice Harry Blackmun’s opinion in *Roe v. Wade* that found the right to privacy using the Due Process Clause). *But see id.* at 835–36 (discussing Justice William O. Douglas’ opinion in *Griswold v. Connecticut* that found the right to privacy using the Bill of Rights instead of substantive due process). However, “[Justice Douglas’] approach has been much criticized and has not been followed by subsequent cases.” *Id.* at 836.

233. *See id.* at 812–13.

234. *See id.* at 814 (“If a right is deemed fundamental, the government usually will be able to prevail only if it meets strict scrutiny . . .”).

235. *Id.* at 835–36 (discussing the majority’s opinion that the right to privacy exists in a “‘penumbra’ of the Bill of Rights”).

236. *See id.* at 812 (describing the Fourth Amendment as a “safeguard from unreasonable searches and seizure” and the Fifth Amendment as “protection from self-incrimination”).

recording his own conduct while on duty is weak. As soon as an officer starts his shift, he forgoes much of his right to privacy to protect the public at large.<sup>237</sup> In fact, there is no law in the United States that prohibits citizens from recording police officers while they are on duty.<sup>238</sup> This issue falls under First Amendment protection.<sup>239</sup> If citizens can record police officers without violating officers' constitutional right to privacy, then it should also follow that the police officers' rights will not be violated by requiring them to record themselves in the interest of public safety and accountability.

Moreover, the police can still retain privacy rights if the requirements regarding body cameras are tweaked. Rather than requiring a police officer to keep the body camera turned on at all times, local rules should only require the officer to turn on the body camera when engaged in an encounter with a civilian. Limiting the responsibility of the officer in engaging the camera to only civilian encounters allows officers to have some reprieve from the constant recording.<sup>240</sup> Body cameras would not record conversations between officers within the squad car or elsewhere, nor would they record officer's conversations with others that do not delve into any specific incident relating to police duties. This helps retain some privacy for officers required to wear body cameras.

Overall, privacy concerns on behalf of police officers do not seem to outweigh the benefit in requiring the use of body cameras.

### B. *The Threat of Misuse of Stored Recordings*

Concerns regarding the potential misuse of video recordings stored by police departments are valid but negligible. Theoretically, police could leak recordings for the benefit of a third party. For example, a celebrity may be a party to a video recording by an officer wearing a body camera. The department could then release the recording or sell it to a third party for a profit. Even with the appropriate safeguards, someone could hack the system, or an employee could engage in misconduct to the detriment of civilians or officers in the recordings. The scenario previously mentioned happened before with dashboard cameras. On numerous

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237. See Saki Knafo & Carly Schwartz, *It's Perfectly Legal to Film the Cops*, HUFFINGTON POST (Aug. 13, 2014, 10:16 PM), [http://www.huffingtonpost.com/2014/08/13/filming-police-officers\\_n\\_5676940.html](http://www.huffingtonpost.com/2014/08/13/filming-police-officers_n_5676940.html) (noting that several courts have reasoned that "police can't reasonably expect privacy while out in public").

238. *Id.*

239. *See id.*

240. The recommendations set forth by the American Civil Liberties Union are in accord with this line of thought. Jay Stanley, *Police Body-Mounted Cameras: With Right Policies in Place, a Win for All*, AM. CIVIL LIBERTIES UNION 1-3 (Oct. 2013), [https://www.aclu.org/files/assets/police\\_body-mounted\\_cameras.pdf](https://www.aclu.org/files/assets/police_body-mounted_cameras.pdf).

occasions, video recordings of DUI stops involving celebrities or other individuals engaged in questionable behavior to the detriment of the parties involved have been circulated;<sup>241</sup> yet, police departments still use dashboard cameras.

Ultimately, the party managing the storage of the recordings must ensure that there are safeguards in place to limit what police departments release to the public. There must also be serious consequences for employees or others who misuse the body camera recordings.<sup>242</sup> Only strong rules and regulations will circumvent the threat of misuse of the recordings.

### C. Does the Cost Outweigh the Benefit?

Absolutely not! Concerns regarding the cost of body cameras are misplaced. As stated above, there are almost 18,000 law enforcement agencies in the United States.<sup>243</sup> To outfit every police officer (not to mention corrections officers) would be a costly endeavor. The PERF survey mentioned above noted that 39% of agencies reported that they do not use body cameras because of the cost.<sup>244</sup> These cameras can cost anywhere from \$120 to \$2000 per device,<sup>245</sup> which does not include the cost associated with the maintenance of storage for the recordings.<sup>246</sup> Admittedly, the cost of acquiring body cameras for all law enforcement and corrections officers is certainly a serious disincentive to agencies across the nation, but again this concern is misplaced. The DOJ makes an important finding in its recent report regarding body cameras. Even though initially it will be expensive to purchase body cameras, in the long run it may actually save agencies money.<sup>247</sup> Studies have shown that there are fewer lawsuits claiming police misconduct and that officers are less likely to use force if they know they are being recorded.<sup>248</sup> Thus, it makes more sense for an agency to spend money on the cameras rather than dish out hefty settlements later. More importantly, is there a monetary value for the protection of a citizen's right to have a fair and accurate trial?

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241. See, e.g., ABC News, *Reese in Pieces: Witherspoon's Arrest, Other Celeb Meltdowns*, YOUTUBE (May 3, 2013), <https://www.youtube.com/watch?v=RJmo8yn3O6c>; TMZ, *DMX Passes Out in Cop Car After Boozy DUI Arrest*, YOUTUBE (July 29, 2013), <https://www.youtube.com/watch?v=BaEE---ykI0>; Omar Villafranca, *Sanger Release Dashcam Video of Randy Travis Arrest*, NBC NEWS (Feb. 14, 2012), <http://www.nbcdfw.com/entertainment/celebrity/Sanger-Release-Dashcam-Video-of-Randy-Travis-Arrest-139340793.html>.

242. Stanley, *supra* note 240, at 3.

243. Reaves, *supra* note 195, at 2.

244. *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, *supra* note 203, at 31.

245. *Id.* at 32.

246. *Id.*

247. *Id.* at 31.

248. *Id.* at 5, 6, 31.

The benefits associated with body cameras far outweigh the costs associated with acquiring them. Not only do they help promote the fair administration of justice, but they will also help to reduce the number of lawsuits against law enforcement agencies. This allows for money that would otherwise be spent on settlements to be put to better use.

### CONCLUSION

Body cameras are a viable solution to police misconduct, and they ensure the fair and accurate administration of justice for those who pursue the aid of the court system to remedy violated constitutional rights due to allegations of excessive force. Time and again, history has proven the need for police to wear body cameras. The Ferguson riots in response to the shooting of Michael Brown were a cry for help. Even if Brown did not have his hands raised up above his head in a position of surrender, the “hands up, don’t shoot” movement has resonated with protestors around the world. Brown’s shooting sparked a fire that is far from being extinguished.

Courts need and will benefit immensely from law enforcement’s use of body cameras. To properly process § 1983 claims alleging excessive force, courts must have an accurate account of what occurred. The best way that courts can obtain such an account is to view recordings of police–civilian encounters. Courts will not only be better equipped to process cases involving excessive force, but they will also be armed against the faulty by-product of the Supreme Court’s exclusionary rule: police perjury. Police perjury is a real issue that produces real consequences and diminishes the appreciation for individual civil and constitutional rights. Real-time recordings of events involving civilians and law enforcement provide a disincentive to officers who would otherwise be inclined to commit perjury. Knowing that there is tangible, verifiable proof of what actually occurred during an event is sure to deter many officers from blatantly lying in any tribunal. Despite the “blue wall of silence” and brotherhood mentality of policing, the use of body cameras creates accountability for not only their actions but also the actions of their fellow officers. Once officers across the country begin using body cameras, they will have to admit to their actions and those of their fellow officers in an encounter. Hiding behind the screen of “cops don’t tell on cops” will no longer be an option. The truth will be front and center, and citizens will have body cameras to thank for protecting their constitutional rights.

Studies have shown that body cameras are effective and beneficial to police departments and police officers alike. Officers equipped with body cameras used force significantly less often, and police departments that employed regular use of body cameras experienced an almost 90%

decline in complaints filed against officers.<sup>249</sup> An officer's use of body cameras will likely go a long way to ensuring that they are on their best behavior at all times. If they know their conduct is constantly being recorded, officers will likely be more circumspect in their adherence to the law and department policies in an effort to thwart personal liability for misconduct.

Although most law enforcement agencies do not currently use body cameras, the increasing criticism surrounding police misconduct has provided an incentive for agencies to do so. As agencies across the nation begin testing and using body cameras, the public's trust of police officers will likely increase. The benefits of using body cameras far outweigh its cost. Protection of the public's right to the fair administration of justice and the public's constitutional rights is of greater import than an officer's privacy rights. Public safety trumps an officer's right to privacy regarding recordings. Had body cameras been worn the day the officer shot Michael Brown, there may have been a different outcome. Body cameras are the future of policing, and it is time for law enforcement agencies to get on board so they may better protect and serve the public-at-large.

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249. Stross, *supra* note 186.

