

POLICE-GENERATED DIGITAL VIDEO: FIVE KEY QUESTIONS, MULTIPLE AUDIENCES, AND A RANGE OF ANSWERS*

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INTRODUCTION

Police-generated digital video is being created at an ever-accelerating pace as technology makes camera systems lighter, cheaper, faster, and more accessible. Video systems have expanded from fixed-site cameras, to dashboard-mounted cameras, to body-worn cameras, to aerial-drone-mounted cameras. Any well-crafted policy regarding digital video must have calibrated answers to five key questions that arise as we consider the life cycle of the video: How will we handle (1) creation, (2) storage, (3) access, (4) redaction, and (5) use of the digital video created by these camera systems? In this Essay, I suggest that there are multiple potential audiences for this digital video, and each audience can be predicted to draw different balances in answering the five framing questions. These potential audiences include police management, police officers, police unions, criminal and civil courts, the media, civil rights advocates, civil libertarians, defendants, defense counsel, prosecutors, victims, and local governments. Their responses are likely different because each audience might give a slightly different answer to the meta-question: Why do we create this video in the first place?

In this overview Essay for our Symposium, I briefly consider the five phases of the police-generated digital video life-cycle and some of the issues that might arise in each phase.¹ Given the tradeoffs

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1. See LINDSAY J. MILLER, JESSICA TOLIVER & POLICE EXEC. RESEARCH FORUM, IMPLEMENTING A BODY-WORN CAMERA PROGRAM v (2014), http://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf [https://perma.cc/TAK6-A46X] (“[D]epartments must anticipate a number of difficult questions—questions with no easy answers because they involve a careful balancing of competing legitimate interests, such as the public’s interest in seeing body-worn camera footage versus the interests of crime

inherent in public policy, I propose no correct answers. Instead, I suggest that having all of the interested voices at the table when these questions are translated into policy will lead to a wide range of different choices that reflect the values and compromises appropriate for the polity that makes them.² Other articles in this Symposium Issue explore specific questions in greater depth.

I. CREATION

The digital video life cycle starts with creation. Some of the ways cameras may be deployed are familiar. Cameras have long been mounted in a wide range of fixed sites, and private business led the way with security cameras. We expect to be filmed when we enter the bank or when we enter and leave convenience stores, so the camera's presence is no surprise.³ Police-owned and -operated fixed-site cameras have also proliferated and appear in places such as subway platforms, street corners in high crime neighborhoods, and other public venues.⁴ In some cities, such as London or New York, citizens understand that the network of cameras covers the majority of public spaces.⁵ Another familiar site for police camera deployment is vehicle dashboards. The dashcam has been in wide deployment since the 1980s,⁶ and has made the transition from film to digital video recordings.⁷

As cameras have transitioned from videotape to digital media, and the devices have shrunk, it has become technologically and financially feasible to mount the cameras on the police officers'

victims who would prefer not to have their images disseminated to the world. One of the most significant questions departments will face is how to identify which types of encounters with members of the community officers should record. This decision will have important consequences in terms of privacy, transparency, and police-community relationships.”).

2. See *infra* Part V.

3. See LIBERTY & SEC. COMM., THE CONSTITUTION PROJECT, GUIDELINES FOR PUBLIC VIDEO SURVEILLANCE: A GUIDE TO PROTECTING COMMUNITIES AND PRESERVING CIVIL LIBERTIES 3 (2007).

4. Will Doig, *New Yorkers Call for More Surveillance Cameras*, NEXT CITY (June 14, 2017), <https://nextcity.org/daily/entry/new-york-surveillance-cameras-police-safety> [http://perma.cc/G4LP-DQXN].

5. See *id.*

6. See Darius Stitilis & Marius Laurinaitis, *Legal Regulation of the Use of Dashboard Cameras: Aspects of Privacy Protection*, 32 COMPUTER L. & SECURITY REV. 316, 317 (2016).

7. OFFICE OF CMTY. ORIENTED POLICING SERVS., U.S. DEP'T OF JUSTICE, THE IMPACT OF VIDEO EVIDENCE ON MODERN POLICING: RESEARCH AND BEST PRACTICES FROM THE IACP STUDY ON IN-CAR CAMERAS 5–6 (2005).

bodies.⁸ Police departments have transitioned from dash-cams to badge-cams, hat-cams, or cameras on the rim of specialized glasses.⁹ In October 2017 the London Metropolitan Police Department announced that it was deploying 22,000 body cameras—believed to be the largest single rollout ever.¹⁰ Other scholars have examined the effect of choices on where and how the cameras are mounted and the extent to which they accurately capture or distort the experience of the officer on the ground.¹¹ But there is no question that the move to the officer’s body has dramatically expanded the spaces where citizens can now expect to encounter the unblinking digital eye. Police officers enter private spaces daily—with and without permission—and with these new cameras the privacy interests of citizens are clearly implicated in new ways. Police officers routinely encounter people during some of the worst times of their lives—when they are terrified, angry, injured, intoxicated, or vulnerable. Cameras are now walking into people’s living rooms, bedrooms, bathrooms, offices, and medical facilities.¹² Officers can now review, at their leisure, video captured

8. For example, in 2016 London took steps toward deploying 22,000 body-worn cameras in all thirty-two boroughs of the city. Press Release, Metro. Police, Rollout of Body Worn Cameras (Oct. 17, 2016), <http://news.met.police.uk/news/rollout-of-body-worn-cameras-191380> [<https://perma.cc/7LEH-JE92>] (“London Mayor Sadiq Khan, said: ‘Body Worn Video is a huge step forward in bringing our capital’s police force into the 21st century and encouraging trust and confidence in community policing. This technology is already helping drive down complaints against officers and making them more accountable, as well as helping to gather better evidence for swifter justice. As we roll them out across London, these cameras will make a real difference to officers, as they continue their great work on the frontline fighting crime and keeping our city safe.’”).

9. 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> [<http://perma.cc/Z49W-TCA2> (dark archive)].

10. Press Release, Metro. Police, *supra* note 8.

11. See Mary D. Fan, *Democratizing Proof: Pooling Public and Police Body Camera Videos*, 96 N.C. L. REV. 1639, 1658–68 (2018); Seth W. Stoughton, *Police Body-Worn Cameras*, 96 N.C. L. REV. 1363, 1399–1413 (2018).

12. This reality has required state legislatures to pass statutes in order to protect citizens’ privacy. For example, “Florida law exempts [body-worn camera] video from release if it is from inside a home, a hospital, the scene of a ‘medical emergency’, or somewhere the individual recorded has ‘a reasonable expectation of privacy.’” BRENNAN CTR. FOR JUSTICE, POLICE BODY CAMERA POLICES, RETENTION AND RELEASE 6 (2016), https://www.brennancenter.org/sites/default/files/Retention_and_Release.pdf [<http://perma.cc/6XXY-KFCK>]; see also FLA. STAT. ANN. § 119.071(2)(I)(2) (West, Westlaw through chapters from the 2018 Second Reg. Sess. of 25th Leg. in effect through Apr. 6, 2018). Similarly,

Washington law exempts video from public release if it depicts: a medical facility or patient, the interior of a place of residence, an “intimate image,” a minor, a dead body, the identity of a victim or witness of sexual assault or domestic violence (unless the subject requests release), or the location of a domestic violence program.

during limited-purpose incursions, such as public-safety or administrative searches, created without a warrant and on less than probable cause.

Given their new scope, it is fair to ask: When and how do we turn the cameras on? The technology permits us to choose a range of options. The camera may be always on or sometimes on. If the camera is only sometimes on it can either be presumptively on, with circumstances in which it is turned off—either at the officer’s discretion or under dispatch control—or presumptively off but turned on for certain kinds of encounters—again, either at the officer’s discretion or under dispatch control. Each of these choices comes with advantages and disadvantages.¹³ The different kinds of video platforms also may raise different questions because we are recording different physical spaces, with different privacy interests. Let us briefly consider each in turn.

A. *Always on*

First, the camera might always be on, so long as the officer is on duty. The always-on option creates the fewest opportunities for manipulation by the officer. It means that the video will reflect the full range of the encounters in which the officer engages. It also raises the highest risk for privacy and implicates the privacy of the public as well as the privacy of the officers. Under this system fleeting conversations¹⁴ between officers and citizens will now be recorded.

BRENNAN CTR. FOR JUSTICE, *supra*, at 7.

13. Enforcing the policies raises another set of issues altogether. Internal discipline or evidentiary presumptions are among the possible sanctions. *See generally, e.g.*, Mary D. Fan, *Missing Body Camera Videos: Evidentiary Fairness Beyond Blame*, 52 GA. L. REV. 57 (2017) (discussing the widespread detection and enforcement gaps regarding failures to record as policy requires).

14. In *United States v. White*, 401 U.S. 745 (1971), Justice Harlan dissented to a Fourth Amendment rule permitting recording by undercover officers or their agents without a warrant:

Authority is hardly needed to support the proposition that words would be measured a good deal more carefully and communication inhibited if one suspected his conversations were being transmitted and transcribed. Were third-party bugging a prevalent practice, it might well smother that spontaneity—reflected in frivolous, impetuous, sacrilegious, and defiant discourse—that liberates daily life. Much off-hand exchange is easily forgotten and one may count on the obscurity of his remarks, protected by the very fact of a limited audience, and the likelihood that the listener will either overlook or forget what is said, as well as the listener’s inability to reformulate a conversation without having to contend with a documented record. All these values are sacrificed by a rule of law that permits official monitoring of private discourse limited only by the need to locate a willing assistant.

With the cameras always on, in-person anonymous tips would no longer exist. Domestic violence victims could expect their spouse and their spouse's counsel to review any statement made to the police. It follows that requests for protection would predictably be converted into evidence for the prosecution, which some advocates say might reduce reporting and increase the danger to victims.

The always-on model also materially alters the privacy balance for the officers themselves. Police officers who could speak to other officers, spouses, or friends while on duty will alter their behavior to reflect the constant monitoring.¹⁵ Pervasive recording of all of the officers' intimate moments is already being challenged by some departments as a material change in working conditions, opening police union contracts to renegotiation.¹⁶ Officers may have rights under labor-law provisions or contracts that are affected by the cameras.¹⁷

B. Sometimes on

Another framework calls for the camera to only sometimes be on—either presumptively on or presumptively off. Under this model, the discretion regarding when the camera will be turned off or on can rest either with the officer or headquarters. The decision of where the discretion should lie and the determination of what is sufficient

Id. at 788–89 (Harlan, J., dissenting).

15. Recognizing this, the Police Executive Research Forum (“PERF”) policy would prohibit recording of officers by officers in some settings.

Agencies should prohibit recording other agency personnel during routine, non-enforcement-related activities unless recording is required by a court order or is authorized as part of an administrative or criminal investigation.

Under this policy, for example, officers may not record their partner while they are patrolling in their vehicle (unless they are responding to a call for service), are having lunch at their desks, are on breaks, are in the locker room, etc.

Rationale: This policy supports officer privacy and ensures officers feel safe to engage in routine, informal, non-law enforcement-related conversations with their colleagues.

MILLER ET AL., *supra* note 1, at 42.

16. See, e.g., Steve Miletich, *SPD Body Cameras are Stalled over Contract Talks*, SEATTLE TIMES (June 22, 2017), <https://www.seattletimes.com/seattle-news/crime/spd-body-cameras-are-stalled-over-contract-talks/> [http://perma.cc/9WZY-RHL9]; see also Paige Browning, *Seattle Police Union Challenges New Body Camera Requirement*, KUOW (July 25, 2017), <http://kuow.org/post/seattle-police-union-challenges-new-body-camera-requirement> [http://perma.cc/AJN7-XBLA].

17. See *NLRB v. Katz*, 369 U.S. 736, 742–44 (1962) (holding unilateral change in conditions of employment under negotiation violates the National Labor Relations Act).

warning to notify a citizen that she is being recorded create their own quandaries.

1. Officer-controlled

The first option is to allow an officer to record only during some activities. Some draft policies, such those from the American Civil Liberties Union (“ACLU”) and the Police Executive Research Forum (“PERF”), assume that the officer will be able to control the camera.¹⁸ PERF contemplates “[a]s a general recording policy, officers should be required to activate their body-worn cameras when responding to all calls for service and during all law enforcement-related encounters and activities that occur while the officer is on duty.”¹⁹ There is, however, a downside to officer-controlled policies. If the officer can turn the camera off for legitimate reasons, he may turn it off for illegitimate reasons. Abusive conduct will be possible.

2. Headquarters-controlled

Technology makes it possible for the cameras to be turned on and off only with the permission of a central office.²⁰ A watch commander, shift sergeant, or other trained individual would decide which calls for service would be recorded and under what circumstances the camera would be turned off. Officers going on meal or bathroom breaks, or requesting private encounters with witnesses or victims, for example, would radio in and request that the camera be turned off. At the end of the justified non-recording period, the camera would be restored. While this would mitigate some of the concerns that are raised by the always-on model, this policy is more labor-intensive, requires a degree of monitoring that might be cost-prohibitive, and may adversely affect morale.

Technology also exists for certain automatic activations. Taser makes it possible to link its cameras to its eponymous electric shock

18. MILLER ET AL., *supra* note 1, at 40; *see also* A MODEL ACT FOR REGULATING THE USE OF BODY CAMERAS BY LAW ENFORCEMENT § 1 (AM. CIV. LIBERTIES UNION 2018), <https://www.aclu.org/other/model-act-regulating-use-wearable-body-cameras-law-enforcement> [http://perma.cc/V2LJ-5XHW].

19. MILLER ET AL., *supra* note 1, at 40.

20. Press Release, U.S. Dep’t of Homeland Security, DHS S&T Awards \$442K to Hitron Technologies Inc. to Develop Auto-Activated Body-Worn Cameras for First Responders (June 30, 2016), <https://www.dhs.gov/science-and-technology/news/2016/06/30/news-release-st-awards-442k-auto-activated-body-worn-cameras> [http://perma.cc/C3MJ-NHNF].

device.²¹ Other manufacturers have linked their cameras to a holster-mounted trigger that automatically activates the camera when a weapon is removed.²² By removing the human element from these high-stress situations, the camera is more likely to be deployed when needed. The downside of adding more technology is increased expense for acquisition, training, and maintenance.

C. *Additional Concerns*

1. Warnings that Recording is Taking Place

Another contested issue is the extent to which police officers should warn citizens that they are being recorded. For good or ill, people might act differently if they know they are being recorded.²³ In fact, this is one of the widely offered justifications for deploying cameras in the first place.²⁴ Policies should cover who to warn about ongoing recording and when. In some jurisdictions wiretap statutes,²⁵

21. Michael Fleeman, *L.A. Police to Get Tasers that Activate Body Cameras When Used*, REUTERS (Jan. 6, 2015, 6:40PM), <https://www.reuters.com/article/us-usa-california-tasers/l-a-police-to-get-tasers-that-activate-body-cameras-when-used-idUSKBN0KF26B20150106> [<https://perma.cc/HY56-N3NH>].

22. *E.g.*, Laura Diaz-Zuniga, *New Bodycams Start Recording with the Draw of a Gun*, CNN (July 21, 2017), <http://www.cnn.com/2017/07/21/us/bodycams-activate-automatically/index.html> [<http://perma.cc/825S-2YE7>].

23. See MILLER ET AL., *supra* note 1, at 40. (“The mere knowledge that one is being recorded can help promote civility during police-citizen encounters. Police executives report that cameras improve both officer professionalism and the public’s behavior, an observation that is supported by evaluations of body-worn camera programs.”).

24. See, *e.g.*, DAVID YOKUM, ANITA RAVISHANKAR & ALEXANDER COPPOCK, *EVALUATING THE EFFECTS OF POLICE BODY-WORN CAMERAS: A RANDOMIZED CONTROLLED TRIAL 1–2* (2017).

25. Two-party consent states include California, Connecticut, Delaware, Florida, Illinois, Maryland, Massachusetts, Montana, New Hampshire, Oregon, Pennsylvania, and Washington. CAL. PENAL CODE § 632(a) (West, Westlaw through Ch. 10 of 2018 Reg. Sess.); CONN. GEN. STAT. ANN. § 52-570d(a) (West, Westlaw through 2018 Supp. to the Gen. Stat. of Conn.); DEL. CODE ANN. tit. 11, § 2402(c)(4) (West, Westlaw through 81 Laws 2018, Chs. 200–216); FLA. STAT. ANN. § 934.03(2)(d) (West, Westlaw through chapters from the 2018 Second Reg. Sess. of the 25th Leg. in effect through Apr. 6, 2018); 720 ILL. COMP. STAT. ANN. 5/14-2(a)(1) (West, Westlaw through P.A. 100-582 of the 2018 Reg. Sess.); MD. CODE ANN., CTS. & JUD. PROC. § 10-402(c)(3) (West, Westlaw through Chs. 1 to 5, 6, 7, 11, 12, 16, 32, 37, 38, 39, 40, 64, 65, 69, 79 & 80 of the 2018 Reg. Sess. of the Gen. Assemb.); MASS. GEN. LAWS ANN. ch. 272, § 99(B)(4) (West, Westlaw through Ch. 62 of the 2018 2nd Annual Sess.); MONT. CODE ANN. § 45-8-213(1)(c) (West, Westlaw through the 2017 Sess.); N.H. REV. STAT. ANN. § 570-A:2(I) (West, Westlaw through Ch. 7 of the 2018 Reg. Sess.); OR. REV. STAT. ANN. § 165.540(1)(c) (West, Westlaw through 2017 Reg. Sess. legislation effective through Jan. 1, 2018); 18 PA. STAT. AND CONS. STAT. ANN. § 5704(2)(iv) (West, Westlaw through 2018 Reg. Sess. Act 11); WASH. REV. CODE ANN. § 9.73.030(1)(a) (West, Westlaw through Chs. 1 to 3, 48, 81, 89, 92, 94, 102, 131 & 133 of the 2018 Reg. Sess.).

written before the advent of police cameras, might be read to require a warning once the officer enters certain places because the recording takes place without the judicial or administrative warrants contemplated by statute.

Warning policies might change depending on the situation. Police-citizen encounters can be voluntary or involuntary. We can expect voluntary encounters with ordinary citizens, victims, witnesses, and confidential informants. In contrast, encounters with suspects, accused individuals, and arrestees might be voluntary or involuntary. The expectations and presumptions for turning the cameras on or off might differ by class of person and type of encounter. So too might the expectations about warning the participants in the conversation that they are being recorded. Officers talking to a suspect might be required to leave the cameras on. Voluntary encounters with witnesses or other non-suspects, on the other hand, might include a presumptive warning that the subject is being recorded and require the officer offer to turn the camera off if the subject objects to the recording.²⁶ In these sorts of cases, some departments require that the

Of these states, Connecticut, Delaware, Florida, Illinois, Maryland, Massachusetts, New Hampshire, Oregon, and Pennsylvania have specifically exempted police body-worn video. CONN. GEN. STAT. ANN. § 52-570d(b)(1); DEL. CODE ANN. tit. 11, § 2402(c)(5); FLA. STAT. ANN. § 934.03(2)(c); 720 ILL. COMP. STAT. ANN. 5/14-2(b); MD. CODE ANN., CTS. & JUD. PROC. § 10-402(c)(4); MASS. GEN. LAWS ANN. ch. 272 § 99(B)(4); N.H. REV. STAT. ANN. § 570-A:2(II)(b)–(c); OR. REV. STAT. ANN. § 165.540(5)(b); 18 PA. STAT. AND CONS. STAT. ANN. § 5704(2).

26. For example, the PERF draft policy reads as follows:

Officers should be required to inform subjects when they are being recorded unless doing so would be unsafe, impractical, or impossible. Some states have two-party consent laws that require a person making a recording to obtain the consent of the person or persons being recorded. In this case, officers must obtain consent unless the law provides an exception for police recordings. Most states have one-party consent policies, which allow officers to make recordings without obtaining consent.

PERF recommends that police in all states inform subjects that they are being recorded, aside from the exceptions stated already. This policy does not mean that officers in one-party consent states must obtain consent prior to recording; rather, they must inform subjects when the camera is running.

Rationale: The mere knowledge that one is being recorded can help promote civility during police-citizen encounters. Police executives report that cameras improve both officer professionalism and the public's behavior, an observation that is supported by evaluations of body-worn camera programs.

MILLER ET AL., *supra* note 1, at 40.

officer state on the recording the reasons why the recording is being stopped before deactivating the camera.²⁷

2. Encoding

Another concern in the creation of large amounts of police-generated digital video is the potential for big-data abuses.²⁸ Digital video recording devices can capture a great deal of information in addition to moving pictures and sound. Embedded GPS devices, compasses, and timers can tell us where the officer was and when precisely the recording was made.²⁹ The downloaded video can be linked or encoded to refer to computerized or recorded dispatch information, video from other officers' devices, and case reports. Suspect information, including prior arrest records, other recordings, gang affiliations, and intelligence assessments of various kinds can be linked across databases in comprehensive assessment systems. The encoded information might be shared across departments with prosecutors' offices, with state or federal level agencies, and with other third parties or researchers. Computerized tools for these purposes are expanding rapidly.

II. STORAGE

Deciding where and how the police-generated digital video will be stored and for how long raises the second important set of questions for departments adopting video systems.³⁰ Digital data is storage intensive, especially at higher resolutions³¹ (and high

27. *E.g.*, SPOKANE POLICE DEPT., POLICY § 703.4(D)(1)(a) (2017), <https://static.spokanecity.org/documents/police/accountability/bodycamera/spd-body-camera-policy.pdf> [<https://perma.cc/BGY2-4AZN>].

28. *See* Peter Swire & Jesse Woo, *Privacy and Cybersecurity Lessons at the Intersection of the Internet of Things and Police Body-Worn Cameras*, 96 N.C. L. REV. 1475, 1485–87 (2018). *See generally* Jonas Lerman, *Big Data and Its Exclusions*, 66 STAN. L. REV. ONLINE 55 (2013) (discussing the threats big data poses to those whom it overlooks).

29. *See* Alexandra Mateescu, Alex Rosenblat & danah boyd, *Police Body-Worn Cameras* 6–7 (Data & Soc'y Research Inst., Working Paper, Feb. 2015), <https://www.datasociety.net/pubs/dcr/PoliceBodyWornCameras.pdf> [<https://perma.cc/5LW4-PUZK>].

30. *See* BRENNAN CTR. FOR JUSTICE, *supra* note 12, at 1 (“In order for video to be used or released, it has to be preserved. Storage space for video is very expensive, however, and privacy and security concerns crop up with a large database of videos. The length of time potential evidence in a court case must be preserved is governed by state law. Retention time for all other video is generally a matter of police policy.”).

31. *See, e.g.*, Lucas Mearian, *As Police Move to Adopt Body Cams, Storage Costs Set to Skyrocket*, COMPUTERWORLD (Sept. 3, 2015), <https://www.computerworld.com/article>

resolution may be critical for investigative and forensic reasons).³² Like any data-intensive government project, database managers will have to answer a host of technical questions, such as deciding if the video will live in the cloud or on proprietary servers, managing the ongoing costs as storage needs mount, and determining the extent to which backups and encryption can solve durability and security concerns.³³

For police and public records, however, one of the most important issues is deciding which videos will be stored and for how long. Storing thousands of hours of video will be expensive.³⁴ Many departments and policies divide video into two categories—evidentiary video and non-evidentiary video—and follow different protocols for each category.³⁵ Uploading unaltered files in a way that maintains video integrity and preserves the chain of custody will be one of the best ways to address future evidentiary questions. Case needs will help define storage periods for evidentiary video, which might last decades depending on appellate schedules and exhaustion. Non-evidentiary video might be kept for significantly shorter periods.³⁶ Currently, departments' presumptive storage times vary widely. The London police will automatically delete video after thirty-one days unless it has evidentiary value.³⁷ Chicago and Dallas

/2979627/cloud-storage/as-police-move-to-adopt-body-cams-storage-costs-set-to-skyrocket.html [http://perma.cc/MJ8E-T75F].

32. David K. Bakardjiev, Comment, *Officer Body-Worn Cameras—Capturing Objective Evidence with Quality Technology and Focused Policies*, 56 JURIMETRICS J. 79, 103 (2015).

33. MILLER ET AL., *supra* note 1, at 15 (“Among police executives interviewed by PERF, security, reliability, cost, and technical capacity were the primary factors cited for choosing a particular method for storing video files from body-worn cameras. Among the more than 40 departments that PERF consulted, all stored body-worn camera video on an in-house server (managed internally) or an online cloud database (managed by a third-party vendor).”).

34. See Mearian, *supra* note 31.

35. See BRENNAN CTR. FOR JUSTICE, *supra* note 12, at 1.

36. See MILLER ET AL., *supra* note 1, at 17. (“Many police executives express a preference for shorter retention times for non-evidentiary video. Shorter retention periods not only address privacy concerns but also reduce the costs associated with data storage. On the other hand, police executives noted that they must keep videos long enough to demonstrate transparency and to have footage of an encounter in case a complaint arises about an officer’s actions. For example, departments in Rialto, Fort Collins, Albuquerque, Daytona Beach, and Toronto base retention times in part on how long it generally takes for complaints to be filed.”). For a collection of policies, see BRENNAN CTR. FOR JUSTICE, *supra* note 12, at 2–9.

37. See Press Release, Metro. Police, *supra* note 8.

policies call for deletion after ninety days.³⁸ The policies in New Orleans and Oakland specify two years.³⁹

The courts have yet to contribute in any significant way on when video might have to be kept for reasons outside of ordinary policy. For example, one underexplored wild card in this area is the need to search for exculpatory information in cases where the defendant claims alibi or mistaken identity. If it is possible that the defendant might appear in a different officer's video stream, *Brady v. Maryland*⁴⁰ and its progeny might create a constitutional duty to preserve potential exculpatory evidence that trumps shorter periods in departmental policy.⁴¹

Cost and logistical concerns for digital video storage may vary significantly, depending on how departments choose to set up their databases. Databases might be fully shared amongst some agencies, some videos (or portions thereof) might be shared on a case-by-case basis, or video might be siloed.⁴² Some departments upload videos to departmental websites, YouTube, or department social media accounts such as Facebook.⁴³

III. ACCESS

The next critical phase once the data has been created, tagged, and stored is accessing it for examination and determining suitability for potential public use.⁴⁴ Groups that may access this data include police, attorneys in criminal cases, and other third parties.

38. BRENNAN CTR. FOR JUSTICE, *supra* note 12, at 2–3.

39. *Id.*

40. 373 U.S. 83 (1963).

41. *Id.* at 87 (“We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.”).

42. *See, e.g.*, BRENNAN CTR. FOR JUSTICE, *supra* note 12, at 1 (“Many of the police departments that use BWCs participate in fusion centers, joint information-sharing efforts between local, state, and federal government and the private sector. These fusion centers pull in copious data that is tenuously related to crime or terrorism and generally retain it for long periods of time, and have been castigated as endangering citizens’ civil liberties with little counterterrorism value to show for it.”).

43. *See, e.g.*, Kerisha Harris, *Tampa Police Share Body Camera Footage on Facebook*, NBC 6 SOUTH FLA. (Feb. 26, 2016), <https://www.nbcmiami.com/news/local/Tampa-Police-Share-Body-Camera-Footage-on-Facebook-370253721.html> [http://perma.cc/Z39S-GDAD]. *See generally* Mary Fan, *Privacy, Public Disclosure, Police Body Cameras: Policy Splits*, 68 ALA. L. REV. 395 (2016) (collecting and examining policies on release).

44. *See infra* Part IV (discussing redaction and public use).

A. Access for Police

Interested groups might be granted access to the data under different predefined conditions. Police departments might have internal policies about who within the agency can access the video once it is created.⁴⁵ For example, an officer might presumptively have access to the video created by his own camera for purposes of writing ordinary reports but may lose access in cases where officer conduct or discipline is likely to become an issue.⁴⁶ On the one hand, access may refresh the officer's recollection and result in more accurate reports. On the other, the officer's memory of events may be distorted by the video or his report may be tailored to tell a story that matches what can be seen on the video, to the detriment of possible disciplinary proceedings. Defense counsel might also prefer if the officer had to write and testify unaided because of the possibility that a difference between the video and the officer's testimony would create impeachment material. Departmental supervisors might have routine access for personnel management or training purposes or access only under certain conditions.⁴⁷

45. See, e.g., LAS VEGAS METRO. POLICE DEP'T, 5/210.01: BODY WORN CAMERAS, <http://ipicd.com/ceer/files/LVMPD%20BWC%20Policy.pdf> [http://perma.cc/D8GV-ZXL2] (establishing when and how officers, supervisors, and other members of the LVMPD may access video recordings).

46. See, e.g., MILLER ET AL., *supra* note 1, at 29. The report surveyed police executives on this issue and found the following:

Given the impact that body-worn cameras can have in criminal and administrative proceedings, there is some question as to whether officers should be allowed to review camera footage prior to making a statement about an incident in which they were involved. According to many police executives, the primary benefit to officer review is that it allows officers to recall events more clearly, which helps get to the truth of what really happened. Some police executives, on the other hand, said that it is better for an officer's statement to reflect what he or she perceived during the event, rather than what the camera footage revealed. The majority of police executives consulted by PERF are in favor of allowing officers to review body-worn camera footage prior to making a statement about an incident in which they were involved. They believe that this approach provides the best evidence of what actually took place. PERF agrees with this position.

Id. Fierce differences arose in Los Angeles, California over whether officers should be allowed to review their video first. See Kate Mather, *Divided Police Commission Approves Rules for LAPD Body Cameras*, L.A. TIMES (Apr. 28, 2015), <http://www.latimes.com/local/lanow/la-me-ln-lapd-body-cameras-rules-20150427-story.html> [http://perma.cc/5TX3-WCA3].

47. See, e.g., MILLER ET AL., *supra* note 1, at 25.

Most agencies permit supervisors to review videos so they can investigate a specific incident or complaint, identify videos for training purposes, ensure the system is working, and monitor overall compliance with the camera program. However, there is some debate over whether supervisors should also periodically

Since a second major purpose of digital video is public accountability, local political bodies such as town councils, county commissions, police commissions, spokespeople, or other non-law-enforcement government employees might also need to access the video in certain cases. These groups might be considered to be within the police-management chain of command for access purposes.

B. Access for Prosecutors and Defense Attorneys

In criminal prosecutions prosecutors' offices also will routinely need to access recordings made by police. The access might be direct or through departmental intermediaries.⁴⁸ Some prosecutors will prefer the ability to judge the relevance and utility of video for themselves.⁴⁹ Others might prefer to have the agencies comb through the video to produce the relevant material.⁵⁰ A benefit to having limited access is that it may also limit claims of tampering and preserve the chain of custody. There are many ways to structure such a policy. For example, a prosecutor's office might permit access to certified digital copies of evidentiary recordings in all charged cases, including videos that might contain exculpatory information, and give its prosecutors the authority to order database searches in compliance with court orders. Likewise, defense counsel, defendants, and innocence and accountability organizations should also have access as appropriate under discovery rules and court orders.⁵¹ To further

and randomly review videos to monitor officer performance. Some agencies allow periodic monitoring to help proactively identify problems and hold officers accountable for their performance. Other agencies permit periodic monitoring only in certain circumstances, such as when an officer is still in a probationary period or after an officer has received a certain number of complaints. Some agencies prohibit random monitoring altogether because they believe doing so is unnecessary if supervisors conduct reviews when an incident occurs.

Id.

48. See LINDA MIROLA ET AL., BODY WORN CAMERAS AND THE COURTS: A NATIONAL SURVEY OF STATE PROSECUTORS 17–20 (2016), <http://cebcp.org/wp-content/technology/BWCPProsecutors.pdf> [<http://perma.cc/U5T9-7SRB>].

49. See *id.* at 6.

50. See *id.*

51. See, e.g., CAL. PENAL CODE § 1054.1 (West, Westlaw through Ch. 10 of 2018 Reg. Sess.). California law states that:

The prosecuting attorney shall disclose to the defendant or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecuting attorney knows it to be in the possession of the investigating agencies:

- (a) The names and addresses of persons the prosecutor intends to call as witnesses at trial.
- (b) Statements of all defendants.

complicate matters, sometimes there will be specialized state law that treats access to body-camera video differently from other data.⁵²

C. Access for Non-Criminal Justice Actors

Direct access to the databases is more politically complicated once the requests expand beyond the core categories of participants in the criminal justice system. We can reasonably expect access requests from uncharged recorded citizens, local and state political bodies, members of the news media, researchers, and ordinary members of the public. The further afield the requesters are, some commentators believe, the more attenuated the need for direct access and the more significant privacy concerns become.⁵³

It might be possible to limit direct access to certain tags, certain terms such as time, date and place, or—as the software gets more sophisticated—facial recognition and other targeted queries. The more the access is curated, the less responsive the department will seem to be to citizen oversight.

(c) All relevant real evidence seized or obtained as a part of the investigation of the offenses charged. . . .

(f) Relevant written or recorded statements of witnesses or reports of the statements of witnesses whom the prosecutor intends to call at the trial, including any reports or statements of experts made in conjunction with the case, including the results of physical or mental examinations, scientific tests, experiments, or comparisons which the prosecutor intends to offer in evidence at the trial.

Id.

52. See, e.g., N.C. GEN. STAT. § 132-1.4A (2017). The release of body-camera video is covered solely by this section of the General Statutes. § 132-1.4A(c). Ordinarily, disclosure is very limited, and a court order is required to overturn any decision for non-disclosure by an agency. § 132-1.4A(e). However, there is a law-enforcement exception:

(h) Release of Recordings; Law Enforcement Purposes. — Notwithstanding the requirements of subsections (c), (f), and (g) of this section, a custodial law enforcement agency shall disclose or release a recording to a district attorney (i) for review of potential criminal charges, (ii) in order to comply with discovery requirements in a criminal prosecution, (iii) for use in criminal proceedings in district court, or (iv) any other law enforcement purpose, and may disclose or release a recording for any of the following purposes:

(1) For law enforcement training purposes.

(2) Within the custodial law enforcement agency for any administrative, training, or law enforcement purpose.

(3) To another law enforcement agency for law enforcement purposes.

§ 132-1.4A(h).

53. See Chris Pagliarella, Comment, *Police Body-Worn Camera Footage: A Question of Access*, 34 YALE L. & POL'Y REV. 533, 541–42 (2016).

IV. REDACTION

What gets released, and in what form, depends largely on the audience to which the video is being released. Unless the department makes the highly unlikely choice to release all video, someone will have to serve as a gatekeeper and redact the video in keeping with some protocol.⁵⁴

We can predict a range of cross-cutting interests that would result in very different redaction policies and interpretations thereof. The core tradeoff will be between the privacy of the individuals recorded and the police officers involved, on the one hand, and public oversight on the other. Police may fear that routine release outside law enforcement circles will make victims and cooperating witnesses less likely to come forward. If there is no confidentiality, by definition there can be no confidential informants.⁵⁵ Prosecutors, defense attorneys, and judges might be concerned about contaminating jury and witness pools and about retaining the evidentiary value of the recordings.⁵⁶ Members of the media will want unfettered access to video of any high-salience event as soon in the news cycle as possible, so they can exercise their own news judgment.⁵⁷ Victims and witnesses may want the video released, or they may want it kept secret because

54. See Fan, *supra* note 43, at 433–34 (2016) (discussing the costs and challenges of redaction of body-worn camera video before disclosure).

55. See MILLER ET AL., *supra* note 1, at 19–20. The report noted:

At the PERF conference, a number of participants expressed concern that excessive recording with body-worn cameras may damage the relationships officers have developed with the community and hinder the openness of their community policing interactions. Some police executives fear, for example, that people will be less likely to come forward to share information if they know their conversation is going to be recorded, particularly in high-crime neighborhoods where residents might be subject to retaliation if they are seen as cooperating with police.

Id.

56. See David Alan Sklansky, *Evidentiary Instructions and the Jury as Other*, 65 STAN. L. REV. 407, 412–13 (2013) (discussing the capacity of juries to disregard known information on the process of formulating their verdicts). See generally WAYNE R. LAFAVE ET. AL., CRIMINAL PROCEDURE 1069–1101 (4th ed. 2004) (discussing the problem of prejudicial pretrial publicity and methods to control it).

57. See, e.g., REPORTERS COMM. FOR FREEDOM OF THE PRESS, TESTIMONY OF KATIE TOWNSEND ON BEHALF OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS ON THE METROPOLITAN POLICE DEPARTMENT'S BODY-WORN CAMERA PROGRAM 4 (2015), <https://www.rcfp.org/sites/default/files/2015-05-07-comments-on-dc-police-bodycam.pdf> [<http://perma.cc/U9WQ-QR48>] (“[I]t is only when the public has access to BWC video that the stated objectives of the BWC program—increased transparency, accountability, and trust between law enforcement and the community—can be achieved.”).

they fear reputational harm or retaliation. Accused persons might want the video freely available because they believe it proves their innocence, or they may want it suppressed because they fear that it establishes their guilt. Uncharged arrestees might seek access to discipline the police, or they may seek suppression to preserve their reputation. Individuals might want video of an interaction outside their home released while opposing the release of video that reveals private details of the inside of their homes. Juvenile recording statutes in many jurisdictions add an additional layer of complexity over all of these decisions.⁵⁸

In many states body-worn video fits the definition of a public record and is subject to the state version of a freedom of information act.⁵⁹ Many such acts have provisions that define what will be produced and when.⁶⁰ Some states have categorically exempted body-camera footage altogether.⁶¹ Others have attempted to balance privacy concerns and public access.⁶² For instance, some states have limited access to videos created inside homes and other private spaces, or “place[s] that a reasonable person would expect to be private.”⁶³ Others define body-camera footage as a police investigative record and restrict access according to preexisting protocols.⁶⁴ Many states or agencies also include cost-shifting provisions, which require the requesters to pay for the cost of the request, sometimes once it exceeds a certain threshold.⁶⁵ Reviewing

58. See Tamryn J. Etten & Robert F. Petrone, *Sharing Data and Information in Juvenile Justice: Legal, Ethical, and Practical Considerations*, 45 JUV. & FAM. CT. J. 65, 66–67 (1994).

59. See, e.g., D.C. CODE ANN. § 2-532(c)(2)(A) (West, Westlaw through Apr. 9, 2018).

60. See, e.g., N.C. GEN. STAT. § 132-1.4A(c)–(d) (2017).

61. See, e.g., Fan, *supra* note 43, at 413–14 (discussing, along with other states, North Carolina and South Carolina’s strict anti-disclosure statutes); see also S.C. CODE ANN. § 23-1-240(G)(1) (2016).

62. See, e.g., Kelly Swanson, *Advocates Push Back Against FOIA Exemptions for Bodycam Footage*, REPS. COMM. FOR FREEDOM OF THE PRESS (June 9, 2015), <https://www.rcfp.org/browse-media-law-resources/news/advocates-push-back-against-foia-exemptions-bodycam-footage> [http://perma.cc/S53U-DG24] (“Florida Senate Bill 248. includes restrictions that make body-camera footage confidential if it is recorded within the interior of a private residence, within the interior of a facility that offers health care, mental health care, or social services or in a place that a reasonable person would expect to be private.”).

63. See, e.g., FLA. STAT. ANN. § 119.071(2)(l)(2)(c) (West, Westlaw through 2018 Second Reg. Sess.).

64. See, e.g., KAN. STAT. ANN. § 45-254 (West, Westlaw through fourth Special Sess. of the 30th Leg.).

65. See, e.g., ALASKA STAT. ANN. § 40.25.110(c) (West, Westlaw through 2017 First Reg. Sess.); DEL. CODE ANN. tit. 29, § 10003(m) (West, Westlaw through 81 Laws 2018); FLA. STAT. ANN. § 119.07(4).

and redacting video is time-consuming and expensive. In some cases requesters have been charged tens of thousands of dollars for the cost of preparing responsive video.⁶⁶

V. USE

If there was a single answer to why we deploy body cameras, some of the policy choices would be simplified. But there are multiple answers to the question.⁶⁷ Body-worn video may ultimately be used as evidence in criminal and civil trials⁶⁸ and in disciplinary proceedings related to use-of-force complaints.⁶⁹ It can be used by courts to determine compliance with the Fourth and Fifth Amendments.⁷⁰ It can be used internally by police departments for training and management and by outside oversight bodies for the same purposes.⁷¹ It can be used by the press and the public to show the good and bad

66. See Swanson, *supra* note 62 (discussing an \$18,000 bill charged to the ACLU by the City of Sarasota when the ACLU made a FOIA request for body cam video; the case ultimately settled).

67. See MILLER ET AL., *supra* note 1, at vii.

Law enforcement agencies are using body-worn cameras in various ways: to improve evidence collection, to strengthen officer performance and accountability, to enhance agency transparency, to document encounters between police and the public, and to investigate and resolve complaints and officer-involved incidents. Although body-worn cameras can offer many benefits, they also raise serious questions about how technology is changing the relationship between police and the community. Body-worn cameras not only create concerns about the public's privacy rights but also can affect how officers relate to people in the community, the community's perception of the police, and expectations about how police agencies should share information with the public.

Id.

68. See Mary D. Fan, *Justice Visualized: Courts and the Body Camera Revolution*, 50 U.C. DAVIS L. REV. 897, 900–02 (2016); see also JOEL M. SCHUMM, *POLICING BODY CAMERAS: POLICIES AND PROCEDURES TO SAFEGUARD THE RIGHTS OF THE ACCUSED* 16 (2017), <https://www.bja.gov/bwc/pdfs/BWC-NACDL-March2017.pdf> [<http://perma.cc/X87U-AK2D>].

69. See OFFICE OF POLICE COMPLAINTS, GOV'T OF THE D.C. POLICE COMPLAINTS BOARD, *ANNUAL REPORT 2017*, at 19–20 (2017), https://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/OfficeofPoliceComplaints_AR17.pdf [<http://perma.cc/8T7F-GWW3>].

70. See 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, 359–60 (2010); see also Tonja Jacobi, *Miranda 2.0*, 50 U.C. DAVIS L. REV. 1, 55 (2016) (“Prof. Paul Cassell has suggested that mandatory videotaping could substitute for *Miranda* rules, since it would provide adequate protection against false confessions ‘by allowing judges and juries to see when police have led an innocent person to admit to a crime he did not commit.’” (citation omitted)).

71. See *Developments in the Law—Considering Police Body Cameras*, 128 HARV. L. REV. 1794, 1802–03 (2015).

of police actions.⁷² Heroic first responders might be praised and police brutality exposed.⁷³

At trial, using body-camera video as evidence may require meeting all of the demands of chain of custody unless it is being used as an adjunct to the testimony of eyewitnesses on the scene.⁷⁴ Confrontation Clause requirements may limit the use of recordings.⁷⁵ Hearsay limitations might require special instructions or redaction.⁷⁶ Fairness requirements might require that all of the video from a situation be produced to place selected portions on context.⁷⁷

72. See, e.g., Miguel Marquez, *Body Camera Video Allegedly Shows Baltimore Cop Planting Evidence*, CNN (July 20, 2017), <http://www.cnn.com/2017/07/20/us/baltimore-cop-allegedly-planting-evidence/index.html> [<http://perma.cc/CY47-P8R3>]; see also Corky Siemaszko, *Body Cameras Win Converts Among Police Officers on the Beat*, NBC NEWS (May 8, 2016), <https://www.nbcnews.com/news/crime-courts/body-cameras-win-converts-among-police-officers-beat-n566311> [<http://perma.cc/7BJ8-287R>].

73. See, e.g., MAYOR STEPHANIE RAWLINGS-BLAKE'S WORKING GRP. ON THE USE AND IMPLEMENTATION OF BODY-WORN CAMERAS, FINAL RECOMMENDATIONS 41 (2015), <http://mayor.baltimorecity.gov/sites/default/files/Body%20Camera%20Working%20Group%20Recommendations.pdf> [<http://perma.cc/92CV-7MGW>] (“After extensive review of the issues posed by the possible use and implementation of body-worn cameras by the BPD, the Working Group concludes that body-worn cameras may provide additional transparency which, in turn, could potentially result in fewer complaints of misconduct, less costs associated with such complaints and greater accountability of BPD to the citizens it serves. Furthermore, prosecutions may be increased along with the success rate of same. The use of a body-worn camera program locally could document law enforcement interaction with the public by providing recorded evidence of actions, conditions and statements that may be used for court proceedings, internal review, or review by the public through formal request. Likewise, such documentation could facilitate and enhance officer and supervisor training.”).

74. See, e.g., Jeff Welty, *One Case, Two Ways of Authenticating Video*, UNC SCH. OF GOV'T: N.C. CRIMINAL LAW (June 27, 2016), <https://nccriminallaw.sog.unc.edu/one-case-two-ways-authenticating-video/> [<http://perma.cc/T47D-E8SZ>].

75. See *Crawford v. Washington*, 541 U.S. 36, 68–69 (2004) (holding that a spouse's tape-recorded testimony was excluded because the petitioner “had no opportunity to cross-examine [his wife]” and all testimonial statements require confrontation). Using this rule in the context of body-camera video, a judge would have to consider whether or not statements made by an unavailable witness to a police officer constituted testimonial statements that require Confrontation Clause protections.

76. E.g., FED. R. EVID. 803(2). For example, an eyewitness making a statement on-camera might repeat hearsay to the officer when describing the events that are the subject of the litigation. See *id.*

77. See, e.g., FED. R. EVID. 106. This rule, titled Remainder of or Related Writings or Recorded Statements, can allow a party to require the introduction of the remainder of a writing or a recording (or other writings or recordings) if fairness requires that this other portion or writing be considered with the one originally introduced. *Id.* In the body-worn camera context, an adverse party may require a party who wishes to introduce a video to introduce the video in its entirety for fairness or context. See also Bakardjiev, *supra* note 32, at 99 (discussing what editing requirements may be imposed by Federal Rules of Evidence 401 and 403, and determining that these rules may require redaction in some situations).

Conversely, First Amendment limits may require the government to accept incomplete, out-of-context, and even deceptive editing of video once it has been turned over to the press or the public.⁷⁸

Police-generated digital video sits at the intersection of at least ten areas of law and policy: police management, administrative law, privacy law, public records law, wiretap/recording laws, Fourth Amendment law, labor law, First Amendment law, tort law, and the emerging field of big data. Properly drafting a policy requires legal as well as political skill. By bringing together researchers from many disciplines, any framework that a state or agency develops must ensure that the tradeoffs of incommensurables that any policy necessarily entails will take place after a full public discussion and will be the product of choice, not inattention.

Body-camera policies are now being made at a number of levels, sometimes with extensive participation from all interested parties, but oftentimes not. Many of the early pilot projects that were used as starting points for follow-on policies were very localized. Police departments wrote the policy with a strong focus on the needs of law enforcement. Local politicians who were directly responsible for department budgets and personnel decisions had the most direct impact on department policy.

Municipal law and state law, taken together, cover much of the legal framework. Preexisting policies such as the Freedom of Information Act may subsume the videos into old categories, such as investigative reports or undifferentiated public records. Recording may be governed by wiretap statutes written at a time when officers were not expected to be wearing recording devices at all times. Police and prosecutors have significant influence on many state legislatures. Interest groups such as the ACLU, the National Association of Criminal Defense Attorneys, the Reporters Committee on the Freedom of the Press, or state-level press-lobbying organizations will have varying degrees of influence.

As policy is being crafted, and the tradeoffs are being made, a multitude of viewpoints should have a seat at the table. Among those included should be thoughtful individuals serving as representatives

78. See Caroline Mala Corbin, *The First Amendment Right Against Compelled Listening*, 89 B.U. L. REV. 939, 977 (2009). Corbin notes that “[t]he right against compelled speech is firmly established in First Amendment jurisprudence: ‘[F]reedom of thought protected by the First Amendment . . . includes both the right to speak freely and the right to refrain from speaking at all.’” *Id.* (quoting *Wooley v. Maynard*, 430 U.S. 705, 714 (1977)).

of the police, prosecutors, defense lawyers, victims/witnesses' rights representatives, civil rights representatives, civil liberties representatives, taxpayer representatives, and the press. The drafters should consider a variety of lenses to test the policy and expect answers to the big questions to cut in different directions.⁷⁹ They might ask how each decision being made promotes or hinders the following values: efficient and equitable law enforcement, privacy, civil rights, civil liberties, free speech and association, safety and security of the police and of the policed, transparency and oversight, and police management. Ultimately, they should be asking: Does the policy advance the goals of government intelligence regarding crime, while protecting us from living in a police state?

CONCLUSION

Is it possible for any policy to simultaneously advance all of the possible goals one could name as reasons for deploying body-worn video systems? It is not. But the Articles in this Symposium Issue, taken together, offer a sophisticated set of analytical tools to policymakers as they make their decisions. Policymakers should seek to answer the questions that will inevitably arise as one tracks the life cycle of the video: creation, storage, access, redaction, and use. The tradeoffs should be conscious and considered as well as legally sophisticated. A wide range of voices should be invited to the table, and efforts should be made to harmonize the wide range of preexisting policies that will impact the use of digital video as evidence.

79. For an example of these different policies, see THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS & UPTURN, POLICE BODY WORN CAMERAS (3.04 ed. 2017), <https://www.bwcorecard.org/static/pdfs/LCCHR%20and%20Upturn%20-%20BWC%20Scorecard%20v.3.04.pdf> [<http://perma.cc/JTQ4-GB5M>]. This report has been signed onto by a wide range of civil rights and civil liberties organizations—including, *inter alia*, the ACLU, Asian Americans Advancing Justice, the Electronic Frontier Foundation, the NAACP, the NAACP Legal Defense and Educational Fund, and the National Council of La Raza—and grades departmental policies on eight criteria: “whether the department”: (1) “Makes the Department Policy Publicly and Readily Available,” (2) “Limits Officer Discretion on When to Record,” (3) “Addresses Personal Privacy Concerns,” (4) “Prohibits Officer Pre-Report Viewing,” (5) “Limits Retention of Footage,” (6) “Protects Footage Against Tampering and Misuse,” (7) “Makes Footage Available to Individuals Filing Complaints,” and (8) “Limits the Use of Biometric Technologies.” *Id.*