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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
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June 9, 2015

Wade Henderson
President and CEO
The Leadership Conference on Civil and Human Rights
The Leadership Conference Education Fund
1629 K Street NW, 10th Floor
Washington, D.C. 20006

Dear Mr. Henderson:

Thank you for your testimony at the Senate Committee on the Judiciary, Subcommittee on Crime and Terrorism hearing entitled "Body Cameras: Can Technology Increase Protection for Law Enforcement Officers and the Public?" on May 19, 2015. I appreciated you taking the time to appear before the Committee.

I have enclosed a copy of the unedited hearing transcript for you to review and make grammatical changes to your testimony, if needed. This is not the official hearing transcript and should not be copied or distributed under any circumstance.

Please mark any changes you may have directly on the transcript, flag the pages and return it to my office, to the attention of Jason Covey, Hearing Clerk, Senate Judiciary Committee, 224 Dirksen Senate Office Building, Washington, D.C., 20510 or by email to Jason_Covey@judiciary-rep.senate.gov. In order to complete the hearing record, please return this transcript with your changes as soon as possible and in no event later than **July 7, 2015**.

Again, thank you for your participation. If you have any questions, please contact Jason Covey at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman

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BODY CAMERAS: CAN TECHNOLOGY INCREASE PROTECTION FOR
LAW ENFORCEMENT OFFICERS AND THE PUBLIC?

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TUESDAY, MAY 19, 2015

United States Senate,
Subcommittee on Crime and Terrorism,
Committee on the Judiciary,
Washington, DC

The Committee met, pursuant to notice, at 3:00 p.m.,
Room 226, Dirksen Senate Office Building, Hon. Lindsey
Graham, Chairman of the Subcommittee, presiding.

Present: Senators Grassley, Cornyn, Durbin,
Whitehouse, Klobuchar, Franken, Coons, and Blumenthal.

1 So there are a lot of proposals up here on Capitol
2 Hill to have grants and pilot programs about outfitting
3 our law enforcement community with body cameras and that
4 is the purpose of this hearing today, to see which would
5 be the best way forward.

6 [The prepared statement of Chairman Graham appears in
7 the appendix.]

8 Chairman Graham. Senator Whitehouse?

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1 hearing on what I consider to be a pretty egregious
2 separation of powers violation by the Administration.

3 So we are looking to schedule at least those two
4 other hearings. They are good topics and I hope that we
5 can make this a very active Subcommittee. I think it may
6 be the most important Subcommittee of the Judiciary
7 Committee, saying that as Ranking Member.

8 [The prepared statement of Senator Whitehouse appears
9 in the appendix.]

10 Chairman Graham. Thank you very much. We will do
11 both hearings.

12 Senator Grassley, would you like to make a comment?

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1 their use need to be thought through. These include
2 determining when cameras would and would not be
3 operating, how privacy of people's homes and of crime
4 victims would be maintained, how footage is to be
5 retained and chain of custody preserved, and public
6 access to the tapes.

7 The Justice Department has also funded some pilot
8 programs and research to determine the best practices for
9 operation of police body cameras.

10 Before we decide what, if any, Federal legislative
11 response is appropriate, we should obtain a good sense of
12 the issues that have arisen in state and local use of
13 body cameras. We should also know which of the competing
14 approaches have been more effective and further shared
15 values.

16 The last thing that we would want to do is create an
17 incentive or even mandate actions that would cost state
18 and local governments large sums of money and not reflect
19 the accumulated wisdom that derives from existing state
20 and local practice.

21 So, Mr. Chairman, I thank you once again for holding
22 this hearing and I look forward to the testimony of
23 witnesses, which I am going to have to read because I
24 have another assignment I have to go to. But I
25 appreciate having the courtesy of what I have just said.

1 OPENING STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR
2 FROM THE STATE OF TEXAS

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4 Senator Cornyn. Thank you, Mr. Chairman. I would
5 like to express my gratitude to Senator Grassley, as
6 Chairman of the full Committee, but to you as Chairman of
7 the Subcommittee for starting the conversation here on a
8 topic that I know is very near and dear to Senator
9 Scott's heart.

10 We all recognize that body cameras are not a panacea
11 and will not solve all the problems, but they may be a
12 piece of the answer and one building block where we can
13 begin to rebuild the public's confidence in law
14 enforcement, which is absolutely critical to maintaining
15 security and safety in our communities.

16 But it is also important -- Mr. Chairman, I know you
17 agree because you are a cosponsor of this bill that would
18 create a commission to study our criminal justice system
19 writ large. Once we get through doing the things that we
20 can do to help improve our criminal justice system,
21 things like passing the Corrections Act that Senator
22 Whitehouse and I are the chief cosponsors of, to help act
23 on the lessons of prison reform that have played out in
24 our states, I hope we can continue this conversation in a
25 way that lets us revisit what works and correct and

1 OPENING STATEMENT OF HON. AL FRANKEN, A U.S. SENATOR FROM
2 THE STATE OF MINNESOTA

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4 Senator Franken. Very quickly. I just have a
5 classified briefing at 4:00. I am going to stay here
6 until. So maybe I will get to my questions and maybe I
7 will not.

8 I discussed this very briefly with Senator Scott.
9 There are so many questions here that I assume that we
10 will get, and thank you, Mr. Chairman, for calling this
11 hearing about what activities, what practices should be
12 on camera and which ones should not, how we develop the
13 best protocols, how we use the experience of communities
14 and states and studies, to figure out when is the camera
15 on and when is it off.

16 So I am looking forward to hearing from Senator
17 Scott, and I thank you for calling this hearing.

18 Chairman Graham. Thank you, Senator Franken.

19 Senator Scott, thank you very much for coming and I
20 do appreciate your leadership on this. You have been
21 very hands-on when it comes to trying to deal with this
22 issue.

23 So, please, proceed.

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1 changing some of the outcomes starts with education.

2 Long-term education will provide a path, an avenue out.

3 Think about work skills for those adult learners,
4 apprenticeship programs where you can earn and learn at
5 the same time, as well as entrepreneurship programs.

6 I am here today because I believe strongly that
7 another important piece of the puzzle in rebuilding trust
8 between law enforcement and the community truly is body-
9 worn cameras by officers.

10 I say one piece because there is no silver bullet.
11 There is no panacea, but rather many pieces to this
12 puzzle. We are here today to listen and to learn from
13 experts on how these cameras can be helpful and, at the
14 same time, for us to understand the concerns, like data
15 retention, disclosure issues, including FOIA, costs and
16 training, when do you use the cameras.

17 I look forward to the discussion, as well as the hard
18 work ahead. The good news is that according to at least
19 one study, public complaints against officers wearing
20 cameras falls by 90 percent. Use of force -- use of
21 force drops by as much as 60 percent. That is moving in
22 the right direction.

23 Tasking the Federal Government to support body
24 cameras through resources should not be confused with
25 federalizing local policing, which I would object to, nor

1 Weir, who is the District Attorney for the First Judicial
2 District, State of Colorado, from Golden Colorado;
3 Lindsay Miller, Senior Research Associate, Police
4 Executive Research Forum, Washington, DC; Wade Henderson,
5 President and CEO of the Leadership Conference on Civil
6 Rights and Human Rights, Washington, DC; and, Jarrod
7 Bruder, Executive Director, South Carolina Sheriff's
8 Association, from Columbia, South Carolina.

9 Welcome to you all. We will start with Ms. Miller
10 and just move across the panel.

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1 So first and foremost, we caution that the decision
2 to implement a body camera program should not be entered
3 into lightly. Agencies must thoughtfully examine all of
4 the issues that cameras raise and develop careful written
5 policies to govern their use.

6 We also found that when implementing a camera program
7 and developing policies, it is critical that agencies
8 engage with community organizations, line officers and
9 unions, local policymakers and elected officials,
10 prosecutors and other stakeholders. Making it a
11 collaborative process can help strengthen the legitimacy
12 of a program and make implementation run more smoothly.

13 We also caution, again, that while body cameras can
14 be a very useful tool, they are not a cure-all. We need
15 to view them as just one tool and remember that they are
16 not a substitute for good policies, good training, and
17 good community policing programs.

18 So when it comes to the benefits of body cameras, we
19 found that cameras have been useful for several things:
20 strengthening police accountability and agency
21 transparency; improving the behavior of people on both
22 sides of the camera; as Senator Scott said, reducing and
23 resolving officer use-of-force incidents and complaints
24 against officers; identifying and correcting problems
25 within the agency both at the individual level and

1 We also recommend that officers should be required to
2 obtain consent prior to recording interviews with crime
3 victims and they should have limited discretion to keep
4 their cameras off during conversations with witnesses and
5 members of the community who wish to provide information
6 about a crime, but who do not want to speak on camera.
7 And this addresses some of the significant privacy
8 concerns that come with videotaping crime victims and
9 witnesses.

10 One of the biggest issues that is emerging that is
11 facing police agencies is when to release video footage
12 to the public and the media this is a very difficult
13 issue and there really are no easy answers.

14 Our report generally recommended a fairly broad
15 disclosure policy to promote agency transparency and
16 accountability. However, agencies must also balance this
17 need for transparency with the very real privacy and
18 evidentiary concerns that come with releasing footage to
19 the public. We always want to make sure that videos of
20 people in their most vulnerable do not end up on You
21 Tube.

22 So, again, these are just a couple of our 33
23 recommendations, which also cover data storage and
24 management, training and evaluation. We also provide
25 useful strategies for how police leaders can engage

1 TESTIMONY OF MR. JARROD M. BRUDER, EXECUTIVE DIRECTOR,
2 SOUTH CAROLINA SHERIFF'S ASSOCIATION, COLUMBIA, SOUTH
3 CAROLINA

4

5 Mr. Bruder. Chairman Graham, distinguished members
6 of the Committee, my name is Jarrod Bruder and I am the
7 Executive Director of the South Carolina Sheriff's
8 Association. It is truly an honor to appear before you
9 today.

10 I come to testify on behalf of the 46 sheriffs of
11 South Carolina. I would like to begin by applauding the
12 Subcommittee for taking the time to study the positive
13 and negative effects of implementing body-worn cameras
14 before enacting legislation.

15 As you will hear throughout my testimony, embracing
16 new technology for the purposes of increasing
17 transparency, officer accountability and officer safety
18 can produce tremendous benefits, but it can also generate
19 serious unintended consequences.

20 For more than 5 years now, law enforcement agencies
21 throughout South Carolina have been experimenting with
22 the use of body-worn cameras. To date, approximately 115
23 percent of our sheriffs' offices have implemented a body-
24 worn camera program.

25 These agencies have found this technology provides a

1 Carolina are struggling to find sufficient funds to
2 protect their officers and the public, a legislative
3 mandate to implement body-worn cameras seems like a
4 nightmare to many.

5 Thankfully, pending legislation in South Carolina
6 will create a statewide trust that will fund the initial
7 and ongoing costs associated with body-worn cameras.
8 This provision, along with several others, has resulted
9 in our support of this legislation.

10 Another issue preventing law enforcement agencies
11 from fully embracing this technology is the protection of
12 privacy. While transparency and openness are welcome
13 concepts for some, those notions are not always conducive
14 to producing successful police work. Oftentimes, our
15 best tips come from criminal informants, witnesses or
16 victims who wish to remain anonymous. There is a great
17 fear in the law enforcement community that the
18 proliferation of body-worn cameras will further divide
19 our communities and have a chilling effect on the
20 exchange of information between our officers and the
21 communities they serve.

22 In my humble opinion, these cameras are not intended
23 to be the source of embarrassment or humiliation. Law
24 enforcement officers often encounter citizens at their
25 lowest moments in life. Data from these cameras should

1 cameras can aid in transparency, but they will not mend
2 community relations alone. Neither will they address the
3 root causes that have led to so many tragic incidents.

4 Technology, no matter far it advances, will never
5 accomplish what can be gained when people take the time
6 to sit down, talk, listen and attempt to understand a
7 different perspective.

8 It is often said that public safety is a core
9 function of government. While I certainly believe that
10 is true, there are far too many law enforcement agencies
11 in this country that are barely making ends meet. Law
12 enforcement agencies are in desperate need for cultural
13 diversity training, use-of-force training, and de-
14 escalation training.

15 Advanced training, not just basic training, is
16 absolutely critical in our efforts to provide public
17 safety. If we truly want to increase protection for law
18 enforcement officers and the public, then we need to
19 provide our law enforcement agencies with the funds
20 necessary to attract, recruit and retain the best and
21 brightest officers.

22 Those officers should be psychologically tested and
23 equipped with the best training available to ensure they
24 serve and protect our communities with equality, fairness
25 and justice.

1 TESTIMONY OF MR. PETER WEIR, DISTRICT ATTORNEY, FIRST
2 JUDICIAL DISTRICT, STATE OF COLORADO, GOLDEN, COLORADO

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4 Mr. Weir. Chairman Graham, Ranking Member
5 Whitehouse and members of the Subcommittee, my name is
6 Peter Weir. I am an elected District Attorney from the
7 First Judicial District in Colorado. That is located in
8 Golden, Colorado, just to the west of Denver.

9 I also am privileged today to be speaking on behalf
10 of the National District Attorneys Association. We
11 appreciate very much the opportunity to lend our voice to
12 this important topic.

13 I would like to suggest that any discussion of body-
14 worn cameras is also a discussion of the foundation of
15 our criminal justice system and that foundation is one of
16 trust. It is trust in the fairness of the system, trust
17 in the men and women who work in the system, and
18 ultimately trust that justice will be done.

19 When we talk of data that is generated by body-worn
20 cameras, we need to keep in mind that that data is
21 actually evidence. So we are talking about the
22 generation of evidence. There are many, many uses for
23 the recordings generated by body-worn cameras. And as
24 has already been alluded to and as it goes to the issue
25 of trust, accountability and transparency are critical

1 of concern that are shared by prosecutors and I need to
2 stress that it is critically important as we go down this
3 path that the prosecution community be part of the
4 dialogue in creating policies and procedures not just at
5 the Federal level, but also at the state and local level,
6 to be able to engage with their local law enforcement
7 authorities to identify the issues that may be very
8 unique to each jurisdiction, because in this discussion,
9 one size does not fit all.

10 We are talking about judicial districts, law
11 enforcement agencies, sheriff's departments of various
12 sizes and what may work in one locale may also not work
13 in other locales.

14 The question that is critical for prosecutors is
15 exactly what is being recorded, what is the extent of the
16 recording. And perhaps another way to put it, when
17 should you not record? It would be easy to say just
18 record everything; anytime that an officer is on the
19 street, the camera is on. But is this really the process
20 that we want?

21 This certainly results in extraordinary costs
22 associated with this, the costs of not necessarily the
23 camera itself, but the costs of appropriate storage,
24 archiving and cataloging so that that evidence can really
25 be used in an appropriate manner.

1 TESTIMONY OF MR. WADE HENDERSON, PRESIDENT AND CEO, THE
2 LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS,
3 WASHINGTON, DC
4

5 Mr. Henderson. Good afternoon, Chairman Graham,
6 Ranking Member Whitehouse, and members of the
7 Subcommittee. I am Wade Henderson, President and CEO of
8 the Leadership Conference on Civil and Human Rights, a
9 coalition of more than 200 national organizations charged
10 with the promotion and protection of the rights of all
11 persons in the United States.

12 I am also the Joseph L. Rauh, Jr. Professor of Public
13 Interest Law at the David A. Clarke School of Law at the
14 University of the District of Columbia. Thank you for
15 bringing us together today.

16 Over the last year, we have seen a growing movement
17 to address policing practices that have a
18 disproportionate impact on low income communities,
19 communities of color, and African-Americans in
20 particular.

21 These practices, like discriminatory profiling,
22 excessive use of force, and both explicit and implicit
23 racial bias in law enforcement, have framed the national
24 debate around police reform and prompted a national
25 conversation on the use of technology, specifically,

1 Committee not to give in to this temptation because body-
2 worn cameras ^{won't} will not be operated by concerned citizens
3 and ^{won't} will not be recording officers. The will instead be
4 directed at members of the community.

5 That is why last Friday, the Leadership Conference
6 joined with a broad coalition of civil rights, privacy
7 and media rights organizations to release shared civil
8 rights principles for the use of body-worn cameras by law
9 enforcement.

10 These principles, which I would like to introduce
11 into the record today, recognize that cameras are just a
12 tool, not a substitute for broader reforms of policing
13 practices.

14 They point out that, quote, "Without carefully
15 crafted policy safeguards in place, there is a real risk
16 that these new devices could become instruments of
17 injustice rather than tools for accountability," unquote.

18 That is why it is so important ^{that} ~~then~~ when cameras are
19 deployed it is with a set of clear and narrowly defined
20 purposes and that policies governing their use are
21 developed in concert with public stakeholders.

22 These cameras should be tools of accountability for
23 police encounters, not face or body scanners for everyone
24 who walks by on the street.

25 Facial recognition and other biometric technologies

1 and implement body-worn camera policies and programs.

2

3 Without the appropriate safeguards, we are at risk of
4 compounding the very problems in policing that we are
5 seeking to fix.

6 Thank you for your consideration. I look forward to
7 your questions.

8 [The prepared testimony of Mr. Henderson appears in
9 the appendix.]

10 Chairman Graham. Thank you, Mr. Henderson. We will
11 accept your principles, without objection, and make it
12 part of the record.

13 Senator Franken, would you like to go first?

14 Senator Franken. Thank you. I feel like we are in
15 the infancy of this technology and as now Ranking Member
16 on Privacy, Technology and the Law Subcommittee, I can
17 see -- Mr. Henderson raised facial recognition and the
18 use of that possibility. We know that technology is here
19 and this raises so many issues.

20 One of the issues I talked about with Senator Scott
21 before this hearing, just a little while ago, because we
22 have heard testimony about the cost of this from Sheriff
23 Bruder.

24 In these studies, Ms. Miller, is there any indication
25 of the benefits in terms of money? In other words, I

1 stories of a miscarriage of justice because of editing of
2 footage. That is not very hard to do.

3 Then the question is what kind of protocols are put
4 in place to guarantee that that does not happen. I
5 imagine that that has been thought through.

6 Does anybody have any response to that in terms of
7 how do we avoid the *60 Minutes* story or the *20/20* story
8 or the *Dateline* story that we all have in our head 3
9 years from now or 20 years from now, someone who has been
10 in prison for 20 years for something they did not do
11 because of a misuse of this?

12 **Mr. Henderson.** Senator Franken, it is a terrific
13 question. Let me first thank the Chairman, the Ranking
14 Member and the entire Subcommittee for convening this
15 hearing, because you have, by doing so, put the issue
16 squarely on the public table and we appreciate that.

17 To avoid the problem you have identified, let us
18 begin with the need to develop these policies in public,
19 that there should be transparency and there should be
20 involvement of various sectors of the public, obviously,
21 the law enforcement professionals, certainly those who
22 are professional advocates in this area, but clearly the
23 public at large, scientists and others, and guidelines
24 have to be developed with an eye toward the subsequent
25 use of this information in various cases.

1 asking.

2 Mr. Weir talked about storage, archiving, retrieving
3 and disclosure, essentially, as all policies and before
4 storage, I guess, is what do you shoot and when.

5 Mr. Henderson, you talked about a carefully crafted
6 policy. So I think those are all things that we need to
7 keep in mind as we go through this technology and this
8 new world.

9 Chairman Graham. Senator Cornyn?

10 Senator Cornyn. Thank you for your thoughtful
11 testimony and that is perhaps one of the most refreshing
12 things I have heard, how unsimple this is. This is a
13 little bit more complicated than I think meets the eye,
14 because some of the suggestion is all you need to do is
15 put cameras on officers and you are good to go and that
16 clearly does not appear to be the case.

17 I have a particular question about victims. There is
18 something called the Federal Crime Victims' Rights Act.
19 One of the rights guaranteed is the right to be
20 reasonably protected from the accused and one of the
21 others is a right to be treated with fairness and respect
22 for victims' dignity and privacy.

23 So I would be interested, Ms. Miller -- maybe we can
24 go down the line here and I would just like to get your
25 comment on how do we be able to make sure that we protect

1 those crimes, they are not -- their identity is not
2 shared, their incident is not shared. Those types of
3 things can only be achieved through the discovery process
4 in court and that is one of the biggest concerns we had
5 there, as well as making sure that people were not
6 victimized for long-term periods based on that.

7 Senator Cornyn. Mr. Weir?

8 Mr. Weir. Senator, thank you. Thank you for the
9 attention on victims. I think this is something that is
10 very important in this discussion.

11 Victims certainly have the right to be protected and
12 they have the privacy rights associated with that. Any
13 policies that have to be crafted have got to be done
14 thoughtfully and in some detail.

15 There may be circumstances, frankly, when recording
16 of a victim would be appropriate, thinking of the
17 domestic violence victim that is recanting.

18 But there are also circumstances where it would be
19 absolutely inappropriate, the victim of a sex assault or
20 a child victim subject to abuse.

21 I think the clarity of the policies within an agency
22 becomes critical at that point, because what you are left
23 with in a courtroom setting is video for a number of
24 purposes and then it is remarkable in its absence when
25 perhaps the most important individual in a proceeding is

1 Senator Cornyn. Mr. Henderson, if I could just
2 follow-up. As I was telling Senator Scott, as we were
3 talking about the officer being responsible for turning
4 the camera off and on and being trained to turn it on at
5 the right time, I could see how that itself will be
6 controversial, because what did the officer record, what
7 did the officer choose not to record.

8 So as we said earlier, this is not perhaps quite as
9 simple as it appears.

10 Mr. Henderson. You are right, Senator, but, again,
11 if the department provides clear operational guidelines
12 for the recording, retention and access to that film,
13 then the officer is not left having to decide for him or
14 herself what incidents require recording and what do not.

15 He will have that clear, bright line that we hope
16 will encourage him to do the right thing or her to do the
17 right thing.

18 That is why it is so important that these guideline
19 be developed with public review, that they be disclosed
20 openly, that that transparency and debate in the public
21 sphere serves the interests of the officer, as well as
22 the public.

23 Senator Cornyn. Thank you. Thank you, Mr.
24 Chairman.

25 Chairman Graham. Senator Whitehouse?

1 Senator Whitehouse. In Rhode Island, we have got 39
2 cities and towns and most of them have their own police
3 departments.

4 Mr. Bruder. Yes, sir.

5 Senator Whitehouse. How many of your sheriffs have
6 what you would consider a sophisticated IT department?

7 Mr. Bruder. A handful. Obviously, a lot of them
8 have to comply with CGIS requirements from the FBI. So
9 they have got some IT, advanced IT stuff there, but only
10 a handful have the ability to go back and do those
11 things.

12 Senator Whitehouse. We have police departments that
13 have been hit by CryptoLocker and shut down.

14 Mr. Bruder. Right.

15 Senator Whitehouse. I think police departments are
16 very often targeted by hackers nowadays, whether it is
17 CryptoLocker or other devices. So the question of the
18 hackability of all of this when you consider what the
19 Rupert Murdoch folks did over in England hacking into
20 telephones, how easy would it be to pay somebody to hack
21 into these and get some of that very, very personal
22 footage out.

23 I do not know how -- I appreciate, Mr. Henderson,
24 your desire that there be a clear, bright line, but at
25 this point, I do not see a clear, bright line if you are

1 I think that for one thing, every state law is
2 different when it comes to disclosure and evidence. So
3 they are all going to be a little different. But what we
4 did was we gathered all of those policies, we spoke with
5 all of the people who have experience in this, law
6 enforcement officials and civil rights groups and unions
7 and different folks and we kind of came up with what we
8 found were, at that phase, some of the best practices and
9 the best policies.

10 So when it comes to turning the cameras on and off,
11 the policy we saw the most and that we thought was
12 probably the best was to do it during all calls for
13 service. And so when you get a call on the radio, when
14 an officer gets a call on the radio and goes to that
15 call, they turn it on from the minute they get that call
16 and it goes until the end of that incident.

17 Then also during all --

18 Senator Whitehouse. An officer comes to somebody's
19 house responding to a call. The person who made the call
20 says I do not want you to come in with your camera on,
21 this is my house, I do not know what you are going to do
22 with all that footage. What is the officer's choice
23 then?

24 Ms. Miller. Well, it depends on the jurisdiction.
25 We would recommend that the officer continue recording,

1 play out between law enforcement and the communities they
2 serve.

3 Last week was National Police Week and we honored 273
4 officers killed in the line of duty, a stark reminder
5 that policing is a dangerous profession and it is our
6 duty as elected officials to provide state and local
7 police with the support, the equipment, the training and
8 the resources they need to come home to their loved ones
9 and families at the end of each day on the job.

10 In the recent weeks and months, we have also seen
11 disturbing footage taken from a number of scenes in New
12 York and Missouri and Ohio and South Carolina and in
13 Maryland and in each of these instances, the actions
14 taken by law enforcement and the ensuing public response
15 has highlighted the deep divisions that still exist in
16 many places between law enforcement and the communities
17 they protect.

18 So it is also our duty as elected officials to try
19 and help bridge those divides, and I welcome today's
20 hearing as an opportunity to learn and work
21 constructively on what is the best way forward for
22 finding common ground.

23 Like many of my colleagues, I believe that body-worn
24 cameras have tremendous potential if implemented
25 correctly and thoughtfully to increase accountability, to

1 And when it comes to the second part of your question
2 and kind of the accountability portion, we recommend that
3 agencies share their policies online, on their Websites
4 with the public, that they share their retention
5 schedules for data with the public, and we recommend that
6 they regularly collect statistical information about the
7 usage of cameras and make that public, as well, so that
8 the public can see how the cameras are being used, what
9 is being released, things like that.

10 So those are kind of our two recommendations.

11 Senator Coons. Thank you. Mr. Bruder?

12 Mr. Bruder. Again, in South Carolina, we are
13 looking at implementing statewide legislation to have
14 body-worn cameras. The legislature has kind of sent that
15 task over to the Law Enforcement Training Council, which
16 is made up of various law enforcement agency heads from
17 across the state.

18 I know that they have already had plans to include
19 many of the groups that Ms. Miller has mentioned, as well
20 as our criminal attorneys, their associations, those
21 kinds of folks to make sure that everybody has input on
22 the implementation and the development of those policies.

23 I echo Ms. Miller's comments on the accountability,
24 that that is probably the best way to go about doing
25 that.

1 for evidentiary purposes and how can we best preserve
2 that evidence.

3

4 Senator Coons. Thank you, Mr. Weir.

5 Mr. Henderson?

6 **Mr. Henderson.** Senator Coons, thank you for the
7 question. I agree with the remarks of my colleagues.
8 All affected stakeholders should be invited to the table
9 and there should be a public debate on these issues.
10 That includes elected officials, that includes members of
11 law enforcement, it certainly includes legal advisors,
12 people ^{who} may serve -- former prosecutors, defense bar,
13 should be encouraged to come, civic organizations, as
14 well as recognized non-governmental organizations that
15 have roles to play in evaluating the implementation of
16 this, human rights groups, like Amnesty International or
17 Human Rights First might be included in the debate.

18 Now, having said that, again, body-worn cameras are
19 only one tool. They cannot accomplish the systemic
20 reform. ^{and} So if, for example, we do not have a policy
21 addressing a ban on racial profiling, for example, and
22 that continues to be a factor in law enforcement in a
23 particular community, it will defeat the purpose of the
24 body-worn camera if that purpose is to help reiterate law
25 enforcement and the community together in a new approach

1 [The prepared statement of Senator Leahy follows:]

2 *****COMMITTEE INSERT*****

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5 Chairman Graham. Senator Klobuchar?

6 Senator Klobuchar. Thank you very much, Mr.

7 Chairman and Senator Whitehouse. Thank you all for being
8 here.

9 This is an issue that is near and dear to my heart.
10 As many of you know, I used to be prosecutor and actually
11 Minnesota was one of the first states in the country that
12 videotaped interrogations both in squad cars and custody,
13 anything that was in custody.

14 It came about because of defense efforts, actually,
15 to prevent any kind of questions about bad activities,
16 but also to protect civil rights. But I made the
17 argument, and our police pretty much agreed, that it also
18 protected them. It made for a better process. It
19 allowed people to see videotape of someone when they were
20 being questioned so that jurors could judge for
21 themselves what they thought.

22 We had a few cases where we had people that would say
23 things that were somewhat incriminating on the videotape
24 that the jurors were able to see, and mostly it made sure
25 Miranda rights were read and that the process was fair.

1 Senator Klobuchar. It is also a good training
2 thing, actually, I think for officers. They are able to
3 watch each other and see what is good and what is bad and
4 make sure. It is really, I think, a very good way for
5 people to learn when they are able to watch each other.
6 But continue on.

7 Mr. Weir. I would certainly agree with that,
8 Senator. And I would also agree that we are all about
9 trying to improve our process. And from a law
10 enforcement and prosecutor perspective, our goal is to
11 pursue the truth. Our goal is to achieve justice and we
12 do not hide from the facts. And if, in fact, the video
13 recording helps establish those facts, then it is a tool
14 that should be used.

15 With respect to the taping, videotaping of
16 interactions and conversations with witnesses and
17 defendants, that is a good practice. Certainly, in my
18 jurisdiction, we do that as often as we possibly can.
19 However, it is not mandated and I would be very reluctant
20 to be advocating mandating that given the fact that, once
21 again, in the pursuit of truth, the pursuit of justice,
22 there may be legitimate evidence that results from the
23 conversations between law enforcement and individual that
24 could be lost and that subverts our pursuit of truth and
25 justice.

1 because you do not see everything that is happening on
2 video.

3 What we do not want to happen is for that to be
4 taking place with body cameras. We do not want to get to
5 the point where the body camera footage is the end-all-
6 be-all of evidence.

7 Senator Klobuchar. I understand this. We used to
8 call it the CSI effect with juries because we would have
9 a case, and Mr. Henderson knows what I am talking about,
10 where there would be no possibility of DNA, but a defense
11 lawyer would say, well, if there is no DNA, and people
12 are used to seeing this on TV. So your point is well
13 taken, although I think some of this -- you would have to
14 explain to juries why something went bad, that it is not
15 necessary to have that for a case. But I think that is a
16 good point.

17 When I came in, Senator Whitehouse was asking some
18 questions about the pilots of you, Ms. Miller. We have a
19 pilot going on in Duluth and in Burnsville, Minnesota.
20 Maybe we want to look into how they are doing there, and
21 Minneapolis with what they are doing. But I do think
22 those pilot programs are one good way of figuring out
23 what is working best and allow states to develop some of
24 these privacy policies that are going to have to be in
25 place to make this work.

1 But I want to thank all of you for being so
2 thoughtful today. Thank you.

3 Chairman Graham. Senator Scott?

4 Senator Scott. Thank you, Mr. Chairman. Thank you
5 once again holding this hearing.

6 I have met with more than a dozen groups over the
7 last couple of weeks and would love to turn the
8 information over to the Committee and submit it for the
9 record.

10 Chairman Graham. Without objection.

11 [The information referred to follows:]

12 *****COMMITTEE INSERT*****

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1 the fact that the American Laboratory is currently at
2 work looking for best practices and the best policies.
3 WE can look around the country and we will find the
4 weaving together of the best practices and policies
5 around the country.

6 I do think it is important to perhaps reemphasize the
7 necessity of local development of the policies. Policing
8 is a local effort and not a Federal effort nor should we
9 find ourselves trying to figure out how to federalize
10 local policing.

11 I think it is also important for us -- Mr. Weir, I
12 would love to hear your thoughts on the mandates. I am
13 of the opinion that we should not mandate from the
14 Federal Government what local law enforcement should do
15 for body cameras, but we certainly should encourage it
16 and we can, I think, Ms. Miller, as we have discussed
17 previously, create a framework for folks to work within.

18 Thoughts?

19 Mr. Weir. Thank you, Senator. I agree and would
20 expect that most of my colleagues in the prosecution
21 community would also agree.

22 There certainly is a place to delineate best
23 practices and there certainly is a place to try to
24 articulate the kinds of issues that need to be addressed
25 and perhaps even suggest proposed solutions to some of

1 important component.

2 Senator Scott. Thank you.

3 Sheriff Bruder and Mr. Henderson, I know that we have
4 heard a lot about privacy issues and where you use
5 cameras or not.

6 I think one of the questions I have has to do with
7 privacy issues in public spaces. With the number of
8 cameras that are now available, call it the iPhone or
9 whatever, Samsung, but I do not want to get in trouble
10 with anybody, but whatever your phone of choice is and/or
11 your cameras at grocery stores or you are walking down
12 the street and if you are in my neighborhood, you are on
13 camera because I have them all around my house, as well.

14 So the truth is that there is a new conversation and
15 perhaps new considerations that need to be absorbed as it
16 relates to privacy issues in public spaces and I am not
17 sure if you have thought this through yet, Mr. Henderson.

18 For Sheriff, since you are a man who can arrest me in
19 South Carolina, I want to make sure we give you as much
20 time as necessary on that issue of privacy. That is my
21 best joke, by the way.

22 Mr. Henderson. Senator Scott, I will be very brief.
23 I think you have identified a new, but very complex
24 challenge that faces ²¹12~~st~~ century society. After all,
25 our Congress has just gone through a debate over the

1 Senate Judiciary Committee and they have the exact same
2 conversations there. Ultimately, it came down to a
3 matter of what was subject to the Freedom of Information
4 Act and what was not. Again, it came down to a resource
5 issue and the fact that we have got very small police
6 departments that would ultimately have to create a FOIA
7 department to be able to maintain all of this data that
8 was coming in and out and all of the requests.

9 So essentially the decision was made not to make it a
10 public document, but to be able to give a copy of that
11 data to a small amount of people and then they,
12 obviously, could do with what they wanted to after that.

13 So that was our way of kind of narrowing it down so
14 that the public still does have input, the public still
15 does have knowledge, and, of course, the agency head, the
16 law enforcement agency head could still release it if it
17 benefitted the public, as well.

18 Senator Scott. Thank you very much.

19 Chairman Graham. Thank you, Senator Scott.

20 Senator Blumenthal?

21 Senator Blumenthal. Thanks, Mr. Chairman. Thanks
22 for holding this hearing and thanks to Senator Scott for
23 the bill that he has introduced and the initiative that
24 he has taken, and thanks to all of you for being here
25 today.

1 to try involved the use of video in a drug prosecution
2 where the video failed for a short period of time and the
3 defense was that the critical, in effect, exculpatory
4 support for the defendant occurred during that period
5 when the video failed and tried to create reasonable
6 doubt because of that malfunction.

7 So we are not done with this topic simply by
8 requiring cameras to be worn by police. There are
9 significant issues to be overcome and I think you have
10 all highlighted them.

11 I might just ask all of you not just for the number,
12 but could you point us in the direction of programs that
13 are working and working well so that perhaps we have
14 models for what should be done by other cities, in fact,
15 maybe other states, if you know of any.

16 Ms. Miller. Thank you again for the question. We
17 worked with several agencies that I think are doing a lot
18 of things right and even though their policies may differ
19 and we may not agree with every single policy they have,
20 I think that they are very thoughtful about what they are
21 doing.

22 I think Oakland, California was one of the initial
23 adopters of body cameras. They have had them since 2009-
24 2010. So I have worked with their chief quite a bit.
25 Places like Daytona Beach, Florida, Greensboro, North

1 Mr. Weir. Senator, in Colorado, approximately 28
2 percent of the law enforcement agencies are using body
3 cameras in one form or another. The greatest success
4 stories that I hear are coming from the very, very small
5 departments. When I say small, these are departments
6 with less than 10 sworn officers. So I think that helps
7 focus some of these issues and also perhaps reduces some
8 of the complexities associated with this.

9 Of that 28 percent in Colorado, there is only one
10 department in excess of 50 officers that have used body
11 cameras and that has been on a pilot basis.

12 So I think in Colorado that it is still an open
13 question, although the response from the agencies, the
14 smaller agencies, has been very positive.

15 Senator Blumenthal. Mr. Henderson?

16 **Mr. Henderson.** Senator, that is a great question.
17 It deserves a thoughtful response. I would prefer to
18 submit my answer in writing. I would like to consult
19 with the task force that helped to produce our civil
20 rights principles and I think they have surveyed some of
21 the programs currently in place and I would like to get
22 their advice before I ~~would~~ respond.

23 Senator Blumenthal. I would welcome that response
24 and any other written responses after this hearing from
25 any of you on any of these topics. I might just say with

1 opinion."

2 In your testimony, you noted the fact that footage
3 from body-worn cameras can be a valuable source of
4 evidence to help protect both officers and the public.
5 The public needs access to that information if it is
6 going to protect them, does it not?

7 **Mr. Henderson.** Senator Durbin, thank you for the
8 question. The answer is yes. I do think the public
9 needs access to that information.

10 Now, I would say in every instance where there has
11 been a use of force by the police department in a
12 particular encounter with the public, that information
13 should be made available and accessible and relatively
14 quickly in the aftermath of a particular incident.

15 Heretofore, we have not had adequate data about the
16 use of force or, for that matter, death in custody. It
17 was not until the Senate this year adopted a provision
18 requiring the collection of data of individuals who died
19 in the custody of law enforcement that we are beginning
20 to get that information.

21 So I am concerned about unilateral declarations that
22 exclude access of this information to the general public
23 without having first a clear discussion of why that
24 approach has ^{been} taken and whether it conforms with
25 existing exemptions of the Freedom of Information Act.

1 individual who is on the camera can request a copy of
2 that and he can obviously do what he would like to do
3 with that data then or the agency head, the law
4 enforcement agency head could still release that
5 information if he felt like it was in the best interest
6 of the public to go ahead and do that and we have seen
7 that time and time again where questionable uses of force
8 have been used and we have gone back to gone ahead
9 released the video.

10 One of the questions that was brought up earlier was
11 about tapering with the video or doing those types of
12 things. This is a topic that came up when we considered
13 our release of information.

14 Not only does FOIA prohibit us from releasing certain
15 things, but there are also ceratin things in South
16 Carolina that prohibit us from releasing victim
17 identifying characteristics or juveniles and those types
18 of things and for us to do that, we would have to go back
19 and redact.

20 Obviously, it is easy to redact a document or a piece
21 of paper where you have got a black Sharpie that we can
22 go out and do those things, but how do you redact a
23 video. And then furthermore, once we get into court,
24 will the question be raised, okay, it is obvious that you
25 have been able to redact and do this to some degree, how

1 agencies you can incorporate things from your cash cam
2 policy, but we would not recommend relying on it.

3 Chairman Graham. You have to go much further with
4 body cameras.

5 Ms. Miller. Exactly. But I do think they can be
6 instructive.

7 Chairman Graham. Has any jurisdiction ever outlawed
8 a dash camera after it came into being for any reason?

9 Ms. Miller. No. I have talked to places that --
10 actually, there was one agency that I can remember that
11 ended up getting rid of their cash cams because of the
12 expectations that the courts started having and it was
13 kind of the CSI effect that was discussed earlier.

14 They found that their officers' credibility was being
15 kind of undermined.

16 Chairman Graham. That is just one.

17 Ms. Miller. Yes. Just one that I have ever talked
18 to.

19 Chairman Graham. Mr. Bruder, dash cams in South
20 Carolina, are they pretty common?

21 Mr. Bruder. They are common. They are mostly
22 required by law, but we are still having a problem
23 getting the funding for that.

24 Chairman Graham. Would you say 80 percent, 70
25 percent?

1 Chairman Graham. Just to buy the cameras, store the
2 data, the whole package.

3 Ms. Miller. Gosh, I am terrible at math. So I hate
4 to even try. But I have talked to agencies that spend
5 millions per year on storage alone.

6 Chairman Graham. Can somebody try to find that
7 answer for us?

8 Ms. Miller. Yes. We can definitely look into that.

9 Chairman Graham. Do you agree about \$100 per month
10 per officer sounds right as far as storage?

11 Ms. Miller. I heard that. I have heard \$800 per
12 officer per year. So it depends on the size of the
13 agency, how many videos they are shooting, that sort of
14 thing.

15 Chairman Graham. Mr. Weir, you talked about look at
16 this as an evidence device; is that correct?

17 Mr. Weir. Yes, sir.

18 Chairman Graham. So chain of custody all would be
19 very important.

20 Mr. Weir. Absolutely, Senator.

21 Chairman Graham. Have you had a problem use dash
22 camera evidence?

23 Mr. Weir. We have not. In Colorado, the dash
24 cameras are used routinely by the Colorado State Patrol
25 and then it is left up to individual police departments

1 you think it is best for the Nation to go down this road?

2 Mr. Henderson. Without question, I think it is
3 absolutely essential.

4 Chairman Graham. Does everybody agree with that?
5 If you do not, speak up.

6 Mr. Weir. Senator, I think going down --

7 Chairman Graham. I am not saying a Federal mandate,
8 but just for law enforcement in general.

9 Mr. Weir. I think it can be an effective tool, but
10 once again, we have got to be very careful primarily on
11 the back end.

12 Chairman Graham. I got you. All the problems are
13 real that you have identified, but is this something
14 worth pursuing? Is the benefit greater than the cost,
15 Mr. Weir?

16 Mr. Weir. I think potentially, yes.

17 Chairman Graham. So that is common ground for
18 everybody. The benefit is worth the cost if we can do it
19 right.

20 Does anybody know if the Capitol Hill Police wear
21 body cameras?

22 Ms. Miller. I think they are looking into it, but I
23 do not think that they wear them now.

24 Chairman Graham. It seems to me that if we were
25 that concerned about it, as members of Congress, we would

1 the way to go here. Have some conditions attached to it.

2 Ms. Miller. Yes.

3 Chairman Graham. Thank you all very much. I have
4 learned a lot.

5 The hearing will be adjourned. We will leave the
6 record open for 1 week for further questions and any
7 information you want to provide for the Committee. You
8 have really done the country a great service. Thank you
9 all.

10 [Whereupon, at 4:34 p.m., the hearing was concluded.]

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