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Adjusting the Focus: Addressing Privacy Concerns Raised by Police Body-Camera Footage

Dalton Primeaux

Former J.D. candidate at Nova Southeastern University Shepard Broad College of Law

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ADJUSTING THE FOCUS: ADDRESSING PRIVACY CONCERNS RAISED BY POLICE BODY-CAMERA FOOTAGE

Dalton Primeaux[†]

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INTRODUCTION

On the night of January 14, 2018, seventeen-year-old Jordan Turpin bravely fled her home and dialed 911 to save herself and her siblings from their abusive parents.¹ “I just ran away from home because—I live

[†] Dalton Primeaux is a former J.D. candidate at Nova Southeastern University Shepard Broad College of Law. At the time of publication, Primeaux, a proud LGBTQIA+ community member, took an indefinite leave due to an unwelcoming environment at the school before his anticipated May 2024 graduation. Since taking leave, when not working on law review articles, he has been doing marketing and public relations consulting, writing for several LGBTQIA+ literary journals and magazines, and self-publishing a queer horror collection. He thanks CUNY Law Review for supporting the decision to publish his work and furthering its mission to diversify the legal sphere, acknowledging that the field still has a long way to go.

¹ Christina Ng et al., *Turpin Sisters Describe Living in ‘House of Horrors’: ‘I Thought I Was Going to Die,’* ABC NEWS (Nov. 18, 2021, 5:00 AM), <https://perma.cc/3MBF-MKUP>.

in a family of fifteen, okay? Can you hear me? And we have abusing parents. Did you hear that?”²

Jordan, completely on her own with nothing but an old cell phone, ran from her home until she was at a safe enough distance to call the police.³ “My two little sisters right now are chained up. . . . I’ve never been alone with a person, so this is very hard for me to talk [sic]. . . . This is one of the most scariest [sic]⁴ things I’ve ever done. I am terrified,” Turpin explained to the police officer in the body camera footage through anxious gasps for air.⁵ Shortly after, the house was raided.⁶

Turpin and her twelve brothers and sisters ranged in age from two to twenty-nine when the footage was recorded.⁷ Some were in such a state of malnutrition that officers initially assumed they were all minors, even though seven of them were legal adults.⁸ Police described the scene as smelling like human excrement and decay, with trash covering the entire house.⁹ The children had been beaten, starved, and sometimes shackled to their beds.¹⁰ Each child was covered in bruises.¹¹ Some of

² Brian Mezerski, *Jordan Turpin Details Making 911 Call Moments After She Escaped Family’s ‘House of Horrors,’* ABC NEWS, at 00:08-00:22 (Nov. 15, 2021, 2:01 PM), <https://abcnews.go.com/US/jordan-turpin-details-making-911-call-moments-escaped/story?id=81178117>.

³ Emily Shapiro et al., *Turpin Daughter on Escape: ‘If Something Happened to Me, at Least I Died Trying,’* ABC NEWS (Nov. 19, 2021, 5:00 AM), <https://perma.cc/PGW5-TC4F>.

⁴ It is common for children who have experienced abuse or neglect to exhibit signs of delayed language development, such as the grammatical irregularities quoted here that are uncharacteristic of most teenagers’ speech patterns. See generally Audette Sylvestre et al., *Language Problems Among Abused and Neglected Children: A Meta-Analytic Review*, 21 CHILD MALTREATMENT 47 (2016) (comparing language development between children who have experienced abuse and/or neglect and those who have not).

⁵ ABC News, *Escape from a House of Horror | 20/20 | Part 2*, YOUTUBE, at 00:23-1:30 (Nov. 20, 2021), <https://www.youtube.com/watch?v=UEKWXFESU68>.

⁶ Shapiro et al., *supra* note 3.

⁷ Melody Chiu, *5 Years After Jordan Turpin Rescued Siblings from House of Horrors, a Look Back at Her PEOPLE Interview*, PEOPLE, <https://perma.cc/78LN-8TYE> (Feb. 6, 2023, 4:23 PM).

⁸ Paloma Esquivel et al., *Children Found Shackled and Malnourished in Southern California Home; Parents Arrested*, L.A. TIMES (Jan. 16, 2018, 8:25 AM), <https://www.latimes.com/local/lanow/la-me-ln-perris-children-shackled-20180115-story.html> (on file with CUNY Law Review).

⁹ Oliver Browning, *Inside Turpin ‘House of Horror’ as Police Find Children Chained Up Living in Garbage and Faeces*, INDEPENDENT TV, at 00:07-00:22 (2021), <https://www.independent.co.uk/tv/news/b2182793.html>.

¹⁰ Steve Helling, *Jordan Turpin Recalls Harrowing Moment She Placed 911 Call That Saved Her and Siblings from Abuse*, PEOPLE (Nov. 16, 2021, 3:51 PM), <https://perma.cc/6JAB-BAEW>.

¹¹ Alaa Elassar, *‘The Only Word I Know to Call It Is Hell’: Turpin Sisters Share the Details of Their Family’s House of Horror*, CNN, <https://perma.cc/2DCL-2QG2> (July 28, 2022, 11:21 AM).

them showed signs of cognitive impairment and nerve damage.¹² The Turpins suffered from a sporadic or total lack of formal education or meaningful social interactions.¹³ Capturing national attention, these thirteen siblings who had barely seen sunlight, six of whom were children, took center stage as the public watched.¹⁴

In November 2021, the body camera footage from Jordan's rescue was broadcast on ABC as a special news event with Diane Sawyer entitled "Escape from a House of Horror."¹⁵ Part One alone has garnered over 25 million views on YouTube.¹⁶

Many public safety advocates have called for the use of police body cameras to document the interactions between officers and the public.¹⁷ In light of the documented incidents of police violence and misconduct, some advocates and policy experts have urged law enforcement to use body cameras to discourage future wrongdoing and create a record of when such incidents do happen.¹⁸ In some states, body camera footage is considered public record and can be obtained upon request.¹⁹ Most policies concerning requests for the release of body camera footage require the chief of police to grant permission for sharing the video with parties outside of the police department, but there is little guidance regarding if and when distribution should be allowed.²⁰ As a result, victims like Jordan Turpin are at risk of complete exposure during incredibly vulnerable moments in their lives. Protecting the privacy of victims and others cap-

¹² Jeremy B. White, *Turpin Family Latest: Parents Charged with Torture and False Imprisonment Following Discovery of 13 Siblings*, INDEPENDENT (Jan. 18, 2018, 8:20 PM), <https://perma.cc/6M8T-KMYC>.

¹³ See Amy Taxin & Michael Balsamo, *The Eldest of 12 Siblings Allegedly Tortured by Parents Went to College but Never Sought Help*, BUS. INSIDER (Jan. 30, 2018, 1:35 PM), <https://perma.cc/3WJZ-C8AZ>.

¹⁴ See, e.g., Chiu, *supra* note 7; Ng et al., *supra* note 1; Mezerski, *supra* note 2; Shapiro et al., *supra* note 3; Esquivel et al., *supra* note 8; Browning, *supra* note 9; Helling, *supra* note 10; Elassar, *supra* note 11; White, *supra* note 12; Taxin & Balsamo, *supra* note 13.

¹⁵ Emily Shapiro, *What Turpin Sisters Hope Public Takes Away from Their Diane Sawyer Interview*, ABC NEWS (Nov. 22, 2021, 10:59 AM), <https://perma.cc/E9PU-WARE>.

¹⁶ See ABC News, *Escape from a House of Horror | 20/20 | Part 1*, YouTube (Nov. 20, 2021), <https://www.youtube.com/watch?v=wngB96Vqbc>.

¹⁷ See, e.g., *Body Cams/Film the Police*, CAMPAIGN ZERO, <https://perma.cc/229U-LSZT> (last visited Dec. 10, 2023); *Pilot New Technologies*, N.Y.C. POLICE FOUND., <https://perma.cc/92QT-DVH9> (last visited Dec. 10, 2023); POLICE EXEC. RSCH. F., IMPLEMENTING A BODY-WORN CAMERA PROGRAM: RECOMMENDATIONS AND LESSONS LEARNED (2014), <https://perma.cc/6SWL-93LG>; *Resolution: Law Enforcement and the Use of Body-Worn Cameras*, NAACP, <https://perma.cc/T6HB-7HQN> (last visited Dec. 22, 2023).

¹⁸ See generally POLICE EXEC. RSCH. F., *supra* note 17.

¹⁹ See BRENNAN CTR. FOR JUST., POLICE BODY CAMERA POLICIES: RETENTION AND RELEASE 2-15 (2019), <https://perma.cc/LX3T-79WX>.

²⁰ *Id.* at 1.

tured in footage is one concern undergirding resistance to expanding such programs.²¹

The increasing use of body camera footage emphasizes a number of new privacy concerns. These issues, however, may be corrected by treating the candid footage more like evidence and less like a policing tool that needs special treatment.²²

The case of the Turpin family is an incredible and heart-wrenching example of how vulnerable victims are during body camera recordings.²³ When police are called to a distressing scene, the person who called them reasonably expects privacy in that moment. Police encounter citizens when they may be battered, distressed, traumatized, under the influence, or worse.²⁴ Jay Stanley, a senior policy analyst at the American Civil Liberties Union (“ACLU”), has expressed that body cameras “capture[] people at the worst moments of their lives,” and no one would want to see such footage distributed to the public for “titillation and gawking.”²⁵

Body camera videos serve as a very useful tool for accountability in the courtroom. However, these tools may have been adopted too quickly to anticipate all the privacy concerns involved in their usage. Now that body cameras are widely adopted and the public is seeing body camera footage in the news more frequently, states must start addressing these issues.

This Note will explore the history, control, and usage of body camera footage; the public’s interest in the release of footage to the media; and the public’s need for privacy. Finally, it will propose a balance between the public’s interest in both accountability and privacy.

I. BODY CAMERA BACKGROUND

Body-worn cameras regularly capture footage that seriously implicates privacy rights, especially when the camera records “victim interviews, nudity, and other sensitive subjects and when recording inside

²¹ Ethan Thomas, Note, *The Privacy Case for Body Cameras: The Need for a Privacy-Centric Approach to Body Camera Policymaking*, 50 COLUM. J.L. & SOC. PROBS. 191, 195 (2017); Bridget M. Synan, Note, *Police Body Camera Footage: It’s Just Evidence*, 57 DUQ. L. REV. 351, 365-66 (2019).

²² See POLICE EXEC. RSCH. F., *supra* note 17, at 9; Karson Kampfe, Note, *Police-Worn Body Cameras: Balancing Privacy and Accountability Through State and Police Department Action*, 76 OHIO STATE L.J. 1154, 1182-84 (2015); Synan, *supra* note 21, at 377.

²³ See ABC News, *supra* note 5.

²⁴ Mary D. Fan, *Privacy, Public Disclosure, Police Body Cameras: Policy Splits*, 68 ALA. L. REV. 395, 399 (2016).

²⁵ Matt Pearce, *Growing Use of Police Body Cameras Raises Privacy Concerns*, L.A. TIMES (Sept. 27, 2014), <http://www.latimes.com/nation/la-na-body-cameras-20140927-story.html> (on file with CUNY Law Review).

people's homes.”²⁶ In 2015, Al Tompkins, senior faculty at the Poynter Institute—a non-profit media organization and newsroom that offers training in fact-checking, media literacy, and journalism ethics—said that “violent videos should only be shown publicly if they tell the audience something they didn’t already know or understand.”²⁷ If the sentiment of this comment were to be applied to not only violent material but other sensitive content as well, then body camera footage (which may infringe on privacy rights) should be scrutinized closely before being distributed publicly.

A. History and Use of Body Cameras

In 2014, Michael Brown, an unarmed, Black eighteen-year-old man, was shot and killed by a white police officer in Ferguson, Missouri.²⁸ The inconsistency between officer and eyewitness statements contributed to the ambiguity regarding the circumstances of Michael Brown’s death.²⁹ Whether Michael was “fleeing, surrendering, or approaching the officer” when the officer discharged his weapon, for example, was one such ambiguity.³⁰ Despite these uncertainties, that a white police officer killed an unarmed Black teenager was clear and inspired intense, long-lasting racial and criminal justice protests in Ferguson and across the nation.³¹ As a result, American media was flooded with civilian concerns about police misconduct, especially when the target of the misconduct is a member of a marginalized community.³² The killing of Michael Brown, and the protests in Ferguson, drew the attention of many white and non-Black Americans who were previously unaware, or dismissive of, the frequent violence and mistreatment faced by Black Americans and Americans of color at the hands of the police.

²⁶ POLICE EXEC. RSCH. F., *supra* note 17, at 18.

²⁷ Melissa Behling, *Activist Challenges the Newsworthiness of Violent Police Videos*, UNIV. OF WISC.—MADISON CTR. FOR JOURNALISM ETHICS (Dec. 7, 2015), <https://perma.cc/Y58J-M3GJ>; *Training Catalog*, POYNTER INST., <https://perma.cc/QN7G-EBU5> (last visited Dec. 18, 2023).

²⁸ Kampfe, *supra* note 22, at 1154; Larry Buchanan et al., *Q&A: What Happened in Ferguson?*, N.Y. TIMES, <https://perma.cc/PM9D-A5TR> (Aug. 10, 2015).

²⁹ Kampfe, *supra* note 22, at 1154.

³⁰ *Id.*

³¹ See German Lopez, *What Were the 2014 Ferguson Protests About?*, VOX, <https://perma.cc/L85R-UXCX> (Jan. 27, 2016, 6:19 PM); Emma G. Fitzsimmons, *Thousands Protesting Ferguson Decision Block Traffic in New York City*, N.Y. TIMES (Nov. 25, 2014), <https://www.nytimes.com/2014/11/26/nyregion/hundreds-protesting-ferguson-decision-block-traffic-in-new-york-city.html> (on file with CUNY Law Review).

³² Kampfe, *supra* note 22, at 1154; see also Gene Demby, *The Butterfly Effects of Ferguson*, NPR: CODE SW!TCH (Aug. 11, 2016, 3:00 PM), <https://perma.cc/FCM5-PFTW>.

In November of the same year, Tim Loehmann, a Cleveland police officer, shot twelve-year-old Tamir Rice, who had been playing with a replica toy gun.³³ Loehmann shot him instantly upon arriving at the scene.³⁴ One month prior, Jason Van Dyke, a Chicago police officer, fatally shot seventeen-year-old Laquan McDonald.³⁵ Van Dyke was among the last officers to arrive at the scene and within seconds of leaving his car shot the teen boy sixteen times.³⁶ In 2015, fifty-year-old Walter Scott was fatally shot by Michael Slager, a police officer in South Carolina.³⁷ In 2016, two Baton Rouge police officers, Blane Salamoni and Howie Lake, shot father of five Alton Sterling.³⁸ In the same year, thirty-two-year-old Philando Castile was fatally shot by police officer Jeronimo Yanez during a traffic stop in Minneapolis.³⁹ In 2020, Derek Chauvin, a Minneapolis police officer, murdered forty-six-year-old George Floyd when he knelt on Floyd's neck for almost nine minutes.⁴⁰ Earlier that year, twenty-six-year-old Breonna Taylor was fatally shot in Louisville

³³ *Say Their Names: 65 Stories: Tamir Rice*, STANFORD LIBRS., <https://perma.cc/X45E-D5QZ> (last visited Dec. 14, 2023); Shaila Dewan & Richard A. Oppel Jr., *In Tamir Rice Case, Many Errors by Cleveland Police, Then a Fatal One*, N.Y. TIMES (Jan. 25, 2015), <https://www.nytimes.com/2015/01/23/us/in-tamir-rice-shooting-in-cleveland-many-errors-by-police-then-a-fatal-one.html> (on file with CUNY Law Review).

³⁴ *Say Their Names: 65 Stories: Tamir Rice*, *supra* note 33; Brandon Blackwell, *Cleveland Police Officer Shot Tamir Rice Immediately After Leaving Moving Patrol Car*, CLEVELAND.COM, <https://perma.cc/T5E6-RNZ3> (Nov. 26, 2014, 6:35 PM); Dewan & Oppel, *supra* note 33.

³⁵ Cheryl Corley, *The Officer Who Killed Laquan McDonald Is Free After Three Years. Activists Are Angry*, NPR (Feb. 3, 2022, 12:16 PM), <https://perma.cc/U2V2-HUUL>.

³⁶ *Id.*

³⁷ Michael S. Schmidt & Matt Apuzzo, *South Carolina Officer Is Charged with Murder of Walter Scott*, N.Y. TIMES (Apr. 7, 2015), <https://www.nytimes.com/2015/04/08/us/south-carolina-officer-is-charged-with-murder-in-black-mans-death.html> (on file with CUNY Law Review); Matthew Vann & Erik Ortiz, *Walter Scott Shooting: Michael Slager, Ex-Officer, Sentenced to 20 Years in Prison*, NBC NEWS, <https://perma.cc/GY3W-HEDF> (Dec. 9, 2017, 11:25 AM).

³⁸ *Say Their Names: 65 Stories: Alton Sterling*, STANFORD LIBRS., <https://perma.cc/RXW8-VFHU> (last visited Dec. 14, 2023); Vanessa Romo, *Officer Who Killed Alton Sterling Is Fired, the One Who Pinned Him Down Is Suspended*, NPR: THE TWO-WAY (Mar. 30, 2018, 8:25 PM), <https://perma.cc/3P23-5JQU>.

³⁹ *Say Their Names: 65 Stories: Philando Castile*, STANFORD LIBRS., <https://perma.cc/XWV9-5GHV> (last visited Dec. 14, 2023); *74 Seconds: The Death of Philando Castile and the Trial of Jeronimo Yanez*, MPR NEWS (available on Apple Podcasts).

⁴⁰ *Say Their Names: 65 Stories: George Floyd*, STANFORD LIBRS., <https://perma.cc/KZJ8-KL6B> (last visited Dec. 14, 2023); *George Floyd: What Happened in the Final Moments of His Life*, BBC (July 15, 2020, 8:15 PM), <https://perma.cc/4D2S-A9JH>.

when at least seven police officers forced their way into her apartment while she was sleeping in bed.⁴¹

Following these killings and various other police abuses, a diverse group of advocates began to call for the implementation of police-worn body cameras, aiming to discourage future misconduct as well as document such incidents when they occur.⁴² For example, following the police shooting in Ferguson, President Barack Obama called for increased funding for body camera programs across the nation, and in 2015, the Department of Justice (“DOJ”) funded an initiative to expand the use of this technology in more police departments.⁴³ The ACLU drafted policy recommendations supporting the use of body cameras that aimed to maximize the technology’s potential to “serve as an effective check against abuses of law-enforcement power,” which the organization believes outweighs concerns about increased recording.⁴⁴ The public outcry was far too thunderous for law enforcement agencies to ignore. Police departments throughout the country started recognizing the value of recording encounters as a means to “rebuild public trust, improve public as well as officer behavior, and protect against false complaints.”⁴⁵

Because of this realization, many cities in the United States have started to use body camera technology.⁴⁶ However, police departments’ eagerness to address public pressure has resulted in the adoption of body cameras without establishing procedures and policies that regulate their use.⁴⁷

⁴¹ See Richard A. Oppel Jr. et al., *What to Know About Breonna Taylor’s Death*, N.Y. TIMES (Dec. 13, 2023), <https://www.nytimes.com/article/breonna-taylor-police.html> (on file with CUNY Law Review).

⁴² E.g., Catherine Garcia, *Brown Family ‘Profoundly Disappointed’ Wilson Won’t Face Charges*, WEEK, <https://perma.cc/EJG2-4HNB> (Jan. 9, 2015); Michael McAuliff, *Police Cameras Seen as a Fix for Ferguson-Style Killings*, HUFFINGTON POST, <https://perma.cc/4WZC-CNPG> (Nov. 25, 2014).

⁴³ Thomas, *supra* note 21, at 192; Press Release, Dep’t of Just., Justice Department Awards over \$23 Million in Funding for Body Worn Camera Pilot Program to Support Law Enforcement Agencies in 32 States (Sept. 21, 2015), <https://perma.cc/A8HM-PMRU>.

⁴⁴ Thomas, *supra* note 21, at 193.

⁴⁵ Fan, *supra* note 24, at 399; see also Laurent Sacharoff & Sarah Lustbader, *Who Should Own Police Body Camera Videos?*, 95 WASH. U. L. REV. 269, 275, 282-85 (2017); Nancy Doolittle, *Cornell Police Implements Body-Camera Program*, CORNELL CHRON. (Feb. 2, 2017), <https://perma.cc/CE29-4RHK>.

⁴⁶ Thomas, *supra* note 21, at 192-93; Kampfe, *supra* note 22, at 1155.

⁴⁷ Kampfe, *supra* note 22, at 1155. In 2013, the United States Department of Justice Community Oriented Policing Services (“COPS”) conducted a nationwide survey of police departments using police-worn body cameras and found that nearly one-third of the responding police departments had no written policy concerning their use. POLICE RSCH. EXEC. F., *supra* note 17, at 2.

B. Officer Control of Footage

Police deciding when to use body cameras or share footage can result in misleading evidence and likely worsen public backlash.⁴⁸ Moreover, systems designed to oversee police actions are frequently turned off when officers intend to act unethically.⁴⁹ Without clear mandates for consistent body camera use and genuine consequences when those mandates are violated, such issues may continue to persist.⁵⁰

Departments using body cameras have faced criticism for inadequate policies to prevent abuse.⁵¹ For instance, the Los Angeles Police Department lost the ACLU's support due to such a policy, whose inadequacies included the contentious requirement that officers review incident footage before creating a report.⁵²

In a 2017 *Washington University Law Review* article, Laurent Sacharoff and Sarah Lustbader note that police authorities determine the operation timing of body cameras and frequently encounter minimal consequences for violating policies.⁵³ While many recording systems automatically start if triggered by a specific event, the systems also grant officers the option to manually start and stop recording.⁵⁴

Police officers possess the capability to halt the recording function of their body cameras, and this feature can be beneficial in specific scenarios like safeguarding the privacy of individuals involved in sensitive cases.⁵⁵ For example, the option to stop recording lets officers refrain from documenting private matters, including the identity of domestic violence victims or the insides of homes.⁵⁶ However, many officers misuse this power by not recording important actions while on duty.⁵⁷ Of-

⁴⁸ Kampfe, *supra* note 22, at 1155.

⁴⁹ *Id.*; see also Joel Rubin, *LAPD Officers Tampered with In-Car Recording Equipment, Records Show*, L.A. TIMES (Apr. 7, 2014), <http://www.latimes.com/local/la-me-lapd-tamper-20140408-story.html#axzz2yOaKuj8F> (on file with CUNY Law Review).

⁵⁰ Kampfe, *supra* note 22, at 1155-56.

⁵¹ Thomas, *supra* note 21, at 193; see also JAY STANLEY, POLICE BODY-MOUNTED CAMERAS: WITH RIGHT POLICIES IN PLACE, A WIN FOR ALL 4 (2015), <https://perma.cc/4VZF-XJAN>.

⁵² Kate Mather, *Divided Police Commission Approves Rules for LAPD Body Cameras*, L.A. TIMES (Apr. 28, 2015, 6:00 AM), <https://perma.cc/75T2-GX68>.

⁵³ See Sacharoff & Lustbader, *supra* note 45, at 287.

⁵⁴ *Id.* (citing LEADERSHIP CONF. ON CIV. AND HUM. RTS. & UPTURN, POLICE BODY WORN CAMERAS: A POLICY SCORECARD (2016); *Police Body-Worn Camera Policies*, BRENNAN CTR. FOR JUST., <https://perma.cc/G4P8-Y9FH> (Sept. 26, 2016)).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 288 (citing *ACLU Questions Lack of Police Body Cams in Alton Sterling Shooting*, CBS NEWS (July 6, 2016, 7:30 PM), <https://perma.cc/CAC8-Z5ZS>; Barak Ariel et al., *The Deterrence Spectrum: Explaining Why Police Body-Worn Cameras 'Work' or 'Backfire' in Aggressive Police-Public Encounters*, 12 POLICING 6 (2018)).

ficers' broad discretion in toggling body cameras on and off leads to a failure to capture the incidents the cameras are intended to capture, and the lack of consequences for this toggling hampers accountability for potential misconduct during those events.⁵⁸ The interruption of recording should therefore be restricted to exceptionally sensitive or graphic cases, such as those involving nudity or sexual violence. With less frequent instances of stopped recording and consequently more instances of sensitive or graphic footage being captured, videos will require more monitoring and redaction in the interest of protecting people's privacy.⁵⁹

A report on police actions in Albuquerque revealed that officers frequently failed to turn on their cameras, even in situations where they should have.⁶⁰ The reasons given for not recording were often generic and did not justify the failure to capture important events.⁶¹ The compliance rates with body camera policies are reported to be as low as 30%, and when officers do not follow the rules, they usually do not face significant consequences.⁶²

The way videos are managed and accessed is often designed to help build cases against suspects and protect police officers rather than ensure police accountability.⁶³ In many cases, only the police have direct access to these videos, and they can review the footage before filing reports, potentially creating biased accounts.⁶⁴ The decision to release these videos to the public or prosecutors is often left to the discretion of law enforcement,⁶⁵ which raises concerns about transparency and accountability in policing.

C. *Public Record and the Request Process*

In 1990, therapist Jerome Oziel was alleged to have administered treatment to Erik and Joseph Menendez, who were being prosecuted for their parents' murder.⁶⁶ On the belief that Oziel possessed relevant evidence, the police got a warrant to search his home and office, where they recorded everything, even Oziel's wife in her bathrobe and files

⁵⁸ *Id.*

⁵⁹ *See id.* at 321.

⁶⁰ *See* Letter from Jocelyn Samuels, Acting Asst. Att'y Gen., U.S. Dep't of Just., & Damon P. Martinez, Acting U.S. Att'y, U.S. Dep't of Just., to Richard J. Berry, Mayor, City of Albuquerque (Apr. 10, 2014), at 26.

⁶¹ *Id.*

⁶² Sacharoff & Lustbader, *supra* note 45, at 288 (citing STANLEY, *supra* note 51, at 4).

⁶³ *Id.* at 289.

⁶⁴ *Id.* at 288-89.

⁶⁵ *Id.* at 289-90.

⁶⁶ Oziel v. Superior Ct., 273 Cal. Rptr. 196, 198 (Ct. App. 1990).

with names of Oziel's other patients.⁶⁷ ABC and NBC News wanted access to these tapes and argued that they should be disclosed because they were public records under the California Public Records Act.⁶⁸

Oziel argued that releasing the videotapes would be like an "unauthorized 'video-tour' of his home," invading his right to privacy, and that the police exceeded their warrant by recording more than they should have.⁶⁹ Additionally, he argued that if the media showed these tapes, it would reveal private information that a reasonable person would find offensive.⁷⁰ Finally, he mentioned that even if no invasion of privacy had occurred, using the video for anything other than its intended purpose or sharing it with others violated the California Constitution's privacy rules.⁷¹

The California Superior Court found it was a mistake to consider the videotapes public records.⁷² It explained that because records from court cases are not part of the public records law in California, the tapes should not be seen as public records, and the lower court was wrong to allow their public release.⁷³ The police and the district attorney, the court noted, do not have any special right to have those tapes.⁷⁴ When the police seize property under a search warrant, they do so on behalf of the court, not themselves.⁷⁵ The ruling in *Oziel v. Superior Court* saved Jerome Oziel and his patients from further invasion of privacy, attesting to the benefits of exempting judicial records from public records requests.

In states that protect records, the typical review process focuses on protecting privacy rights. For example, in Florida, law enforcement agencies can provide relevant body camera recordings to the person who was recorded.⁷⁶ Florida law also provides that body camera recordings are confidential and exempt from public disclosure if the recordings were taken inside a private residence; a health care, mental health care, or social services facility; or "a place that a reasonable person would expect to be private."⁷⁷

⁶⁷ *Id.* at 198-99, 200 n.4.

⁶⁸ *Id.* at 199.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at 200-01.

⁷³ *Id.* at 207-08.

⁷⁴ *See id.* at 201.

⁷⁵ *Id.*

⁷⁶ FLA. STAT. § 119.071(2)(1)(4)(a) (2023).

⁷⁷ *Id.* §§ 119.071(2)(1)(2)(a)-(c).

In Charlotte, North Carolina, body camera recordings are not public records.⁷⁸ Recordings can generally be disclosed only for law enforcement purposes,⁷⁹ except to the person whose image or voice is in the recording (or, under some circumstances, a representative of that person).⁸⁰ However, the chief of police has the authority to share video recordings with other law enforcement agencies without the need for a court order.⁸¹ Upon the chief of police's request, the Police Attorney's Office can also seek a court order to authorize the public disclosure of body camera footage showcasing significant officer-involved incidents.⁸²

In states where the videos are subject to a public record request, the procedure instead prioritizes accountability. In Boston, "the Video Evidence Unit processes requests from the public as well as federal, state, and local prosecutors."⁸³ Non-evidentiary video is kept for thirty days, and the public can seek body camera recordings through a public records request.⁸⁴ Requests for civil discovery are directed to the Office of the Legal Advisor, while collective bargaining representatives or unions submit their requests to the Office of Labor Relations.⁸⁵ In cases where officers are served with court orders or civil subpoenas, they are forwarded to the Office of the Legal Advisor for further investigation.⁸⁶

In Cleveland, the public can request video through public records requests that "must clearly state the records and/or information being sought."⁸⁷ Media is released under the Cleveland public record policy in accordance with Ohio public records law.⁸⁸ Requests to release media to

⁷⁸ N.C. GEN. STAT. § 132-1(b) (2023); BRENNAN CTR. FOR JUST., *supra* note 19, at 4.

⁷⁹ BRENNAN CTR. FOR JUST., *supra* note 19, at 4.

⁸⁰ N.C. GEN. STAT. §§ 132-1.4A(c)(1)-(5) (2023). Recordings can be disclosed to a representative if the person in the recording is (1) an adult who has consented to the disclosure, (2) a minor or adult under lawful guardianship, (3) deceased, or (4) an adult who is incapacitated and unable to provide consent to disclosure. *Id.*

⁸¹ BRENNAN CTR. FOR JUST., *supra* note 19, at 4.

⁸² *Id.*

⁸³ *Id.* at 3; *see also* BOS. POLICE DEP'T, RULES & PROCEDURES R. 405 §§ 8.1-8.2 (2021).

⁸⁴ BOS. POLICE DEP'T, *supra* note 83, R. 405 § 8.3; BRENNAN CTR. FOR JUST., *supra* note 19, at 3.

⁸⁵ BOS. POLICE DEP'T, *supra* note 83, R. 405 § 8.3; BRENNAN CTR. FOR JUST., *supra* note 19, at 3.

⁸⁶ BOS. POLICE DEP'T, *supra* note 83, R. 405 § 8.3; BRENNAN CTR. FOR JUST., *supra* note 19, at 3.

⁸⁷ CITY OF CLEVELAND, PUBLIC RECORDS POLICY (2017), <https://perma.cc/C8CG-48TN>; BRENNAN CTR. FOR JUST., *supra* note 19, at 5.

⁸⁸ BRENNAN CTR. FOR JUST., *supra* note 19, at 5; *see also* OHIO REV. CODE ANN. §§ 149.43(H)(1)-(2) (West 2023); CITY OF CLEVELAND, *supra* note 87.

external parties are handled by the chief of police,⁸⁹ and the Mobile Support Unit also reviews and passes along requests for law enforcement purposes.⁹⁰ However, the Office of Professional Standards, which is in charge of investigating some complaints of police misconduct, does not need to file a public records request to be granted access.⁹¹

Foremost, it is important to understand whether the footage will be eligible for public release under public records laws. Sometimes a release is at the discretion of police departments or specific body camera video groups, but not always.⁹² Most states have public disclosure laws that govern when footage from body-worn cameras is subject to public release.⁹³

D. Evidence and Use by Defense

Body camera vendors and police alike “configure the access” to footage “in a manner designed to build a case against a suspect, and to prosecute that suspect in court, rather than to keep police accountable.”⁹⁴ Now that body cameras have been widely adopted, the videos can serve as evidence in the courtroom.⁹⁵ Some have pointed out that police departments deploy these programs “chiefly as a tool of ordinary law enforcement rather than accountability” or to assist in collecting evidence against individuals in criminal cases.⁹⁶ This framing naturally—but dangerously—leads law enforcement to treat body camera footage the same as any other type of criminal discovery.⁹⁷ One consequence of this is that the prosecution’s and defense’s access to video evidence differs significantly; prosecutors can view the footage when “drawing up a complaint, in arguing at any first appearance or bail hearing, . . . and in

⁸⁹ CLEVELAND DIV. OF POLICE, GENERAL POLICE ORDER: WEARABLE CAMERA SYSTEM IX(A) (2020), <https://perma.cc/NQQ2-2JKM>; BRENNAN CTR. FOR JUST., *supra* note 19, at 5.

⁹⁰ CLEVELAND DIV. OF POLICE, *supra* note 89, IX(C); BRENNAN CTR. FOR JUST., *supra* note 19, at 5.

⁹¹ CLEVELAND DIV. OF POLICE, *supra* note 89, IX(F); BRENNAN CTR. FOR JUST., *supra* note 19, at 5; *see also* *Police Oversight & Accountability*, CITY OF CLEVELAND, <https://perma.cc/DC8D-68LJ> (last visited Dec. 23, 2023).

⁹² *See generally* BRENNAN CTR. FOR JUST., *supra* note 19.

⁹³ *See Police Body-Worn Cameras Legislation Tracker*, URB. INST., <https://perma.cc/QS7W-PSNL> (July 14, 2022).

⁹⁴ Sacharoff & Lustbader, *supra* note 45, at 288.

⁹⁵ *Id.* at 273.

⁹⁶ *Id.* at 289; *see also* POLICE RSCH. EXEC. F., *supra* note 17, at 9.

⁹⁷ *See, e.g.*, N.Y.C. POLICE DEP’T, NYPD RESPONSE TO PUBLIC AND OFFICER INPUT ON THE DEPARTMENT’S PROPOSED BODY-WORN CAMERA POLICY 24 (2017), <https://perma.cc/D73J-HZWR> (stating that in New York City, defendant requests for body camera footage “are handled by prosecutors in accordance with existing criminal discovery practices and procedures”).

preparing for trial,” while the defendant and their counsel must often wait “until the eve of the trial itself.”⁹⁸

The Supreme Court has repeatedly failed to hold that defendants have a constitutional right to all relevant discovery.⁹⁹ As a consequence, defendants would likely only have a right to receive body camera videos as discovery within the Court’s prescribed limitations—namely, if the video is material and exculpatory.¹⁰⁰ Therefore, if a particular body camera video contains evidence that could potentially exculpate the defendant or significantly impact the determination of guilt or the appropriate punishment in the overall case, prosecutors are likely obligated to disclose it prior to the trial.¹⁰¹

To date, the commitment to accountability has mostly remained unfulfilled, partly due to the extensive control wielded by police over both body camera programs and the footage.¹⁰² However, these issues may be corrected by treating all body camera footage more like evidence and less like a distinctive tool that needs special treatment.¹⁰³ Just as the California Superior Court concluded in *Oziel*, each state should recognize all body camera footage—not just footage in criminal cases—as judicial record and not public record. Doing so could keep discretion regarding release and use with the court, eliminate control and partiality by the police, and curb inappropriate media requests.

II. PUBLIC INTEREST IN DISCLOSURE

The court in *Oziel* considered whether the public, especially the media, has any right to the release of videotapes.¹⁰⁴ It stressed that “the right of access [to judicial records] is not absolute,” and that “[n]ondisclosure may be appropriate for ‘compelling countervailing reasons.’”¹⁰⁵ Additionally, it asserted that while courts possess the inherent authority to manage their own records in order to safeguard litigants’ rights, in the absence of conflicting statutes or public policies, the free-

⁹⁸ Sacharoff & Lustbader, *supra* note 45, at 291.

⁹⁹ See *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (holding that defendants only have a constitutional right to evidence that is material and favorable to them); *Giglio v. United States*, 405 U.S. 150, 153-55 (1972) (holding that the *Brady* standard applies to impeachment evidence as well as exculpatory evidence); *United States v. Bagley*, 473 U.S. 667, 678 (1985) (holding that evidence is only material under *Brady* if “its suppression undermines confidence in the outcome of the trial”).

¹⁰⁰ See *Brady*, 373 U.S. at 87.

¹⁰¹ See *id.*; *Bagley*, 473 U.S. at 678.

¹⁰² Sacharoff & Lustbader, *supra* note 45, at 272-74.

¹⁰³ Synan, *supra* note 21, at 377.

¹⁰⁴ *Oziel v. Superior Ct.*, 273 Cal. Rptr. 196, 202 (1990).

¹⁰⁵ *Id.* at 203 (first alteration in original) (quoting *People v. Rhodes*, 261 Cal. Rptr. 1, 5 (Ct. App. 1989)).

dom to examine public records must be granted without hindrance.¹⁰⁶ The court further suggested that counteracting public policy might be triggered by events that injure the public or tend to challenge “individual security, personal liberty, or private property.”¹⁰⁷

In *Oziel*, the media argued that it had a First Amendment right to access the videotapes, stating that it was important to make the recordings public so that people could monitor what the police were doing while on duty.¹⁰⁸ To address this claim, the court employed the framework established in *Press-Enterprise Co. v. Superior Court*¹⁰⁹ to examine whether this First Amendment right existed in the circumstances before it.¹¹⁰ Under the *Press-Enterprise Co.* framework, a court has to first consider “whether the place and process have historically been open to the press and general public.”¹¹¹ Second, the court considers “whether public access plays a significant positive role in the functioning of the particular process in question.”¹¹² If both these questions are answered in the affirmative, “a qualified First Amendment right of public access attaches.”¹¹³ However, this right is not absolute; in some circumstances, for example, “the right of the accused to a fair trial might be undermined by publicity.”¹¹⁴ Under *Press-Enterprise Co.*, the presumption of public access may only be overcome when concealment would be narrowly tailored to serving a superseding interest in preserving higher values.¹¹⁵

Regarding the first benchmark pronounced in *Press-Enterprise Co.*, the media in *Oziel* did not establish that “the public has historically had pretrial access to items seized under color of a search warrant.”¹¹⁶ The media did not show any historical tradition in the state of California of pretrial public access to evidence.¹¹⁷

The court in *Oziel* found two cases persuasive. The first was *Times Mirror Co. v. United States*, in which the court ruled that “the First Amendment does not establish a qualified right of access to search war-

¹⁰⁶ *Id.* (citing *Craemer v. Superior Ct.*, 71 Cal. Rptr. 193, 199 (Ct. App. 1968)).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ 478 U.S. 1 (1986).

¹¹⁰ *Oziel*, 273 Cal. Rptr. at 203.

¹¹¹ *Press-Enterprise Co.*, 478 U.S. at 8.

¹¹² *Id.* (citing *Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596, 606 (1982)).

¹¹³ *Oziel*, 273 Cal. Rptr. at 203.

¹¹⁴ *Id.*

¹¹⁵ *Press-Enterprise Co.*, 478 U.S. at 10.

¹¹⁶ *Oziel*, 273 Cal. Rptr. at 204 (“Under English common law, the public had no right to attend pretrial proceedings’ . . . and closed pretrial proceedings have been a familiar part of the landscape in this country as well.” (quoting *Gannett Co. v. DePasquale*, 443 U.S. 368, 388 (1979))).

¹¹⁷ *Id.*

rant proceedings and materials” during an ongoing pre-indictment investigation.¹¹⁸ The court’s reasoning was motivated in part by concern for the privacy interests of the people identified in the warrants and supporting affidavits.¹¹⁹

The second was *Allegrezza v. Superior Court*, in which the court held that “the press and the public in general have no right to pretrial disclosure of a purported confession of a defendant awaiting trial for murder when the disclosure may deny the defendant a fair trial.”¹²⁰ The superior court opined that the rights of the press are no greater than the rights of the public generally, “and the public generally has no right to pretrial disclosure of questionable evidence [that] might well deny to the accused the fair and impartial trial” they are due.¹²¹

The court in *Oziel* concluded that the media had not shown that disclosure of the videotapes would play a significant positive role in the functioning of either the search warrant process or the pretrial hearing.¹²² The court additionally identified several counteracting policies that worked against public disclosure of the videotapes.¹²³ As the court noted, “It is one thing to be forced to submit to a search of one’s home under color of warrant; it is quite another matter to be forced to have the whole world accompany” authorities during the search.¹²⁴ Ordinary citizens enjoy the right “to be left alone in their own homes except under carefully prescribed circumstances.”¹²⁵

Ultimately, based on the procedural posture of the case and the privacy interests at stake, the court held that disclosure of the videotapes should not have been permitted¹²⁶ and that “[a]ccess to the videotapes [was] not necessary for the public to obtain knowledge about the execution of the search warrant” or the activities of authorities in its execution.¹²⁷

After digesting the reasoning in *Oziel*, it is hard not to wonder if the body camera video from Jordan Turpin’s escape was necessary for the public to obtain knowledge about the children’s rescue and the activities of the authorities involved.

¹¹⁸ *Times Mirror Co. v. United States*, 873 F.2d 1210, 1216 (9th Cir. 1989).

¹¹⁹ *Id.*

¹²⁰ *Oziel*, 273 Cal. Rptr. at 204 (citing *Allegrezza v. Superior Ct.*, 121 Cal. Rptr. 245, 247 (Ct. App. 1975)).

¹²¹ *Allegrezza*, 121 Cal. Rptr. at 247.

¹²² *Oziel*, 273 Cal. Rptr. at 204.

¹²³ *Id.*

¹²⁴ *Id.* at 207.

¹²⁵ *Id.* at 206.

¹²⁶ *Id.* at 208.

¹²⁷ *Id.* at 204.

III. NEED FOR PRIVACY

In *Commonwealth v. Kean*, the Pennsylvania Superior Court established that each examination of a secret videotape made of defendants while they were engaging in sexual activities in their bedroom was a compromise of the defendants' privacy.¹²⁸ Kean and his wife argued that their rights were violated when the lower court refused to suppress a videotape that depicted them participating in sexual activities in their own bedroom.¹²⁹ This videotape had been secretly recorded by two juvenile Peeping Toms and was given to the police by one of their mothers.¹³⁰ The police then watched the videotape without a search warrant.¹³¹

Although the case involved ordinary citizens who recorded the sexual activities in the Keans' bedroom, the significance of the tape as evidence for the prosecution lay in its depiction of images and details related to events that individuals typically anticipate will remain private, especially when they exclude the general public from their homes.¹³² A screening of the tape was essentially "a visual inspection of the home [and] was at least as revealing as an actual entry" into the residence on that same night.¹³³ The court boldly asserted that an examination of the videotape was not simply *like* a search of the home; it *was* a search of the home.¹³⁴ The Keans "had a constitutionally protected privacy interest in the home, [and] this privacy interest could have been infringed upon when the police peered into the recesses of their home by means of playing the videotape."¹³⁵

The court further explained that the Keans' privacy interest in the tape "was not destroyed when [it] was subsequently viewed by a small number of private citizens" before being viewed by the police.¹³⁶ The court thought it "clear" that being naked and vulnerable in front of one person is not the same as being naked and vulnerable in front of the entire world:

To be forced to disrobe before a stranger is an invasion of privacy; to be forced to disrobe before a second stranger and a third stranger is a further invasion of privacy. To be spied upon by a

¹²⁸ 556 A.2d 374, 387 (Pa. Super. Ct. 1989).

¹²⁹ *Id.* at 375.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.* at 382-83.

¹³³ *Id.* at 383.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* at 386.

Peeping Tom while in bed is an invasion of privacy; to be spied upon by a series of Peeping Toms and then by the police is a greater invasion of privacy.¹³⁷

Therefore, the court concluded that each time somebody watched the tape, the Keans' privacy was again compromised.¹³⁸

A. Policies That Protect Privacy

While extensive transparency measures can enhance openness and accountability, there may be privacy apprehensions associated with the public or media release of certain videos. Police departments must strike a delicate balance between upholding accountability and safeguarding individuals' privacy rights. The deployment of body cameras presents distinctive challenges and privacy concerns, leading legislatures in several jurisdictions to deliberate on bills aimed at tackling this issue.¹³⁹

In 2020, Florida Governor Ron DeSantis signed into law restrictions on when body camera footage can be made public.¹⁴⁰ According to Florida's public disclosure statute, the recording may be disclosed to certain people, including the person recorded.¹⁴¹ As noted earlier, some or all of a body camera recording is exempt from the state's public records law if it is taken within someone's home; inside 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."¹⁴²

Body camera video is available in Washington, D.C. through public records law, but videos are not released if they were recorded inside a personal residence; their release would interfere with enforcement proceedings; or they are related to an incident involving domestic violence, stalking, or sexual assault.¹⁴³

In Austin, Texas, requests from news or other media outlets for body camera footage are processed through the Public Information Office of the Austin Police Department.¹⁴⁴ According to the Texas Occupations Code, a recording of an incident involving deadly force or under

¹³⁷ *Id.* at 387.

¹³⁸ *Id.* ("Each time the videotape was screened, a window opened through which the observer could peer directly into the [Keans'] home. Each time the videotape was screened, the [Keans'] naked, sexually aroused bodies were involuntarily exposed.").

¹³⁹ See Urb. Inst., *supra* note 93.

¹⁴⁰ H.B. 7015, 122nd Leg., Reg. Sess. (Fla. 2020).

¹⁴¹ FLA. STAT. § 119.071(2)(1)(4)(a) (2023).

¹⁴² *Id.* § 119.071(2)(1)(2); Fla. H.B. 7015.

¹⁴³ D.C. CODE §§ 2-534(a)(2A)-(3) (2023); BRENNAN CTR. FOR JUST., *supra* note 19, at 14.

¹⁴⁴ AUSTIN POLICE DEP'T, GENERAL ORDERS § 303.4.5 (2022), <https://perma.cc/C55R-LKF3>; BRENNAN CTR. FOR JUST., *supra* note 19, at 14.

official investigation cannot be disclosed until the investigation concludes and all criminal matters have been adjudicated.¹⁴⁵ The Department Legal Advisor reviews the recordings and grants approval before public release, and requests from non-media outlets are handled by the Department Coordinator in Central Records.¹⁴⁶

In Tucson, Arizona, body camera footage can be released, “with redactions, through the existing public records process.”¹⁴⁷ However, accessing or releasing recordings for anything other than official law enforcement purposes is strictly prohibited.¹⁴⁸

In Oklahoma, any footage released should be redacted or obscured to hide dead bodies, nudity, minors, or private personal information, unless provided otherwise by council or court order.¹⁴⁹

To comply with the State of Washington’s Public Records Act, the Legal Unit of the Seattle Police Department is required to address all public disclosure requests as outlined in Department policy.¹⁵⁰ The Public Records Unit manages requests for police reports and carries out redactions on electronic police reports.¹⁵¹ Specifically, “all Department records must be identified to the public, so long as the records are not part of an open and active investigation and do not meet specific exemptions.”¹⁵² A video may be excluded from public disclosure if it depicts a medical facility or patient, the inside of a home, 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.¹⁵³

This exemption “may be rebutted by specific evidence in individual cases.”¹⁵⁴ The right to obtain video, subject to exemptions, is held by:

¹⁴⁵ TEX. OCC. CODE ANN. §§ 1701.660(a)-(a-1) (West 2023); BRENNAN CTR. FOR JUST., *supra* note 19, at 14.

¹⁴⁶ AUSTIN POLICE DEP’T, *supra* note 144, §§ 116.2.4(b), 303.4.2, 303.4.5; BRENNAN CTR. FOR JUST., *supra* note 19, at 14.

¹⁴⁷ BRENNAN CTR. FOR JUST., *supra* note 19, at 14; *see also* ARIZ. REV. STAT. ANN. §§ 39-121 to 39-129 (West 2023); TUCSON POLICE DEP’T, GENERAL ORDERS 7012-7014 (2012), <https://perma.cc/3GTT-S56X>.

¹⁴⁸ BRENNAN CTR. FOR JUST., *supra* note 19, at 14.

¹⁴⁹ OKLA. STAT. tit. 51, § 24A.8(A)(9) (2023).

¹⁵⁰ SEATTLE POLICE DEP’T, MANUAL § 12.080-POL(5), <https://perma.cc/S69Z-9SYT>; BRENNAN CTR. FOR JUST., *supra* note 19, at 13.

¹⁵¹ SEATTLE POLICE DEP’T, *supra* note 150, § 12.080-POL(6); BRENNAN CTR. FOR JUST., *supra* note 19, at 13.

¹⁵² BRENNAN CTR. FOR JUST., *supra* note 19, at 13; *see also* WASH. REV. CODE § 42.56.240(14) (2022). *See generally* WASH. REV. CODE §§ 42.56.210-692 (2022).

¹⁵³ WASH. REV. CODE §§ 42.56.240(14)(a)(ii)-(vii) (2022); BRENNAN CTR. FOR JUST., *supra* note 19, at 13.

¹⁵⁴ WASH. REV. CODE § 42.56.240(14)(b) (2022); *see also* BRENNAN CTR. FOR JUST., *supra* note 19, at 13.

[a] person involved in a recorded incident or a related criminal case[;] an attorney representing a person regarding the denial of civil rights or a violation of a U.S. Dept. of Justice settlement agreement[;] or an executive director from the Washington State Commission on African-American Affairs, Asian Pacific American Affairs, or Hispanic Affairs.¹⁵⁵

Additionally, the ACLU drafted a model statute to assist states in regulating wearable body cameras by law enforcement.¹⁵⁶ The model statute was most recently updated in July 2021, and it states that law enforcement agencies shall not divulge or use any recordings for commercial or non-law enforcement purposes.¹⁵⁷ However, according to the ACLU's model statute, with accountability and police misconduct in mind, body camera video footage should generally “not be released to the public in the absence of express written permission from the non-law enforcement subject(s)” of the footage.¹⁵⁸ And in cases where the subject of the video is “shot by a firearm, killed or grievously injured, the requested footage will be provided as quickly as possible—no later than five days after receipt of the request.”¹⁵⁹ Footage cannot be withheld from public access under the claim of being an investigatory record when a police officer or any other law enforcement personnel is under investigation concerning their on-duty behavior.¹⁶⁰

Each state takes a different approach to regulating footage from police-worn body cameras. Some states, like Washington, explicitly state exemptions from public disclosure based on subject matter or location of the footage.¹⁶¹ Privacy is obviously an element of concern for many, but there is yet to be a clear and universal way to approach and prioritize those concerns.

Most importantly, although public disclosure laws govern footage from body-worn cameras and when they are subject to public release, “most of these laws were written long before police departments began deploying body-worn cameras” and therefore “do not necessarily account for all of the considerations that must be made.”¹⁶²

¹⁵⁵ BRENNAN CTR. FOR JUST., *supra* note 19, at 13; *see also* WASH. REV. CODE § 42.56.420(14)(e)(i) (2022).

¹⁵⁶ *See* ACLU, A MODEL ACT FOR REGULATING THE USE OF BODY WORN CAMERAS BY LAW ENFORCEMENT (2021).

¹⁵⁷ *Id.* § 1(s).

¹⁵⁸ *Id.* § 1(l)(1).

¹⁵⁹ BRENNAN CTR. FOR JUST., *supra* note 19, at 16; ACLU, *supra* note 156, § 1(l)(2).

¹⁶⁰ BRENNAN CTR. FOR JUST., *supra* note 19, at 16; ACLU, *supra* note 156, § 1(m).

¹⁶¹ *See* WASH. REV. CODE §§ 42.56.240(14)(a)(ii)-(vii) (2022).

¹⁶² POLICE EXEC. RSCH. F., *supra* note 17, at 17.

B. Minors in Focus

Jordan Turpin was only seventeen years old in the released footage.¹⁶³ In the Turpin case, children and their disabled adult siblings were exposed in an incredibly public way via body camera footage released to the media.¹⁶⁴

If the footage from a body camera does not pertain to accountability and depicts a minor, it should not be released to the public. As Al Tompkins of the Poynter Institute has stated, “[V]iolent videos should only be shown publicly if they tell the audience something they didn’t already know or understand.”¹⁶⁵ The same should be true with other subject matters that deserve heightened discretion, such as videos involving minors. Children are especially vulnerable. Therefore, their right to privacy should be greater, and they should not be put in danger of exploitation from media coverage and internet circulation of body camera footage.

However, only a few states’ public disclosure laws even address minors in their statutes at all.¹⁶⁶ In North Carolina, video or audio recording may be disclosed to “[a] personal representative of a minor or of an adult person under lawful guardianship whose image or voice is in the recording.”¹⁶⁷ In California, in instances when privacy outweighs public interest in disclosure, upon request, recordings should still be provided to the individual whose privacy is under consideration or a representative of that person.¹⁶⁸ This includes the legal guardian if the subject is a minor or the “heir, beneficiary, designated immediate family member, or authorized legal representative” if the subject is deceased.¹⁶⁹

The most protective statute for minors may be Section 42.56.240 of the Revised Code of Washington. As previously stated, this statute excludes video from public dissemination if it depicts a medical facility or patient, the inside of a home, an “intimate image,” a minor, a dead body, the identity of a victim or witness of sexual assault or domestic violence, or the location of a domestic violence program.¹⁷⁰

¹⁶³ *E.g.*, Browning, *supra* note 9.

¹⁶⁴ *See, e.g., id.*

¹⁶⁵ Behling, *supra* note 27.

¹⁶⁶ *See* BRENNAN CTR. FOR JUST., *supra* note 19, at 2-15.

¹⁶⁷ N.C. GEN. STAT. § 132-1.4A(c)(3) (2023); *see also* BRENNAN CTR. FOR JUST., *supra* note 19, at 4.

¹⁶⁸ CAL. GOV’T CODE § 7923.625(b)(2)(A) (West 2023); BRENNAN CTR. FOR JUST., *supra* note 19, at 7.

¹⁶⁹ CAL. GOV’T CODE §§ 7923.625(b)(2)(A)-(C) (West 2023); *see also* BRENNAN CTR. FOR JUST., *supra* note 19, at 7.

¹⁷⁰ WASH. REV. CODE. §§ 42.56.240(14)(a)(ii)-(vii) (2022); BRENNAN CTR. FOR JUST., *supra* note 19, at 13.

IV. FINDING A BALANCE

The utilization of body cameras raises concerns related to privacy and accountability, and effective policies must strike a balance that protects both these competing interests. Only by adequately addressing these considerations can body camera programs truly benefit the public. As we continue to ponder whether transparent policing requires the reduction of privacy, it is still important to try to balance privacy with accountability. Therefore, in an effort to protect privacy rights, body camera footage should not be owned by the police and would instead be better suited for a third-party agency. There should also be a higher standard of discretion in order to disseminate the videos to the public through news media.

A. *Third-Party Agency*

Police control over videos might not be good for the public, and that control would be better suited for a third-party agency. So, instead of the police having the videos, another group, like a police accountability agency, should be in charge.¹⁷¹ This agency would choose the cameras and decide which ones to use, but the police would still help in the decision.¹⁷²

Other groups, like state legislatures, city councils, complaint review boards, defense attorneys, and attorneys general, should also be part of the process. They would similarly give ideas about which cameras to use and how to set them up, and they would be in charge of dealing with claims of police misconduct—either defending or prosecuting them—to ensure the program keeps police accountable. Groups that care about privacy should also be involved.¹⁷³

This group would do what scholars, policymakers, and advocates have been asking for. They want more control over how the police act, and this group would keep a closer watch on them.¹⁷⁴ The police would

¹⁷¹ See Sacharoff & Lustbader, *supra* note 45, at 275 (“We propose a solution to this disturbing trend: shift the ownership and control over videos from the police to a neutral, third-party government agency—a police accountability agency. This new agency would follow new disclosure rules. These rules would promote accountability by calibrating disclosure according to that value. Second, these rules would enhance fairness in the criminal justice system through early, symmetrical disclosure of footage to defendants and their counsel.”).

¹⁷² *Id.* at 291 (“Police and law enforcement interests generally play a central role in procuring body camera systems. In New York City, for example, a federal court ordered the police department to create a body camera pilot program precisely to remedy constitutional violations and improve accountability. But the New York City Police Department (NYPD) had sole discretion in choosing a vendor.”).

¹⁷³ See Kampfe, *supra* note 22, at 1171-72.

¹⁷⁴ *Id.*

still help decide how to get the cameras, set them up, and use them,¹⁷⁵ but the third-party agency should be in control of selection, especially since many camera companies cater to police preferences.¹⁷⁶ Prosecutors and judges would also help make sure the videos are useful in the early stages of criminal cases.¹⁷⁷

The group would be run by neutral people who make everyday decisions about the program and when to show the videos. They would also show the videos to the media, people who want to sue the police, and the Department of Justice to make sure the police are doing their jobs. But if the case is about something private like child abuse or domestic violence, they might not show the video to the media. This police accountability agency would mainly focus on body camera footage, but it could work on its own or be part of a larger accountability agency, as long as that agency stayed independent from the police and other law enforcement.

Overall, the agency would make sure the police are held accountable.¹⁷⁸ It would check body camera videos when there is a claim of misconduct, and it would check other videos unaccompanied by such claims to see how the police are doing as a whole. These tasks would involve keeping an eye on the police. The agency would use these videos to deter misconduct, expose it when it happens, punish the police for any mistakes, and create programs for the whole department to do better. These videos would mostly be used as evidence in cases against the police, not as evidence against suspects.

If this agency is all about making sure the police do the right thing, then it should only be used for that, not for news stories. Keeping that in mind, and following the ACLU's model statute, which says that recordings should not be shared or used for any business or non-police purpose, a video would not be shown to the public unless (1) it centered on police doing something wrong and (2) the public did not already know what happened.¹⁷⁹ If this idea were accepted, videos would not be used to make a private, disturbing story more interesting. They would be used for what they are supposed to be used for: making sure police officers are doing their jobs. When making rules for body cameras, it is important for the people in charge to think about both privacy and making sure the police are held accountable.

¹⁷⁵ Sacharoff & Lustbader, *supra* note 45, at 291.

¹⁷⁶ *Id.* at 286 (discussing several body camera websites being geared toward police protection).

¹⁷⁷ *Id.* at 305, 312.

¹⁷⁸ See generally Fan, *supra* note 24 (advocating for having a third-party agency be in charge of handling body camera recordings by prioritizing law enforcement accountability).

¹⁷⁹ ACLU, *supra* note 156, § 1(s).

These rules are a positive step towards making sure body cameras are used for the right reasons, but they do not account for all concerns that arise from the camera footage. It might be time for states to look at these rules again and agree on what is best. The ACLU has made a set of rules to help states control how the police use body cameras,¹⁸⁰ which is a good starting point, but it also does not cover all the issues that come up with the videos.

If state laws still control how body cameras are used, the best rules might be a mix of what North Carolina implements¹⁸¹ and what the ACLU suggests. If the only purpose of the videos is to make sure the police are doing their jobs right, then when it comes to videos that are interesting for the news, they should only be shared if the story is *also* about making sure the police are doing their jobs right. And to make this happen, it would be better for a different group, not the police, to own the body camera videos.

B. *Balancing Factors*

Six factors should be considered by the police accountability agency when relinquishing a police-worn body camera video to the public: (1) its use in a criminal trial, (2) public interest, (3) location, (4) subject matter, (5) age of subjects or victims, and (6) purpose of use.

The first factor weighs the interest in using the footage in criminal court proceedings and trials. As discussed in *Press-Enterprise Co. v. Superior Court*, “open criminal proceedings give assurances of fairness to both the public and the accused,” but in some circumstances, the defendant’s right to a fair trial might be undermined by publicity, and this should be considered.¹⁸²

The police accountability agency should take the public interest of releasing the video into account to further free speech interests and the public’s right to information. The party responsible for publishing the video should evaluate whether making it publicly available significantly contributes to the effectiveness of the specific procedure and if granting access to the video is essential for the public to gain insights into how the process is carried out and the actions of the authorities involved.¹⁸³

¹⁸⁰ See generally *id.*

¹⁸¹ As previously discussed, in North Carolina, body camera footage is not considered part of police personnel records and can only be shown as allowed by the state’s laws, which say that only certain people or agents can watch the videos and they can only be used for court and police reasons. N.C. GEN. STAT. §§ 132-1.4A(b)-(c) (2023).

¹⁸² *Press-Enterprise Co. v. Superior Ct.*, 478 U.S. 1, 9 (1986).

¹⁸³ The California Superior Court also applied this framework in *Oziel v. Superior Court*, 273 Cal. Rptr. 196, 203-04 (1990). See discussion *infra* Section I.C.

The recording's location is also crucial. Just like in Florida's law, if the body camera footage is captured within someone's residence, a healthcare or mental health facility, or in a location where a reasonable person would anticipate privacy, release should be prohibited.¹⁸⁴

Sensitive subject matters depicted in body camera footage, such as domestic violence, child abuse, death, sexual assault, and nudity, should also weigh against release to the public and be heavily redacted if released. While scandalous or sensational personal events like divorce or adultery often pique the public's curiosity, providing titillation and entertainment, these matters typically fall short of informing citizens and fail to rise to the level of genuine public interest.¹⁸⁵ Matters of a personal nature are generally not released to inform the public but are rather sensitive issues that warrant privacy and respect.

The consideration of individuals' ages should also play a pivotal role in the decision-making process. Specifically, if the video features a minor, this should be a deterrent to releasing the content to the public. Vulnerability associated with minors necessitates a careful evaluation, with the inclination to err on the side of caution in matters of public disclosure.

In *Oziel v. Superior Court*, Oziel argued that the use of video for a purpose other than the one for which the government created it was explicitly repudiated by the California Constitution's privacy amendment.¹⁸⁶ If the sole purpose of body camera footage is accountability, footage should only be disseminated if the media story is focused on accountability. Therefore, if the purpose of releasing a body camera video is not to address a question of police accountability, it weighs heavily against its release.¹⁸⁷

In an effort to protect privacy rights, newsworthy footage should only be disseminated if it is heavily monitored and redacted, the release is in the best interest of the public, and the news story attached to the video is focused on accountability.¹⁸⁸ State laws should otherwise explicitly repudiate its use. Such repudiation may take the form of privacy-focused policies; body camera footage being owned by a third party; only releasing footage to the media when appropriate; and treating body camera footage solely as a judicial record, not a public record.

¹⁸⁴ FLA. STAT. § 119.071(2)(1)(2).

¹⁸⁵ See *Time, Inc. v. Firestone*, 424 U.S. 448, 454-57 (1976).

¹⁸⁶ 273 Cal. Rptr. 196, 199 (1990).

¹⁸⁷ See generally ACLU, *supra* note 156; Sacharoff & Lustbader, *supra* note 45.

¹⁸⁸ See Sacharoff & Lustbader, *supra* note 45, at 321; Synan, *supra* note 21, at 373-74.

CONCLUSION

The increasing use of body camera footage drums up a number of new privacy concerns, but these issues may be corrected by treating the candid footage more like evidence and less like a policing tool that needs special treatment,¹⁸⁹ because judicial records are exempt from the definition of public records.¹⁹⁰ According to state and municipal policies, footage is hovering in limbo somewhere between a public record and judicial record, depending on its status as evidence.¹⁹¹ If we treat body camera videos more like evidence or a tool of the court, many privacy questions would be answered.¹⁹²

Release of this footage to the public should be discouraged when possible, especially in criminal cases, because the release may interfere with the case and infringe on privacy rights.¹⁹³ Under this framework, the Turpin case could have probably met enough factors that an agency would opt not to release the video. There was a criminal case attached to the footage, access to body camera footage was not necessary to obtain knowledge for the benefit of the public interest, the subject matter involved child abuse, minors were depicted, and the purpose of the video was not in connection to police accountability.

It is important to note that even though Jordan Turpin most likely did not personally contest the video's dissemination—and in fact, it appears she supported its dissemination—this should not be dispositive of whether the video should have been released to the public. Nor should the fact that at the time of the video's release, enough years had passed that the video would not substantially affect any proceedings. For all of the reasons discussed thus far, use of the video is still questionable in general, regardless of whether she consented to its release or the status of the proceedings.

It is also likely Jordan Turpin felt compelled to continue to advocate for herself and her siblings even after their escape. Despite facing unstable housing, she eventually registered for college; however, her

¹⁸⁹ Chuck Wexler, executive director of the Police Executive Research Forum ("PERF"), captured this misguided attitude perfectly in his introduction to a PERF research report on body camera policy: "The decision to implement body-worn cameras should not be entered into lightly. . . . [O]nce the public comes to expect the availability of video records[,] it will become increasingly difficult to have second thoughts or to scale back a body-worn camera program." POLICE EXEC. RSCH. F., *supra* note 17, at v.

¹⁹⁰ See Kampfe, *supra* note 22, at 1182-84. See generally Synan, *supra* note 21.

¹⁹¹ See BRENNAN CTR. FOR JUST., *supra* note 19, at 2-15.

¹⁹² Synan, *supra* note 21, at 377-80.

¹⁹³ See, e.g., *Oziel v. Superior Ct.*, 273 Cal. Rptr. 196, 203-04 (1990).

depression proved to be debilitating.¹⁹⁴ “They separated me from my younger siblings and basically left me to be homeless,” she said in an interview.¹⁹⁵ Unfortunately, Jordan and five of her siblings continued to experience trauma when they were assigned to an abusive foster home.¹⁹⁶ The siblings initiated legal action against Riverside County and their foster care agency, ChildNet Youth and Family Services, and their complaints included allegations “that the foster family had a prior history of abusing children [and] that the organizations were aware of that history—and failed to act even after the children asked for help.”¹⁹⁷

This Note does not aim to vilify technological progress. In fact, it was modern technology that ultimately led to the Turpins’ rescue.¹⁹⁸ More than her old cell phone and the body camera played roles in their story. Jordan has expressed that social media, specifically TikTok, inspired her to seek help.¹⁹⁹ The maltreated siblings were able to see the way other people were living and were even able to communicate with people online on some occasions, helping them understand that the way they were being treated was not acceptable.²⁰⁰

Since her daring escape, Turpin has gathered a following of over 1 million on her TikTok account, where she shares beauty tips and viral dance clips.²⁰¹ Her greatest aspiration “is that someone watching is finding strength through her story.”²⁰² She is now one of the inspiring figures on social media she once looked up to.

Rather than condemning technological advances, this Note intends to advocate for responsible technology use and recalls the original reasons behind the adoption of body cameras by the American people.

¹⁹⁴ Chelsea Ritschel, *Jordan Turpin Opens Up About Healing from Trauma of Foster Care Abuse After Rescue from ‘House of Horrors,’* INDEPENDENT (July 27, 2022), <https://perma.cc/VKZ3-PZBS>.

¹⁹⁵ Chiu, *supra* note 7.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *House of Horrors Survivor Jordan Turpin Talks Trauma as Social Media Influencer Models in Stunning Elle Spread*, INSIDE EDITION (Feb. 8, 2023, 9:02 AM), <https://perma.cc/25X5-KLJN> (explaining that Turpin was able to use her cell phone to make a call that eventually led to her and her siblings’ rescue).

¹⁹⁹ Ng et al., *supra* note 1.

²⁰⁰ Shapiro et al., *supra* note 3.

²⁰¹ Inside Edition, *supra* note 198; Chiu, *supra* note 7.

²⁰² Kyler Alvord, *Jordan Turpin Hopes to Become Motivational Speaker After College and ‘Make a Difference in the World,’* PEOPLE MAG. (Nov. 23, 2021, 1:09 PM), <https://perma.cc/7VFH-VZ3Q>.