BODY WORN CAMERAS:
STUDENT PRIVACY RIGHTS
AND VIDEO SURVEILLANCE

By Bernard James, Professor of Constitutional Law, Pepperdine University and Fhanysa Clark, Graduate Student in Law and Public Policy, Pepperdine University
The important dimension of campus safety which affects student rights is the movement among educators toward greater reliance on video surveillance. Events are moving swiftly and a great deal is being attempted. For instance:

- The U.S. Department of Education reports that during the school year 2013-2014, more schools reported using security cameras.
- Washington, D.C.-area public school districts utilize more than 30,000 surveillance cameras inside school buildings to monitor school safety.
- In Illinois, the Springfield School District is spending $489,200 in health life safety funds to install 30 to 40 security cameras at each school.
- In California, the Santa Maria Joint Union High School District is installing cameras and tracking devices to its buses. The monitoring system, "rMax Trac," will allow the school district to know the location of its buses, see what's happening on the buses, and know the names of all the students on board.

At the same time, a new form of video surveillance that is very controversial among educators and law enforcement is emerging. School districts and police departments are introducing body-worn camera programs ("BWC") onto public school campuses.

- In Iowa, the Burlington Community School District is equipping school administrators with body cameras to record their interactions with students and parents.
- In Pennsylvania, York City officials are equipping school resource officers with body cameras. The new policy will require School Resource Officers (SROs) to record incidents when officers are called to respond.
- In Georgia, SROs in Clayton County will again begin the school year equipped with body cameras.

In policy discussions, it is possible to make too much of the differences between BWC and the traditional, fixed, video surveillance cameras, thereby losing one’s way in selecting the best program. Admittedly, the BWC is an imposing leap forward by simultaneously recording both video and audio footage. It also gives the wearer mobility to target the subject(s) of the surveillance with the ability to film close-up images of events. However, these differences should be taken at face value. In all cases, they merely serve to place an even greater emphasis on existing privacy laws that limit government surveillance of citizens.

Two traditional constraints from the law carry over to school-based BWC programs. The first constraint restricts the places where the device is allowed to record. This privacy demand is a variation on the well-known theme of the legitimate expectation of privacy students possess while in school. The second constraint is the duty to avoid unwarranted disclosures of personal student information by implementing administrative security procedures. Therefore, the policy challenge is straightforward: How should BWC programs be implemented to avoid violation of student privacy rights?

DEVELOPMENT OF BWC PROGRAMS

There is no way of knowing when the first BWC programs were commissioned. Law enforcement agencies in the United Kingdom were experimenting with BWC as far back as 2005. In the United States, police officers in Rialto, California, Mesa, Arizona, and Fort Worth, Texas, began using body-worn cameras in 2012. In August 2013, the Police Executive Research Forum ("PERF") made a survey of 500 law enforcement agencies in the U.S. in which 25% made use of BWCs.

Early BWC programs were primarily internal tools to improve police operations. The video record was used as a training tool for incoming officers, as documentation in performance evaluations for veteran personnel, and as a resource for improving tactics and communication. At the same time, BWC programs were being required to resolve misconduct investigations against police departments by outside organizations. Jurisdictions began relying on BWC programs to document compliance with the terms of consent decrees with courts and in agreements with the Civil Rights Division at the U.S. Department of Justice. In this way, expansion of BWC programs evolved to its current form.

The undeniable benefits of BWC programs were established in 2012 in pilot programs in Rialto, California and Mesa, Arizona. The results of the studies show both a decline in public dissatisfaction with police conduct and a decrease in tension between residents and officers. In Rialto, a small city of approximately 100,000 residents, officials saw the number of complaints filed against police officers decline 88 percent. In Mesa, a city of 400,000, complaints against officers declined 40 percent.

Two most important implications for BWC programs quickly emerged — police accounta-

bility and public trust. Phoenix, Arizona officials made use of BWC footage to discharge a police officer from employment for directing profane language at citizens during calls and traffic stops. And in Kentucky, a Louisville school resource officer was arrested after school surveillance cameras caught him punching a student and placing another in a chokehold.

With the exception of the Burlington Community School District in Iowa, school security officers and school resource officers wear the devices in BWC programs. The objectives in these programs reflect the hope of improving officer performance and accountability, providing an important new category of evidence in solving crimes, resolving civil rights complaints, and enhancing the transparency of law enforcement programs. The BWC program in the Burlington, Iowa suggests more educators will soon wear the devices with two additional goals: improving how school officials relate to students and enhancing the community's perception of the safety of the school.

STATE LAWS ON BWC PROGRAMS

To date, state laws broadly authorize and regulate BWC programs focusing on law enforcement use only. Twelve (12) states have enacted the following legislation.

<table>
<thead>
<tr>
<th>State</th>
<th>Bill</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arizona</td>
<td>SB 1300</td>
</tr>
<tr>
<td>Colorado</td>
<td>HB 15-1285</td>
</tr>
<tr>
<td>Florida</td>
<td>SB 248</td>
</tr>
<tr>
<td>Georgia</td>
<td>SB 94</td>
</tr>
<tr>
<td>Illinois</td>
<td>SB 1304</td>
</tr>
<tr>
<td>Nevada</td>
<td>SB 111 and AB 162</td>
</tr>
<tr>
<td>North Dakota</td>
<td>HB 1264</td>
</tr>
<tr>
<td>Oklahoma</td>
<td>HB 1037</td>
</tr>
<tr>
<td>Oregon</td>
<td>HB 2571</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>§SB 57</td>
</tr>
<tr>
<td>South Carolina</td>
<td>SB 47</td>
</tr>
<tr>
<td>Texas</td>
<td>SB 158</td>
</tr>
</tbody>
</table>

Florida’s BWC law (SB 248) became effective on July 1, 2015. The law creates a broad exemption for BWC footage preventing disclosure to the public. It makes BWC recordings confidential if the recording is taken within a private residence, a health care facility or a place where a person would expect privacy. Pennsylvania’s BWC law (SB 57) became effective February 2014. It amends state wiretapping laws to allow police to implement BWC programs. The law places restrictions on BWC use in private residences, and requires officers to announce the use of the BWC of the camera.
to citizens as soon as reasonably possible. The law does not contain an exemption for BWC footage and a court has recently ruled that BWC records are subject to public disclosure.13

In South Carolina, the BWC law (S 47) was signed into law on June 10, 2015. It creates an unfunded mandate for all law enforcement agencies in the state to implement a BWC program. The law exempts BWC footage from disclosure under the Freedom of Information Act, but police agencies have discretion under the law to release body camera footage. In Texas, legislation (SB 158) authorizing BWC programs took effect on September 1, 2015. Under the law, a grant fund is created to help Texas law enforcement agencies purchase and implement their programs. An officer equipped with a BWC is required to activate the camera “when responding to calls for assistance and when performing other law enforcement activities, including traffic stops, pursuits, arrests, searches, or interrogations, unless activation of the camera would be unsafe, unrealistic, or impracticable.” The Illinois BWC law (SB 1304) takes effect on January 1, 2016. Its provisions regulate footage retention, recording protocol, and video dissemination. The BWC must be able to record for 10 hours, must be turned on 30 seconds before an encounter with a citizen, and be on at all times when an officer is responding to a call. An officer must inform the citizen they are being recorded. Video footage can be held for 90 days before being destroyed unless it has been flagged because of a complaint or as part of an investigation.

None of the state laws govern BWC programs by educators. Future legislation on school-based BWC programs will need to acknowledge and account for four unique elements in education law: the wide expanse of common areas on public school campuses, the broad expectation of privacy of students, the authority of educators to maintain a safe learning environment, and the unique relationship between SROs and school officials.

BWC Programs and Common Areas on Public School Campuses

The bright line that separates lawful surveillance from illegal recording is the reasonable expectation of privacy. The law of the Fourth Amendment to the U.S. Constitution controls all student assertions of privacy.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and the warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.14

Generally, most school video surveillance programs used for campus safety do not intrude upon legitimate expectations of privacy. When video cameras cover only public spaces, the expectation of privacy is difficult to assert. For example, student activities occurring in parking lots, hallways, classrooms, buses, auditoriums, and other common areas do not create reasonable expectations of privacy.15 In addition, schools have an effective and lawful way to eliminate expectations of privacy for the physical plant and school-owned equipment used by students from day-to-day by declaring their intentions in school policy documents. This effectively disqualifies lockers, desks, books, computers, tablets, and other school property from providing the basis for a reasonable expectation of privacy.16

Therefore, in common areas the validity of school-based BWC programs is a given. Moreover, there is no First Amendment claim to be asserted in the BWC context; video surveillance “does not violate First Amendment rights, even though it may be directed at communicative or associational activities, and even though it may inhibit those activities.”

Because nothing is as important as our future

Lockemout®

Lockemout is the rapid lockdown solution to an active shooter scenario. They are a system of high quality, made in America door anti-breach devices, providing easy to use, stand-alone security for all types of doors. They are innovative physics-based devices, easily deployed in seconds. Totally stand-alone, so there is no need to modify any part of the building. Lockemout provides exceptional intruder defense at an affordable price.

WWW.LOCKEMOUT.COM

SCHOOL SAFETY Fall 2015

16
to school officials when "there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school." T.L.O. 469 U.S. at 341. A BWC search is valid when "the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction." T.L.O. 469 U.S. at 342. Therefore, challenges to the implementation of school-based BWC programs should mimic the results of the reasonable suspicion cases generally.

THE UNIQUE RELATIONSHIP BETWEEN SROS AND SCHOOL OFFICIALS

An issue that is both misunderstood and controversial among policymakers is the question of the status of the school resource officer when conducting searches. Education law on searches after T.L.O. is based on the presumption that a "school official" is conducting the search. As the Court in T.L.O. puts it,

"[A] search of a student by a teacher or other school official will be "justified at its inception" when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. T.L.O. 469 U.S. at 341-42 (emphasis added).

In all but two states, the law generously considers the school resource officer to be a school official. One federal court summaries the law this way:

"[T]he weight of authority holds... that a search of a student on school grounds by a school resource officer at the request of school officials should be deemed a search by a school employee for Fourth Amendment purposes and thus is subject to the reasonableness standard, not the probable cause standard." Wilson v. Cahokia Sch. Dist. #187, 470 F. Supp. 2d 897, 2007 U.S. Dist. LEXIS 3974 (S.D. Ill. 2007)

The Indiana Supreme Court adds significant clarity to the majority rule with the apparent agreement of the U.S. Supreme Court:

"(1) where school officials initiate the search or police involvement is minimal, the reasonableness standard is applied; (2) where the search is conducted by the school resource officer on his or her own initiative to further educationally related goals, the reasonableness standard is applied; and (3) where "outside" police officers initiate the search of a student for investigative purposes, the probable cause and warrant requirements are applied." Myers v. State, 839 N.E.2d 1154, 1160 (Ind. 2005), cert. denied, 547 U.S. 1148 (2006).

Therefore, in the instance when a student has a reasonable expectation of privacy the reasonableness standard should apply to BWC programs without regard for whether the educator or the school resource officer is wearing the device. However, when an outside officer brings a BWC onto campus for purposes unrelated to a school incident, the probable cause standard will apply to its use in settings where students have a legitimate expectation of privacy.

BWC PROGRAMS & MODEL DISCLOSURE POLICY: "LAW ENFORCEMENT UNIT"

After an incident is recorded, the most important issue in BWC programs focuses on the duty to avoid unwarranted disclosures of personal student information. This is not simply a question of a school district enforcing privacy rules as part of its administrative custom; numerous and complicated laws govern the ways in which educators share information from student records. The education code of every state sets limits and conditions on sharing information from student records. In addition, the U.S. Department of Education makes the most stringent demands in this regard through the provisions of the Family Educational Rights and Privacy Act [FERPA] (20 U.S.C.S. §1232g). FERPA imposes on educators an array of regulations (34 CFR Part 99) that cover the entire landscape of student record disclosure. School cannot be too careful to keep current on the limits of disclosure of BWC footage of students.

The U.S. Department of Education has recently issued a model policy on the subject of video recordings and FERPA:

Schools are increasingly using security cameras as a tool to monitor and improve student safety. Images of students captured on security videotapes that are maintained by the school's law enforcement unit are not considered education records under FERPA. Accordingly, these videotapes may be shared with parents of students whose images are on the video and with outside law enforcement authorities, as appropriate. Schools that do not have a designated law enforcement unit might consider designating an employee to serve as the "law enforcement unit" in

A web-based software system that provides SROs a user-friendly way to record incidents, conduct pattern analyses, establish appropriate and effective responses, assess the impact of their activities, and develop reports.

FEATURES

Detailed incident data for all SROs across multiple schools
Queries by incident and demographic variables
Ongoing tracking of SRO prevention activities and interventions
Analysis of outcomes for individuals and system-wide
GIS mapping by demographics, school location, and other variables to support incident pattern and impact analyses
Report preparation support
Manages classes taught by SROs

FOR MORE INFORMATION

Download our brochure: bridgetechsystems.com/sro
315.635.1695 ext. 111
info@bridgetechsystems.com

www.nasro.org
order to maintain the security camera and determine the appropriate circumstances in which the school would disclose recorded images.11

Taken together with state mandated reporting laws and interagency agreements with local agencies, a school-based policy would resemble the following model:

**BODY-WORN CAMERA POLICY**

100 PURPOSE AND SCOPE
The School Board authorizes the use of body-worn cameras (BWC) on district property to ensure the health, welfare, and safety of all staff, students and visitors to district property, and to safeguard district facilities and equipment. Video cameras shall be used with no conditions or limitations in all common areas. In areas otherwise private BWC will be used when reasonable grounds exist for suspecting that the recording will turn up evidence that the student has violated or is violating either the law or the rules of the school.

The use of BWC provides objective documentary evidence, transparency of safe school procedures, as well as protecting the SRO and school staff wearer from civil litigation and allegations of misconduct.

Every SRO and school staff wearer equipped with a BWC must be trained in the operation of the equipment prior to its use. When utilizing these devices the SRO or school staff wearer shall adhere to the objectives and procedures outlined in the school safety plan so as to maximize the effectiveness of the BWC and the integrity of the video documentation.

The SRO or school staff wearer should make every effort to document all incidents anytime he or she is interacting with students and visitors. If it is safe and practical to do so, the SRO or school staff wearer should activate the BWC while approaching an incident or as soon as practical. The SRO or school staff wearer may supplement the BWC recording with an audio description of the event and describe any external factors that may not have been recorded (e.g., prior observations, surrounding conditions).

101 NOTICE AND DUE PROCESS
Each school shall notify staff and students through student/parent and staff handbooks that BWC surveillance may occur on campus and at school sponsored events.

The notification shall include that students engaged in conduct in violation of Board policies, administrative regulations, codes of conduct, building rules, or law shall be subject to appropriate disciplinary action. Others may be referred to law enforcement agencies.

The notification shall include that BWC recordings may become a part of a student’s educational record. The district shall comply with all applicable state and federal laws related to record maintenance, retention, and disclosure.

102 RETENTION
All raw, unedited recorded imagery will be stored and retained by for no more than 90 days, OR until all administrative uses to which the recordings are relevant have been completed. _________ shall have the authority to move data to disk or mark data to be saved permanently for purposes consistent with Board policy and school rules.

103 UNAUTHORIZED MANIPULATION OF RECORDINGS PROHIBITED
Under no circumstances will an SRO or school staff wearer edit or attempt to edit, alter, erase, delete, duplicate, copy, record, or distribute by any other means any recordings made with the BWC without the prior authorization from _________ OR his/her designee.

All recordings are considered the property of the _________ and no personal use of the BWC will be permitted. Violations of this policy shall be formally documented and may be grounds for disciplinary action.

104 RECORD REQUESTS
It is the goal of the Board to support and promote openness and transparency in an effort to improve relationships with students and parents as well as enhancing the community’s perception of the safety of the school. All requests for recordings or will be received and processed in accordance with federal, state and local statutes and in accordance with Departmental policy. The release of recordings must also ensure the rights to privacy of students, staff, and visitors whenever possible and ensure that the integrity of an investigation is not compromised. Legitimate redactions and/or denials of requests shall be made to ensure that this is accomplished. Classification of BWC recordings as private, protected or controlled will be made on a case-by-case basis and as allowed by state law. This policy will not conflict or interfere with the release of recordings pursuant to a court order or valid subpoena.

Adopted by the _________ on [DATE]

**REFERENCES**

1. Bernard James, Professor of Law, Pepperdine University.Phanysa Clark, Graduate Student in Law and Public Policy, Pepperdine University.


16. Only two states provide students with a legitimate expectation of privacy in the use of school lockers. Florida Statutes Annotated § 1060.09(1) allows the search of a locker only “if she or he has reasonable suspicion that a prohibited or illegally possessed substance or object is contained within a student’s locker.” Iowa Courts have ruled that a reasonable officer may search a locker based on reasonable suspicion of a crime (State v. Jones, 666 N.W.2d 142, 2003 Iowa Sup. LEXIS 134 (Iowa 2003) that gives students an expectation of privacy in lockers only to extract its teeth by declaring that it "may be impinged upon for reasonable activities by the school in furtherance of its duty to maintain a proper educational environment.


18. Georgia and Washington State have rejected the majority rule in favor of unique approaches to the status of the school resource officer on campus. In Georgia, the rule is that "[t]he action by school officials will pass constitutional muster only if those officials are acting in their proper capacity and the search is free of involvement by law enforcement personnel." State v. Young, 234 Ga. at 498(2), 216 S.E.2d 586. TLO has never been adopted in Georgia. Therefore, the state courts have flatly refused to entertain the possibility of a school resource officer as a school official. See State v. K.L.M., 278 Ga. App. 219, 628 S.E.2d 651 (2006) ("[T]he reasonable suspicion" analysis of Young will not apply even if a law enforcement officer searches at the direction of a school official"). In Washington State, the standard appears to fix the status of the SRO to category three (law enforcement only), although it is not clear if local interagency agreements have the capacity to make the SRO a school officials. (See State v. Meneese, 174 Wn.2d 937, 282 P.3d 85 (Sup. Ct. Wash 2012). In Florida, one appellate court ruled in 1993 that an SRO could never be a school official, see A.J.M. v. State, 617 So. 2d 1137 (Fla. 1st DCA 1993). The same court repudiated its decision as one that "does not correctly state the law." State v. D.S., 685 So. 2d 41 (Fla. 3d DCA 1997).


20. Disclosures of education records permitted by FERPA include:
   - To comply with a judicial order or lawfully issued subpoena.
   - In connection with a health or safety emergency.
   - To provide "directory information" (student name, address, date of birth, dates of attendance, etc.).
   - To State and local officials in compliance with a State statute that requires or authorizes information sharing.
   - To provide information from the school’s law enforcement unit records files that is usually maintained by the SRO.
   - To other school officials, including teachers, within the school or school district.
   - To officials of another school, school system, or post-secondary institution where the student seeks or intends to enroll.
   - To teachers and school officials in other schools when the information concerns disciplinary action taken against the student for conduct.
   - To police and school officials in other schools when the information concerns disciplinary action taken against the student for conduct.


Bernard James is Professor of Constitutional Law at Pepperdine University and a regular contributing editor for NASRO’s Journal of School Safety. Professor James is a nationally recognized expert on civil rights and education reform. Email Professor James at bjamess@pepperdine.edu.