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Public Records Request Panel
Public Records Request Panel
February 23, 2016

The California Public Records Act (Govt. Code §§ 6250 et seq.) states: “In enacting this Chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” (Gov. Code § 6250.)

This panel was assembled to address the issues of public records requests, privacy, and body worn cameras. The transcript of the panel discussion follows below.

DAVID ANGEL: All right, well thank you. Actually this is pretty good for the last seminar, I guess, or discussion of the day. And so I appreciate you all coming. And this is actually fascinating—the gentlemen on this panel have some very diverse life experiences which I think will be tremendously valuable in informing their opinions. And I’m going to tell you, I think this may be one of the key issues, because if we don't get in California—this sort of public access, the CPRA, the privacy/transparency balance—correct, it could really be devastating to any of the other objectives we want to achieve with body cameras. So, although I try to stay very positive about it, I do actually think this is a tremendously important issue to get right.

Now, you have already been introduced to some of the panelists. And of course it’s all in your binder. But for some of the people who are new and I don’t think have spoken with us before, first let me introduce Greg Fisher to my left. He’s a producer with CBS News and 48 Hours. He’s the West Coast director of 48 Hours. And as he puts it, his 30 years of experience in not just battling as a journalist, but battling [to gain] public access [to] documents, sometimes winning and sometimes losing.

Next to him is Professor Steven Morrison from [the University of North Dakota]. He’s also an Attorney at Law for the National Association of Criminal Defense Lawyers.

Next to him is Jay Stanley, a senior policy analyst for the ACLU. He has been with them—oh, that’s the American Civil Liberties Union for those of you who were unware of that. Since 2001 he’s been with them. And he’s particularly focused on emerging technologies. And I think, especially for those who were listening to the prior panel, you don’t need to either be a member of the ACLU or member of another organization to recognize there are really significant changes in technology that is requiring us to think about not just the law, but also how will these new technologies impact what we think of as privacy. So really, I’m grateful to have him here.

And you have previously been introduced to two of our prior panelists, Chief Ken Miller of the Greenville Police Department in South Carolina, and next to him, Gary Schons of Best Best & Kreger, and who also has numerous—as we detailed yesterday—[years of] experience throughout our criminal justice system.

So what I thought I would do is start off with giving a very brief overview of what the CPRA is, because I suspect that many of you aren't that familiar with it. So while I’m not an expert on it, I am [the expert] from my office. I have been tasked as a person in charge of CPRA requests. So just as a side note—as a bit of career advice—if you ever find yourself in a room with either your chief or the DA, and they utter the words “you” or “CPRA” in the same breath—that’s the moment to dust off your resume or kind of wonder what exactly has happened to go wrong with your career. Let me assure you, it is not a super fun area.

But I didn’t really know too much about it before I kind of started out, being responsible for it. And you’re going to find it in section—basically [Government Code] 6254 and onward. But this is the idea behind it. Certainly if you’re a government official it can be very frustrating because it imposes a bunch of requirements on you that
are at times—let me be clear—quite onerous and time sensitive and difficult. But the idea behind it is really wedded to what we do. It’s wedded to our democracy and our Constitution. And the idea is—those of us who are public servants—the first word of that is “public.” And that means the public really does have a right to know and they have a right to examine and have copies of public records. And that’s many of the records that we keep.

Some of the other members of our panel will speak to the extraordinary valuable work that has been done on kind of checking on democracy and keeping institutions honest because regular people can make requests. And as a government official—in a democracy you can’t just say it’s secret or you have no right to know.

So the general rule of the CPRA is if you are a government department or agency or commission or anything like that, and any member of the public makes a request for a record, you have an obligation to let them know within 10 days whether you’re going to give it to them or not. You don’t have to necessarily produce the record in that 10-day period, because sometimes the requests are quite onerous. But you have to at least figure out whether it exists and whether there are any exemptions that apply.

A record is generally defined as any writing consisting of the information related to the conduct of the People’s business, prepared, owned, or attained by any state or local agency regardless of physical form or characteristic. And a writing is further defined as any form of communication or representation including digital representations. The statute directs the courts and the courts in the case law, to direct—to interpret—this quite broadly.

So there was a case out of my county, in fact. I don’t have the case cite, but it kind of surprised me when I first read it. The county had spent inordinate—I mean hundreds of thousands of dollars—to generate a certain type of survey map with very specific information on it. And they were going to make it available for purchase to help defray the cost of it. And then a private competitor just said, “Oh, actually I’d like that under the California Public Records Act for free.”

The court ruled that, well, if you prepared it and it’s a public record, it was prepared through taxpayers’ dollars then it’s owned by the public. That means anyone can request it. And in general, the only thing you’re allowed to charge for in a CPRA request is the actual copying costs. There are some exceptions to that if you’re searching a database, but, basically, it’s just literally the photcopying costs. You’re not allowed to charge for labor. So why it can be very onerous is you might get a whole bunch of these [requests] at the beginning of the week, and you may have had an agenda of other things you’re doing, but you really have to respond to these all within 10 days, which is figuring out do you have them? And [if so,] can we produce them?

Now, when it comes to body cam footage, there are a couple of really important implications that I look forward to having expanded upon by the group. But we’re not going to spend a lot of time debating the law because I think—as was alluded to in the prior panel when it came to drones—a lot of this law is unsettled at this point. So it really doesn’t make a whole lot of sense for us to have a big robust debate on questions that are going to be determined by the court.

But the pinch points probably are this: Is data, or is raw footage or evidence in a film—is that considered a public record at all? My guess is it probably will be, but it’s certainly a debatable point. It certainly probably was not the original intent of the law, where you look at it and talk about some records—documents generated by government agency as opposed to raw footage—but that will be a question that’s decided [by the court].

The second issue is usually—certainly for DA’s it’s a little easier, but for the police departments it will be as well. In California we have a very broad exemption for investigative files. And so pretty much—well, the argument is usually that pretty much anything in an

—DAVID ANGEL
Greg spent 16 years as an investigative producer for ABC News 20/20 and Primetime working with Diane Sawyer, Chris Wallace, John Quinones, and Chris Cuomo. Greg has spent his 30-year career winning crime in Los Angeles, files court reports from around the western states, and established an ongoing cold case reporting series with the El Dorado County DA's Office.

I think that would at least be a "basic" interpretation. By basic, I mean, we all know courts can—and people can—have more complicated arguments that may carry the day. But the most straightforward reading of it is you would have, arguably, a somewhat ironic or a counter-intuitive result that the footage that might be of the greatest public interest—an officer involved shooting in a high-profile case—would be exempt from disclosure. Whereas the public might have the least interest—somebody asking some directions to the beach—would not be exempted. So that's kind of a general overview.

But what I'd like to do now is go down and ask each of our panelists to spend some time talking about the larger issue of how do we balance the needs for the public to know, and kind of a democratic tradition of responsive government, along with the concerns of privacy that criminal defendants—and the different kind of institutional interests—have. How they use the CPRA or other kind of FOIA-type laws in their work, and what they think some of the emergent issues are. And then we'll follow up with some questions following that.

So perhaps it would be most appropriate if I start with the press—just as you're getting a glass of water. But Greg, could you take the floor and tell us what you think about this issue?

GREG FISHER: Great, thanks a lot David. And it's a pleasure to be here. Thank you very much for having me here today.

I have a little bit of a unique perspective as a producer for 48 Hours at CBS News and before, that having worked as an investigative producer at 20/20 and Primetime with ABC News for 16 years. Because I, as a national journalist, use the national FOIA law and also have used PRAs in various different states and have a little bit of an ability to compare that. And we'll give you a little bit of an evaluation of the CPRA today.

First off, I want to explain I'm not speaking today for CBS News. However, my statements are consistent with, and informed by, the major legal advocacy groups who represent the press. So my
remarks today are not by any means—as much as they may sound like it—the rantings of one lone hack.

My understanding is we’re here to discuss how police body cam videos should be regarded by the California Public Records Act. I want to state up front that I’m here to urge that we make these videos, which reporters regard as just another public record, default to transparency. I’m here to urge that we not make these records default to secrecy. Remember, transparency, not secrecy, is the hallmark of a democracy.

I want to be clear, reporters are not expecting transparency to mean complete disclosure of everything. We contend that the law already makes it clear that privacy, particularly the privacy of crime victims if we’re talking about—obviously and not limited to—rape victims or child abuse victims. That will always be protected. Legitimate significant investigatory records should also be protected. Journalists are reasonable on this matter. We just do not believe that there’s a place for a default-to-secrecy provision for vital records such as police body cam video in a free and open society. That is to say, that the default should be transparency and then limitations, restrictions, and exemptions should come from there.

Because in a democracy, if you default to secrecy you’re putting too much burden on the public to try and get access to public information; to government information.

I wanted to talk today about a specific video tape. I want to talk about the shooting that happened in Gardena, California, that led to a $4.7 million settlement. It was a federal civil suit that led to that settlement. Now I could have had CBS editors cut versions of that videotape and show that so we could all discuss different things. But I’d like to put that aside today and talk instead about how that videotape came to be released to the public. Because I think that process is instructive moving forward about how to determine exemptions and how these police body cam videos should be dealt with in California.

That civil suit resulted—during the process of that suit the videotape was sealed. And so as the settlement was made, part of the agreement was to maintain that seal. News organizations filed a motion for the court to unseal the video footage. And it was a simple argument. The taxpayers paid $4.7 million in damages. They had a right to see what they were paying for.

Among the city officials’ many failed arguments to keep that video secret was one that the city settled for $4.7 million presuming, as part of the agreement, that the videotape would remain sealed. And the federal judge, Stephen Wilson, said that argument backfires here because the city spent public tax dollars that actually, quote, “strengthens the public’s interest in seeing the videos.”

But there was something more confusing and counterintuitive at play with the argument over that Gardena tape. Another argument the city made was that California law guarantees the right to keep the video secret. The California Public Records Act guarantees that right. Luckily for the public, in this instance the federal court precedent, not state law, required the release of the sealed videotape because it was part of the court record.

So you might wonder, how does the California Public Records Act guarantee secrecy of public records even when it was such a no-brainer decision for the judge? And this brings us squarely to today’s topic of discussion: the CPRA. You see, reporters are not fans of the CPRA when it comes to law enforcement records.

I’ll spare you my own characterization, which involves a fair amount of profanity. And instead, because I’m speaking to a room full of lawyers, I’ll borrow from a Yale University more-legalistic characterization. And they say that the CPRA is, quote, “a case study in overly broad law enforcement investigatory records and exemptions.”

Now there are three prongs to why the CPRA is overly broad compared to the standard in other states, at least as journalists see it. Indeed, any one of...
these prongs would make the CPRA overly broad. But all three make it truly epic and special among all the PRAs in all the different states.

One, there simply is no right of access to investigatory records. Two, concluded investigations are allowed to be kept secret from the public, as David mentioned. Three, abstract investigations. Investigatory records can be kept secret even when there is no demonstrable likelihood of enforcement. None of these three prongs are the standard in PRAs in other—in most of the other states.

The bottom line is that those three prongs allow California police and police departments to operate outside of the routine public-access means of inspection and oversight which other states afford the media and the public. So I appreciate being able to talk to you today about this important topic. And I'm grateful that [Mark Zahner] included me on this panel. I'm particularly appreciative of my fellow panelists who shared time and documentation prior to this discussion, which has helped to educate me.

As we have this discussion here today, 30 states are contemplating legislation to exempt, whole cloth, body cam footage from PRAs. That's 30 states opting to default to secrecy as journalists see it.

As far as California is involved, however, the fix is already in. The simple fact of the matter is that the joke is on us in the media, and more badly I think, on the public. Whether you draft legislation to specifically exempt body cams or not, it, frankly, won't really make a difference. Thanks to those three prongs, the current overly broad exemption already covers body cams—just another public record to which the California public has no right of inspection or oversight.

[LAPD Chief] Charlie Beck and the LAPD have heard the joke and are laughing as LA taxpayers run all the way to the bank. I say this because the LAPD, according to the LA Times, plans to buy 7,000 body cams. And I asked the guys who are here—the vendors outside who are selling the body cameras—how much that would cost. And they said that in the budget, that LA City Council put in $50 million for those 7,000 cameras over five years. However, at the same time that they put in that request to cost the taxpayers $50 million, the LAPD has already announced, too, that the department considers body cam footage investigatory records and will not release footage to the public unless required by civil or criminal proceeding.

So let's go back to that Gardena tape that I mentioned. That was the argument the City of Gardena made to the federal judge. Don't you get it, Judge Wilson? The fix is in. We don't have to show the public police records. Those are secret in California. Secret by law.

I'm here to urge that police departments not adopt public policy the way the LAPD intends to—a policy of asking the public to pay for these cameras on the one hand, and then on the other hand, denying the public the right to see that video. I must borrow from Judge Wilson's reaction to that argument. Let's tell the LAPD that argument backfires here. The very fact that the public will spend tax dollars on the cameras strengthens the public's interest in seeing the videos.

I submit to you, this is ultimately untenable public policy. In the light of the current public outrage over the number of police shootings of unarmed black men, I do not see that this policy will ultimately fly. I submit to you that this is going to be politically precarious policy to justify, in light of the current public sentiment regarding police shootings of unarmed black men, which is leading to further scrutiny. FBI data indicates that nationally, police have been responsible for 12,000 deaths since 1982, and that the data does not include two of the largest states: New York and Florida. So that number is likely much higher. Of course the overwhelming majority of those cases involve justified action by police. But if that's the case, then that's another reason why transparency is good public policy—good for the cops as much as it is for the public. And if we bring the issue local, just last week, as if on cue for our panel, the LA Times reported that police in six Southern California counties have shot
more than 2,000 suspects since 2004, and only one officer was prosecuted.

The public will continue to have questions in light of these statistics and you will have the answers—good or bad—on videotape. My point is that public scrutiny of police shootings is only going to continue to be a heated public issue. And hiding the police video in secrecy will ultimately prove untenable.

DAVID ANGEL: All right, thank you. I want to thank you twice for that. First of all, I think it's a really invaluable perspective to get. And also, I'm used to always having the least-popular position on a panel. And so I asked [Mark], could you just invite someone who will drown me out at long last? So thumbs up.

GREG FISHER: My pleasure.

DAVID ANGEL: Thank you.

GREG FISHER: Any time.

DAVID ANGEL: All right. So next, Steve can you please—why don't you have the floor and talk about what some of your concerns are and the balances you'd like to see?

STEVEN MORRISON: All right, thank you. Yes, and I am a criminal defense attorney but my primary job now is teaching criminal law and constitutional law at the University of North Dakota School of Law. And so I approach these issues in at least two different hats, sometimes as a criminal defense attorney and then sometimes as a law professor, and hopefully a legal scholar who takes a more equivocal approach; who can see both sides.

And I think when we're talking about implementation of body cameras and when we're talking about public records requests and public records regimes, there is a lot of interest convergence that's possible between interest groups including prosecutors, police departments, criminal defense lawyers, public interest groups, and the community.

And just to let you know a bit more about where I'm coming from: I'm the co-chair of the Body Cam Task Force for the National Association of Criminal Defense Lawyers, and I'm also a member of the ABA Task Force on Body Cameras. And I can tell you there's been a lively conversation in those two groups about the issue of public records.

I think a lot of people are trying to look for that interest convergence. At least with NACDL, most people realize that if you don't have police departments on board, if you don't have prosecutors on board, you're not going to get anywhere. So just one major—well, a couple points I'd like to impart to you today are these:

First, the purpose of a body cam program in any particular police department is going to be key. Whether that purpose is to protect police officers from false claims, whether it's to protect victims from abusive officers, whether it's to develop evidence, or whether it's a generalized interest in transparency and legitimacy, the purpose to which you put your program is going to help determine the contours of that program—not least when it comes to a public records regime.

It was accurately stated [that] we don't have one clear law on this. California's is obviously open for debate. Different jurisdictions have different approaches. Bills are being introduced, and have been introduced in the past year or two, regarding body cameras and their place in public records. So I can't really say—and none of us can really say—what the law is, but I'd like to suggest what the law potentially should be. And that's the second point I'd like to impart to you.

If there is a video out there that doesn't constitute evidence and that might not, or doesn't, really have the potential to influence any investigation… that video's not going to be used for anything and everybody knows this. What I would say is that video should be automatically released. We shouldn't even worry about whether it's a public record or not. 

—STEVEN MORRISON
What the Seattle Police Department does—and I think they still do it—they post all of their videos on their own YouTube channel. They blur out the images. They don’t have any sound on those videos. So in case you’re worried about the cost, well at least the Seattle Police Department has found a way to make it feasible.

So those are videos that won’t constitute evidence; don’t have the real possibility of influencing any investigation. Those videos that do constitute evidence or that could potentially influence an investigation—say it’s a video that might become evidence or that might be used to generate other evidence—these are the videos that prosecutors’ offices and police departments might have an interest in keeping secret for any number of reasons of which you’re all well aware. But there’s obviously still an interest in the public knowing what the police are up to.

And, ironically, it’s these videos that are the most in contention. It’s your benign video that shows nothing—nobody cares about that. It’s these contentious videos that most people want to see and the public has a special interest in seeing, but that, oftentimes, police and prosecutors have a different set of interests in keeping secret.

What I would say is for these videos, they should be subject to release to—for what now I’m calling a bona fide requester or a trusted requester. That could be the press. It could be a group like the ACLU. It could be the attorney for an alleged victim, of say, a police officer who might’ve used excessive force. So they should be released as certain people who have an interest, not just your everyday person.

I know—oh, gosh, I can’t remember the jurisdiction. I think it might’ve been Seattle. There was a guy in Seattle who decided it was his job to request every single video that the Seattle Police Department—or whatever city’s police department—produced, and the costs were exorbitant. They were just simply prohibitive.

So one thing you’re obviously going to run into with broad record release could very well be cost. But if you go the Seattle Police Department route and post this on YouTube, it—at least for Seattle—seems like the costs are workable.

Now the advantages here are, first, the public sees more of what police officers are doing. If you’ve got these bona fide requestors who are able to look at a video and decide whether maybe they want to move the court to release this video to the public—if you’ve got these bona fide requestors, there’s an increased layer of legitimacy that communities will have towards police departments. They might not get everything, but somebody’s getting the contentious videos and somebody is vetting those.

And, in addition, that broad release of even benign videos helps to populate the pool of known police actions with benign police encounters when police are doing really good work. And, as anybody here will attest to, when an officer is filmed doing something really bad, the first thing you say is—and that video [well, it really] showed it—is, well, that’s one bad apple. And I’m certain that’s the case. But when the public only sees the bad videos, that’s all the public sees.

Broad release can help populate the pool of known videos with a ton of other benign stuff. And, you know, you’d have to leave it up to the public to realize that the really contentious videos showing abusive police force are, indeed, in the minority. So the interest convergence is there. You’ve got transparency and legitimacy. You’ve got a system built up that funnels videos towards the public in an appropriate way that protects investigations. Hopefully you’ve got increased legitimacy from police departments. And then the community is satisfied as well, if you do it right.

So the two takeaways are: Think about the purpose of your program—of your body cam program—and think about how you would craft a public records regime based on that purpose. And then, second, I would aim towards releasing as much as you can. Both for the public’s interest and your own. And that’s really all I have to say for now.
DAVID ANGEL: Great. Thank you. Jay, from the ACLU, what's your—I'm sure you will support the idea of a list of bona fide requesters who get government data as opposed to, your run of the mill citizen, but what's your perspective on this issue?

JAY STANLEY: Thanks. So I come to this is a privacy advocate. And the ACLU is obviously a big privacy advocacy organization. We're against technologies being used for mass surveillance. But we're also an open government and a transparency-and-accountability organization. And most of the time we stand with the media lockstep on those kinds of issues. So I agree with almost everything that Greg said, but not everything.

So this was a very tough issue for us. When I started getting calls from the media, from our state affiliates around the country, “what do we think of this new technology,” it was really, really a difficult balancing act for us. And the recommendations that we've come up with basically see neither extreme as the right balance.

If you have a state, a regime where all the video is being released, that is a real privacy problem. I mean, officers are seeing all kinds of stuff that there's no public interest in. But there is a serious privacy interest in it from people having the worst day in their life, to people bleeding out after a car accident, and so forth. And there's a real danger that people will be afraid to call the police. And there will be chilling effects if they are afraid that they're going to end up on CBS News or on YouTube.

So if a policy is to release everything, we don't think that's the right balance. And Seattle—because of Washington State law—basically has been doing that. They've been releasing these videos but they're all, sort of all, blurred. They're all sort of like an avant garde video—you know, art installation. And they kind of don't really fit either interest very well because where there's privacy interests, it reveals too much because you might be able to see who's on the video and who's involved in whatever it's showing based on the location or other ways of recognizing people. And if there is a public interest in the video, then it doesn't show enough. It's too obscured.

What we've called for is that most of the video should be kept private. Held for a short period in case a complaint is filed. Not analyzed. Not used for any other purpose. No face recognition. No analytics. And then delete it within six months. We support an exception for training. Everybody has a shared interest in well-trained officers. If an officer comes and says, “You know, this is the situation, could I have handled this better? Can you give me some advice, you've been on the force for 30 years? Blah, blah, blah.”

But where there has been a use of force—a felony arrest, a complaint against a police officer—or one of the subjects requests it, then we think, in those cases, it should be default releasable. Certainly in the case of a police shooting or other use of deadly force, the public's interest in understanding how and why an officer took that kind of a measure is overwhelming. It—the video directly illuminates—I mean we're a democracy. We're in the middle of a national debate about police use of force. And the public has an intense interest in finding out about what's going on out there.

Video can illuminate how police operate. Helps identify potential misconduct or potential problem officers, poor policies and training by agencies, and allows the public to hold their elected civic leaders accountable for problems. On multiple occasions, videos of police shootings have been crucial in shedding light on what has taken place and about overall deeper problems about when police elect to use force.

Police agencies are bureaucracies. And like all bureaucracies they have an inherent tendency to want to keep information to themselves and not to share—keep control over it. If police departments have total control over what gets released and what doesn’t—total discretion—they're going to release the video of the officer saving the baby and they're not going to release the video where it isn't so pretty. And it's going to become a police propaganda tool in some ways.

“...What we've called for is that most of the video should be kept private. Held for a short period in case a complaint is filed. Not analyzed. Not used for any other purpose. No face recognition. No analytics. And then delete it within six months. … But where there has been a use of force … or one of the subjects requests it, then we think in those cases it should be default releasable. Certainly in the case of a police shooting or other use of deadly force, the public’s interest in understanding how and why an officer took that kind of a measure is overwhelming."

—JAY STANLEY
From 2010 through 2015, as chief of police in Greensboro, North Carolina, and Greenville, South Carolina, KEN MILLER stabilized organizational management and operational culture by overhauling disciplinary processes and enhancing crime reduction focus and accountability throughout each organization and throughout operations. He has dramatically improved community outreach, communication and satisfaction in both departments. Miller also implemented a complaint mediation process to better resolve police/community conflict.

In 2013, Miller led the Greensboro Police Department’s implementation of body-worn cameras to over 500 field officers, and is currently working through the same process in Greenville. He has helped police agencies nationwide consider policy and practical implications of implementing this increasingly popular technology. Chief Miller implemented a GPS-based offender management program that greatly reduced recidivism among serious and repeat offenders. He also developed the North Carolina DNA Consortium, enabling cross-agency comparisons of DNA profiles to inexpensively and quickly solve crimes that the state laboratory could not process. Chief Miller also provided the executive leadership in developing the Guilford County Family Justice Center to address family violence and abuse.

Prior to serving as a chief, Miller was a 21-year member of the Charlotte-Mecklenburg Police Department.

And when there is an incident, and there are communities where there is, unfortunately, bad relationships between police and the community, and then something happens and the department won’t release the video, that is seen, especially by poor and minority communities, as showing disrespect, and increases the sense of mistrust. And I would go so far to say that it violates an implicit social bargain that we’ve reached around this technology.

The reason we’re not opposing body cameras, that the Black Lives Matter movement isn’t opposing body cameras, the reason President Obama called for and supported and called for financial support for body cameras, is because of the oversight role that this technology can play.

Now, obviously, it can also play an evidentiary role. That’s sort of the bargain. It can offer evidence where somebody has done something wrong. You know, helping to catch people who actually do things wrong is not a problem for civil libertarians. What’s a problem is when innocent people get caught up, and people are not treated fairly, or when their privacy is invaded.

So I think that we have to recognize that this is a technology that needs to be seen as both providing evidence and oversight. And if the videos are not released publicly—the videos that are of public interest—then they’re not serving that oversight mechanism which is behind President Obama’s support—financial and rhetorical—for the technology, and for the general acceptance by the American people.

Let me [say] something about the ongoing-investigation exemption for release. A lot of the reasons for those exemptions don’t really fit body camera video—in the case, for example, of a police shooting. Protecting personal privacy, for example—one of the reasons we had exceptions for the release of information that’s an ongoing investigation is we don’t want people who may be suspects but may later be eliminated as suspects, to have their names tarred and dragged through the public arena as a possible suspect.

Obviously we want to protect confidential sources. We don’t want interference with the investigation. We don’t want to tip off possible suspects—what we know, what we don’t know. And as David said, encouraging open conversations with police. If we have a police shooting, and that police officer—everybody knows who he is or should know who he is. That police officer knows that he’s under investigation for that shooting, especially if it’s questionable and controversial, and there’s been allegations that none of those reasons really apply.

There’s no reason why the government shouldn’t release that video forthwith, because on the other side of the equation, the public interest and need for knowing what happened is very intense. And remember, in addition to police cameras there may be bystander videos. And those are going to be released. But nobody has any control over that because people do have a First Amendment right to take their own photographs and post them on YouTube.

In Albuquerque, for example, we have officers who’ve shot people three, four times in very questionable circumstances, repeatedly. And the public has an interest in knowing who those officers are. And also where civil liberties attorneys want to file lawsuits and complaints—where they think that there has been an abusive death or other behavior—they need to be able to get past it all. My colleagues who do litigation tell me and establish that there is a reasonable probability for success in litigation. If they can’t access the video until a year later when the investigation is concluded, then they can’t even file. And we do know that some police departments claim ongoing investigation for decades and decades, and basically use it to avoid embarrassing material from getting out.

So let me wrap up here. Let me just say—I mean, this is a hell of a complicated issue. Of all the issues I work on it’s really the most complicated. And I think everybody’s trying to figure it out. I think inevitably there’s going to be a common law evolution of policy and practice and technology, and we’re all going to figure what works best.
But the main outlines of what good policy looks like I think are clear. And again, I wrote a white paper on this. We also have model state legislation—or model policy actually—which are easily findable online and also in that packet. Thanks to the organizers for printing those. Thank you.

DAVID ANGEL: Thank you, Jay. And just a quick legal point for those of you who don't know, but the CPRA does not shield the identity of officers involved in a shooting. Those have to be released pursuant to the CPRA for a lot of the reasons that Jay spoke. And that case is—I think it's the City of Long Beach and it came out in 2014.

JAY STANLEY: Some states do, yes.

DAVID ANGEL: Yes, just filling in on the CPRA. Chief Miller, what's your perspective of [somebody who deals] with FOIA ...

KEN MILLER: Yes.

DAVID ANGEL: And by the way, just so you know, the reason why we don't deal with FOIA so much in California is that it—FOIA—is federal and our version of that for the state is the CPRA.

KEN MILLER: Yes.

DAVID ANGEL: And there's obviously analogs to it but they're not identical.

KEN MILLER: We have a state version of FOIA in South Carolina. But rather than getting too deep into those laws, I will say, one, I appreciate your presentation because, although I was commenting, the policy guideline that the ACLU puts out is one of those that I wouldn't agree with in the language—the provisions—very well, but I very much agreed with a lot of your points that you made today.

And I think ... for me in South Carolina, we are granted discretion to release. So body camera video—and I was involved in helping to negotiate the final legislation that was passed on June 10 of last year to help represent the police chiefs' interests—there was a lot of discussion and a desire to make it a public record. And ultimately, it's the case examples that you bring forward that really shaped and changed the perspective on that.

However, I don't think the last chapter in that book is written, because there are several chiefs across the state and sheriffs who said, "I'm not required to release the video, I'm not doing it." And I think that that's a mistake.

In Greenville, we've had to draft a policy to comport with the state law, but we were doing it anyway. As I mentioned in the prior session, we are implementing the body cameras there as much as we did in Greensboro. And so for me, I think it's important to promote—and our purpose and our policy statement—our purpose is to promote transparency, confidence, and trust in the actions of police. It's also to help prosecute cases where video may be, in fact, helpful in identifying individuals or prosecuting the cases themselves. So that is an interest that we share.

But let's face it. I mean, the reason why police officers are wearing these things is because we are in the midst—in the throes—of a trust crisis. And so the more we retreat and the more we hide behind the law—we are going to run into conflict and be forced to have to manage everything being public. And the redaction burdens—the management burden for trying to put all our video out—unless you do it like Seattle did, which is ineffective, and you heard other people say that—then it becomes an untenable situation.

So in our policy we speak to really trying to balance the interests of the public's right to know. The “public interest” meaning it's a situation where there is an elevated level of public concern and desire to know, and just interest in the event itself. It's the fairness to employees who are often investigated in complaints. And there is some due process for our employees that varies to some degree state by state, department by department, but ultimately providing your employee some level of due process.

“Let's face it. ... the reason why police officers are wearing these things is because we are in the midst—in the throes—of a trust crisis. And so the more we retreat and the more we hide behind the law ... then the more we are going to run into conflict and be forced to have to manage everything being public.”

—KEN MILLER
Fairness to the citizens—or the members of the public because everybody's not a citizen—but the members of the public who are actually on your film or actually recorded on the video. And the prosecutor's ability to provide a fair trial and to effectively prosecute if it's usable in the prosecution, whether that prosecution is the police officer or a deputy, or whether it's a member of the public. And I think that those interests have to be balanced.

You heard me earlier say that I wouldn't always agree, necessarily, with the prosecutor about whether or not to release video. We may be in different places on that, and we would try to work through that, and try and find the right timing. But if we can't, ultimately, his decision to release or not to release is going to be governed by his priorities and his interests. My decision is going to be governed by mine. Because at the end of the day, a prosecutor may choose to protect the interests of a trial or a review to determine whether or not we go to trial, while my city burns. And I have a duty and obligation to protect that interest.

I can give you an example also of an in-car camera situation that just occurred last month with us where we had a use-of-force situation. It was a very minor use of force, but when the guy was handcuffed and he was taken to the ground, he banged his mouth and eventually a tooth fell out. So we're repairing his tooth, got an estimate today. But he's agreeing not to sue us, too, because he can't really afford to have his tooth fixed. ... So we offered to do it really as an act of compassion. All he had to do was get back in the car like our officer told him to begin with and none of it would have happened at all. That much is on video.

But we have public records requests for that video and also the reports and the statements of officers. We released the reports and the statements of officers right away, but we withheld the video, because on all the social-media posts around the incident, we kept hearing this chatter about three independent witnesses. And we didn't want to put the video out there because then any one of you could be those three independent witnesses.

[For example], because you could view the videos from two ... different angles, get a good sense for the composition of the scene, and establish some level of credibility that you're in fact that person, and then put whatever spin you want on it—that is the dig. That's not really on the video but you [can] say you saw [it].

And so we do have to protect the interests of the investigation on the police part. So there are ways that we work through that. There are other things. There's distortion with the videos. I will tell you that in releasing video, I would almost not release video in a controversial event without having a brokered release. And by that, I mean it's playing behind me and I'm pointing out certain pieces that are relevant for the public to know.

The public is not trained to be a police officer. I can't tell you how many times when a shooting occurs that I've heard people say, or read in social media, or people have commented to the news, “I just don't understand why they don't shoot the gun out of his hand.” And, “Why didn't they shoot him in the leg?” Well, does anybody know that police are trained to shoot guns out of hands? We're not trained to shoot in limbs.

Seven percent of our rounds actually hit the target. That's pretty low nationally. At least that was the figure a few years ago. And that's aiming at center mass. So now you want to put a smaller target out there and we miss more and put more people at risk. But the public doesn't know that, in general. So you have to ask these things as you release the video. Objects are closer than they appear. The cameras shoot at a wide-angle lens. And whenever you have a wide-angle lens to replicate dual—you know, bifocal vision—you wind up with objects closer than they appear. So they appear further away and you should have more time to react. And, in fact, the reality is, you don't.

So some of these things you can address by brokering your release. The good thing about the South Carolina
law—because it protects the video and exempts it with very few exceptions from the FOIA Act—is that I get to choose a venue which I need to do it. So dependent on the interest or the interest group, there might not be broad interest but I might be able to prevent something from escalating by a limited or very focused release or discussion of the video.

So I personally think trying to come up with every exclusion and exception in a Public Records Act is a futile effort. I like the exemption—or I like the protection—aspect of the South Carolina law, but I will tell you that I will always err on the side of release. And I will always err on the side of release in a very timely way, or as timely as I can make it, because of the very purpose—as you mentioned, the very purposes as to why we’re wearing them to begin with. So I hope that’s sufficient to get it started.

DAVID ANGEL: I think so. Thank you Chief. And then, finally, Gary, maybe you can close out this introductory or this, you know, beginning part. What are your thoughts on the issues we’ve raised?

GARY SCHONS: Well, thanks, David. I want to preface my remarks by just one observation. And that is this: that the lens of a police body worn camera points outward. And the purpose of a police body worn camera is, I think, to most of the people in this room, to collect evidence in support of criminal investigations and prosecutions. And we should never lose sight of that fact.

I’ve dealt with a lot of law enforcement executives on this issue since Ferguson, and as much as body worn cameras can serve the interests of transparency and accountability and citizen participation in our criminal justice system, many law enforcement executives I speak to have at least suggested that if body worn camera data is available under a Public Records Act, however it’s formulated—in other words, anybody can walk in and demand to see any video taken by a police officer with a body worn camera—they will take the cameras off the chest of their officers and out in the field because it won’t be worth it in terms of the threat that that will pose to their officers, to witnesses, to victims, to the integrity of the criminal justice system, the expenses that it will cause. And so, in a sense, applying the Public Records Act to access police body worn camera data will kill what is a very promising technology that serves these different purposes.

The problem with the Public Records Act as applied to body worn cameras—and what I think is interesting and so eloquently made by the other members of this panel before me—is you can see all of the different policy issues, and yet each one of the members of this panel comes to different conclusions as to whether this data should be available, and what aspects of the data should be available, and to whom it should be available, and when it should be available.

The problem is that—I think the Chief made note of—is it’s incredibly difficult to frame legislation, whether you apply the current Public Records Act or start from scratch, that would take account of all of these different considerations. And what I think the Chief makes the best point of, is at a certain point in time in resolving these issues, that we have to trust the discretion and judgment and fairness of law enforcement executives to make the correct decisions as to when those—when these data should be released and when it should be withheld.

But the problem with the Public Records Act—this is basically a binary system. It either is out there and available to the public or it’s not. And as Greg Fisher noted, under the California exception if it qualifies under the investigative file exemption, it’s locked down and it’s permanent and it’s all encompassing.

Now to that point, I do have to say this and I will make this observation—some may disagree with me: Although California’s investigative file exemption is broadly sweeping and it is permanent and it may be more restrictive than that in other states, I do believe—based on my 38 years as a prosecutor in this state—that we probably have the finest law enforcement establishment of any state in the nation. I mean, I don’t see

“I would suggest that we ought to default to secrecy. In other words, give the agency discretion. … The Public Records Act says that an agency may withhold documents or records under the various exceptions …, but [it] also says that a public agency may release any record even though it subject to an exception. And in fact, the law encourages agencies to make records.”

—GARY SCHONS
the republic crumbling because we have an extensive and sweeping investigative exception, file exception for our criminal justice investigative files.

But that said, because it's either open or it isn't, I would suggest that we ought to default to secrecy. In other words, give the agency discretion. And, I think, as Greg talked about, the argument that was made in the federal court, where the city argued that the Public Records Act guarantees the secrecy of these recordings, well that—we know that's a false argument, those of us who are familiar with the Act. The Act makes no such guarantee at all. The Public Records Act says that an agency may withhold documents or records under the various exceptions in section 6254, but that the same Act also says that a public agency may release any record even though it subject to an exception. And in fact, the law encourages agencies to make records [available].

So the Public Records Act is not a guarantee of secrecy and it's not a requirement of secrecy. What the Public Records Act says is that certain records are exempt from mandatory disclosure but that agencies may choose to release them. And that's exactly what the Chief was talking about—giving discretion to law enforcement executives whether it's the chief of police, the sheriff, in cities, for example, the mayor or the City Council, the district attorney, and eventually the courts should have discretion whether to release this information.

And then there was the aspect of privacy. And I think one of the interesting things that I heard here is how that rebounds differently. For example, I heard that on the one hand, Jay with the ACLU advocates that what you would call the junk data. In other words, the regular traffic stops and that sort of thing should be locked down, not available to the public, and then quickly destroyed. But Professor Morrison basically argued that the junk recordings ought to be made public to show that police are doing their job on a day-to-day basis.

I mean, I would observe—I don't think anybody’s going to watch it, but be that as it may, you can see how coming at this from an intellectual level, you achieve different results. You know, Jay, for example, wants evidence of a felony arrest or use of force or a citizen complaint to be automatically open to any asker. Professor Morrison suggested it shouldn't be. And so there again you see this—you can achieve different results or come to different conclusions when you apply some of the policy imperatives to the decision here.

So what I would argue for, again, is that body worn camera data should be subject to the investigative files exception. I believe it is. In fact we'll know fairly quickly. There is a case pending in the California Supreme Court. It's ACLU v. City and County of Los Angeles. And this was an effort to—through the Public Records Act—obtain the license plate reader data that was collected in the city and county of LA.

The Court of Appeal decided in a public decision that that data was, in fact, exempt from disclosure under the investigative files exception. The California Supreme Court has granted review in that case and it should be decided probably later this year or early next year. And I think the result of that case will answer for us a question of whether body worn camera data is subject to the PRA, and we'll know.

And then one final observation I want to make is this, and I think the Chief is on this. The problem with this body worn camera data—to me these recordings—it's just too easy. Yes, this is what people want to see. They want it on their YouTube. They want to see it on the nightly news, and all that sort of thing. But the fact of the matter is we don't release autopsy reports. We don't release photographs of victims and the wounds that they suffer. So why do they want these tapes all of a sudden? What is so magical about them?

And I suggest it's an intellectual laziness that you just run the tape and that's going to explain it all. Well those of us in law enforcement know that the tape—and we've heard this all throughout the last day and a half—the tape doesn't explain it all. In fact, the professor made the case that what the tape shows—even coming from the body worn camera of
the officer—is not what the officer saw and what he's reacting to.

And so the problem is, is if you release the tape you're not explaining what happened out there. And the only way to do that, as the Chief noted, is you have to provide other information to the public. Well, there again, once we start that road the question has to be where do we stop and when do we do it? And I would suggest that this material has to be protected. It cannot be subject to open public request for the whole host of reasons that we’ve discussed here today, and that we need to step back and try to devise policy that provides some discretion to law enforcement executives.

DAVID ANGEL: All right, thank you. … Let me follow-up with—let me first turn right back to Chief Miller and Gary. In some ways the challenge presented by Greg at the beginning—and, Chief, I was struck by what you said, that you have adopted a fairly transparent policy. And I mean, just obvious in hearing you talk today and the day before you have a real balance—you really are cognizant of the different interests at stake.

But what about what Greg said? If you have a case—forget the particular one, but let's say it's a police shooting and let's say it's very—it's one that the community is tremendously upset about. And we all know from having seen videos, there are some that we've had a couple people say, I think Chief [Holloway] yesterday: your one percent or two percent or your—however you want to say it—but people, it does seem to me, have a real right and need to know that. And are you and Gary—are you concerned at leaving it at the sole discretion of the very government agency that is being questioned to decide whether evidence of wrongdoing will be revealed or not? What's your answer to that?

KEN MILLER: Well, I'll start with that. It's not in my sole discretion because the prosecutor could always step in or the state investigating. Because if it's a fatal officer-involved shooting, the state is investigating that in our state, not the department. So there are three entities that could override one another in terms of their release. And I think that that's helpful.

But although it falls into the discretion of the chief, I would say that you have to balance the interests. And even if I'm not willing to release a video immediately, I think it's in my best interests—and the community's interest—to step out there and speak to the matter, and not say that canned statement that comes out through a spokesperson or on letterhead that says, "there'll be no release of video unless and until, the investigation is complete and the district attorney has done what he or she wants to do," or that we're not releasing video, period.

I think that's a huge mistake. And I think the public understands the various—or can understand the various—interests at play, and the difficulties in balancing those interests if we directly share that information with them, and what those interests are and how they affect that particular incident.

But at the same time, you have to move with purpose because if you withhold it too long and there was—I don't know how much you followed and how much airplay stuff on the East Coast gets on the West Coast—but there was a fatal shooting at a Hardee's with a 17- or 18-year-old boy near Clemson University in South Carolina. And the police chief there just absolutely refused to release the video.

And finally, after the case was—or the prosecutor elected not to prosecute—then the State Law Enforcement Division released the video, And, you know, when I saw that video I thought it was an enormous error not to release the video earlier. And I—truthfully I don't know why the individual—the officer—wasn't charged. I just don't. He fired into a moving vehicle when it was no longer a threat to him.

And you may not win the case. And again, the interests are different as I mentioned. And that's a classic case where, as a prosecutor, it's close enough that you may not win the case in court and you may elect not to put the resources to it to lose the case. But as a police chief, people believing in your organization and the importance of them believing in your organization, matters more than that other interest to me so ….

I am actually tremendously interested in the rights not just of the victim, but also the criminal defendant in the case.

—DAVID ANGEL
DAVID ANGEL: I’m going to follow-up. I know you—there’ll be some counter arguments to that, but if you’ll allow me, maybe I’ll just ask a different question, different panelists. And of course, you can always you can go off script. I mean, I don’t have any enforcement powers here.

But for Steve, you know, you—and in some ways I think Jay as well—I mean especially in your hat as a criminal defense attorney... So one thing as a prosecutor, all of us here who are prosecutors know that even though it’s often not noted as much in the public, but I am actually tremendously interested in the rights not just of the victim, but also the criminal defendant in the case.

So what about the really boring case? And I was—actually I think a perfect example of it was the video we saw earlier today. Remember where there was a young man who was very belligerently refusing to be searched, I think, or expressing his dissatisfaction with English law enforcement, and there was the family by there, and he looks like a total jackass, right?

What if you—he’s your client and let’s say that after he’s sobered up and he’s not loaded, he’s like... “I feel terrible I did that. I’m 19 years old. I really don’t want that on YouTube for the next 25 years of my life.” But let’s further imagine it’s, what some might say, the glory days of California narcotics law, back when that would’ve been a felony, so it’s a felony arrest. Should that be subject to any old somebody who says, “Hey I would like a copy of that and I’d like to slap it up on my YouTube channel?”

STEVEN MORRISON: It’s a great question. And I hope I wasn’t understood to be advertising what I think is a good statute because I wasn’t. You know, none of this [is] complete. And one reason I didn’t address the privacy concerns was that, in part, I’m on a privacy panel tomorrow so we’ll cover those then. As far as YouTube posting goes, I would be in favor, obviously, of redaction so that you can’t see who the person is, right?

And if you can’t redact a video such that you really can’t identify the person, I could see, maybe there’d be a reason not to post that one. And the downside would be very minimal because that’s one benign video out of a million.

DAVID ANGEL: Well, just not to like buck the hype or anything, but I guess what I was envisioning is somebody asks for it. “Hey, my neighbor, that no-good kid, I heard he was arrested. I’d kind of like to see what that looked like.” Now under the CPRA it’s all or nothing. So if it’s not exempt, you can’t pick and choose among virtuous requesters. So I guess, my challenge is, is that a price worth paying or do you feel like there are—that that is something where there’s a privacy right that exceeds the public’s right to know?

STEVEN MORRISON: As a criminal defense attorney, I would say no, the neighbor cannot get it. But as a matter of policy, I guess I’d have to give it more thought. I mean, we compel sex offenders to register. You can get somebody’s criminal record. So a lot of this stuff is public already, for better or for worse. And sometimes it’s for better and sometimes it’s for worse. And I think the video would fit into that, you know, would fit into that larger pool, I suppose.

GREG FISHER: Can I respond to that question?

DAVID ANGEL: Sure.

GREG FISHER: I think you have to really be careful if you’re talking about that very example there, and you think about Johns going for prostitutes in neighborhoods. And there’s been a long-standing tradition in this country of taking those mugshots and publishing them places to embarrass them so that people in that community can get those people to stop coming into their neighborhoods.

So if you take that specific example that you’re talking about there and you say that this kid did—committed some felony and he did some silly thing when he was drunk or something, and should that really be posted on YouTube, but what you’re talking about here is all that information is public already, that he
was arrested, that he was charged, his name, that he's your neighbor.

So now you start to come up with the strategy to rewrite some separate law that, while it's public and it has been public in law for so long, but we're going to write a different law to make it not public because it's on videotape? The simplest way to look at this is that if a police officer is out on patrol and he comes in contact with a civilian and writes up a police report about it. Generally, in most states, but not in California, that police report is ultimately, at a certain point, when the investigation is closed and usually sooner, because many interactions the patrol officers have don't lead to long term investigations—that police report is public. That information is public.

And really I think the way to look at this is that that videotape documentation of that interaction between the police officer and the civilian is just another public record, just like the police report. And if you try and write separate legislation so that some things are already public but videotape is not public for some contrived reason you—I mean that's so complicated on the face of it. I think that that really serves to demonstrate that the videotape is just another form of public record.

And all these FOIA acts actually allow that digital records are included as information and it should be, whether it's an audio-tape recording or audiovisual, the same thing as another public record.

DAVID ANGEL: Jay, what's—how do you feel about that?

JAY STANLEY: So there's so much to say here. I mean, I guess I'm disagreeing with almost everybody. But I ....

DAVID ANGEL: I've done my job.

JAY STANLEY: I mean, it didn't sound—like I think that—I mean, I agree mostly with what Greg said. But the fact that you say that we can't do that because it's complicated well, I'm not sure how ... strong an argument that is against having the right balance. And with new technologies, we are entering, in many ways, a radical new era where we have to deal with these realities....

And the other thing that I would put on the table as a reminder that—and this applies to things that Gary was saying and so forth in terms of about intellectual laziness of a video and why does everybody need to see the video—I mean, there's also bystander videos. Those are happening simultaneously to the police videos. And those are going to be released because people are going to stick them up on YouTube, and in many cases—especially the more dramatic and the more public it is—the more inevitable it is that there will be one—or probably multiple—bystander videos.

And so now we're going to get all [up in arms] about what happens to the police video when there's six YouTube videos up there already. [That] doesn't always make sense. ...

KEN MILLER: Well, if I may ... I've had that situation, and many police chiefs have, where I don't have video, but up comes the cell phone video on YouTube, and next thing you know I'm holding my own press conference using their video to explain the circumstances of the situation where we didn't have video and they did. So you're right about that. And there are times when that's going to be the case. And I think we just have to roll with the punches there and work through those.

DAVID ANGEL: All right. I think we can open it up now to some questions if there are any. Sir?

ART COLIG: Good afternoon. Thank you for being on this panel. My name is [Art Colig] and I'm the director of policy for the Los Angeles Police Department. So I wanted to address some of the comments that Mr. Fisher and others have made, specifically about the LAPD and sort of the implication that the policy that has been in place for decades—that the LAPD is somehow contrived to deprive and make secrecy.

The LAPD has been probably the most open police department in the state, if not the nation, on uses of force and disciplinary records to the extent advisable allowed by law. It has
disclosed the names of officers who all involved in serious uses of forces decades before the Supreme Court decision. It releases the Chief’s analysis of the use of force to the public, and then we have a police commission that does that as well.

The reason why body worn video is not disclosed, and has not been disclosed, is actually something Mr. Fisher has mentioned. It’s not any different than other records. It’s not any different than other evidentiary or investigative records that the department does not release in any case. We don’t release 911 tapes. We don’t release crime-scene photos. We don’t release autopsy photos. We don’t release the audio recordings of witnesses and other people—I mean, so many different things. Now if—and there’s some important reasons why that is.

First and foremost is that we want people to cooperate with the police department. And especially in a large urban area where many people are reluctant to even talk to police because of immigration status or fear of retaliation, the idea that what they’re saying would ultimately be put up and made available for everybody is a very difficult prospect. And that’s important. Rape victims, domestic violence, under-reported crimes—these are serious reasons that the chief of police has been very public about why we shouldn’t just seek to take these and put them online.

The other very important part of it is the integrity of a criminal investigation. The purpose of police having an encounter with a member of the public for an investigative or enforcement contact, is because they are the police and are doing it for the purposes of a criminal investigation. It may or may not turn out to be anything, but that does not change the nature of that contact. And third, which I think is a very important thing, the idea, well many of these contacts are mundane and they’re routine, that is true. I’ve watched many video. I’ve been bored to death. But you have to think about the volume.

And I can at least speak for the LAPD, which has an independent inspector general—a civilian who reviews everything—a five-person civilian police commission that not only has access to everything, but makes the final determination of whether something is policy, then there’s a very close relationship with the district attorney’s office that investigates every single officer-involved shooting. That’s how this can be used.

And so my question … is why is video so magical? Why is it that video all of a sudden is something that needs to go on television? Digital video evidence has been in law enforcement—and digital evidence—for decades. Audio

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recordings of encounters—police officers have been having audio recordings for decades. That is not disclosed.

Video—third-party other evidentiary video has been going on so long. Digital in car video, just in Los Angeles, six years. Many of the agencies represented, probably for 15, 20 years. But now all of a sudden body worn video is so critical to get out to increase transparency. And I just don't see what the distinction is.

DAVID ANGEL: So I'll take a stab at answering that. Because you just have to look what's going on in the country and watch the television news. You know, sometimes the video that gets released is the most clarifying piece of evidence that reveals something that, for most people, was always hidden, right? So they didn't know what happened in police encounters. People would make allegations all the time, and they wouldn't know if they were true or not true. And we've had these videos—some of them—you know, obviously there's a selection bias where the ones that end up being shown a lot are the ones that show something bad, and we all know that. But they do show things that most people find—the ones that are bad—will find shocking and upsetting and extremely probative.

So I think video is a little different. I guess in some ways I feel like Jay. I found myself disagreeing with everyone some of the time and agreeing with everyone some of the time. But I think video is different, which is also my answer to why I think it's different to release as we do. So-and-so was arrested on this day, and here are the charges, and here's the new court date, is kind of different than showing a video of somebody, which having seen them, are often extraordinarily embarrassing and compromising and something that they probably don't want to live forever in cyberspace.

STEVE MORRISON: Yes, just—there's another reason. It's because society wants these videos and we're in a democracy. And I think all your points are incredibly important and they have to be included in any body cam program, obviously.

But, you know, when it comes to the videos, you're absolutely right. Dash cams have been around forever and we've managed to work through that. And we'll manage to work through body cameras, and maybe they'll end up being folded neatly into dash-cam regimes.

But based on what we've seen over the past couple of years coming out of Ferguson, and based on the fact that it's the body cams—body cam footage—that people want to see, that's a reason to treat them differently than other types of evidence.

DAVID ANGEL: Gary, you have a comment?

GARY SCHONS: Yes, I just wanted to make it. I disagree with Professor Morrison on that. If you allow unfettered access to police body worn camera data so that when the principal of a school is pulled over and ticketed or arrested for DUI, or the politician is, or the rock singer, or whomever, I will guarantee you that the citizens of this state will beat feet to Sacramento to get a bill passed to lock down that data, because they're not going to stand for that kind of invasion of their privacy. That's just not going to happen. And yes, people want it because they roll the film; we live in a reality TV age, and that's why they want it. That's what makes body worn camera data different than everything else. But, again, that's the intellectual laziness that I was kind of referring to.

But the fact is, I am confident that if there's unfettered access to police body worn camera data, either body worn cameras will be taken off the streets by law enforcement executives, [or] the citizens, the voters, will demand that that data be locked down because of the incredible invasion of their privacy.

KEN MILLER: You know, I don't have any interest in serving the prurient interests of the viewing public with body worn video. But what I would like to do is to be able to address controversial situations head-on and square up, and do it in a manner that's timely enough to settle down the community because it serves everybody's interest.
But, you know, when we work through this issue of, is it releasable? Is it not? We put everything out there. I think, we think we work at cross purposes.

GREG FISHER: I just want—to your question specifically I would say, at the least, video cameras are not magical. They're not magical at all. That's my whole point. They're just another public record. They're just another documentation of that same police report. The point that I was making was that police reports aren't available to the public in California even though most other states they are at some point or in some way.

And so the point I was making earlier about the $50 million expenditure to buy the 7,000 cameras—I didn't mean to single out the LAPD any more than that's just the recent example. And I live, in Los Angeles County and I work in Los Angeles City.

And so it was the decision to ask the public to spend the money for those cameras and then not release those videos—which, as you point out, is completely consistent with California law and was what I was talking about—is ultimately, in the current climate, I think, going to expose the hypocrisy of asking the public to spend that money but not allow them to look at the video. That's just my opinion.

But I did want to say, Gary, I do not see—I disagree with you. I do not see the public beating down the door of the state legislature because they're releasing body cam DUI video when the public has already accepted that they release mugshots from DUIs and they release dashboard camera from DUIs. And the public has not beat down the door to make sure that that's not released.

And, furthermore, I just want to point out just so people understand, that you were talking about unfettered access to this video. I'm not advocating unfettered access to the video. I'm simply advocating that the system default to transparency and then the exemptions come from there. And rather than defaulting to secrecy and then putting the burden on the public to try and prove that something needs to, or should be, released to the public, and then rely on the good graces of public officials, who often, as you see in the case of Rahm Emanuel in Chicago, have a lot of political interests in keeping that information private.

So all I'm asking for is some mechanism in the law that we can have a judge listen to both sides of the argument and make a fair decision about whether this material should be released or not. I don't mean unfettered access to every single body cam video that's taken. Police departments—even in states that have less restrictive FOIA exemptions—have a great deal of latitude in respecting privacy, ongoing investigations, and all the rest.

DAVID ANGEL: All right, well, if I can observe, I think one of the things that makes this so challenging and contentious and fascinating is, in some ways, it triggers, I think, core values of different constituents. So if you're a prosecutor, one thing that I—every prosecutor I've ever known and admired—is we don't try our cases in the press. We don't selectively release evidence. And I'm extremely troubled at the thought of ever releasing evidence prior to trial because I don't think it's fair.

And I'm constantly privy to extremely confidential information that, as a lawyer, you don't talk about to people who don't have a need to know it. And similarly, if I may observe, it seems if you're a journalist, one of your core goals is to hold government accountable and to allow the public to know, and to not just trust, people like me—that I'm going to always do the right thing. And I think similarly, the ACLU—you're kind of wearing both hats: a real concern about privacy, but a real suspicion that you can't just leave it to the Chief Millers of the world to—I think no one would doubt the incredible intelligence and integrity he brings to it, but that not every official is going to be like that.

And then when you talk to a police department who is worried about their community sometimes burning down. The thought of, kind of, having policies that don't take that into account that protecting the members of that public are incredibly strong. So I think that one thing that makes this a challenge is that it engages core values of various different constituencies in ways that I do think there are areas of agreement; that it's possible to come to some policies that might harmonize this at least to some degree. But it's not immediately apparent how we'll do that.

So on that optimistic note, I will end this panel and today's festivities.

The organizers of the Body Cam Summit wish to thank NET TRANSCRIPTS for providing the transcripts of our panels and speakers.