American University Washington College of Law

Digital Commons @ American University Washington College of Law

2021

# "Hey Siri, I'm Being Pulled Over."

Charlene Collazo Goldfield

Gabriela Chambi

Amanda Torres

"Hey Siri, I'm Being Pulled Over."
Charlene C. Goldfield, Gabriela Chambi, Amanda Torres[*]

[*]Charlene Collazo Goldfield is an attorney advisor with the FCC and LL.M. graduate in National Security and Cybersecurity from GW Law School. Charlene served as attorney advisor with the Office of Information Policy at the U.S. Department of Justice. Gabriela Chambi is an associate attorney at Carr Maloney P.C. in Washington, D.C. Gabriela served as a judicial law clerk with the District Court of Maryland, Montgomery County. Amanda Torres is an assistant state attorney in Tampa, Florida. Amanda served as judicial law clerk to Chief Judge Robert Morin of the Superior Court of the District of Columbia. Special thanks to the Honorable Zuberi B. Williams, associate judge for the District Court of Maryland, Montgomery County.

# ABSTRACT

*Statistics show that policing disproportionately affects communities of color; police are more likely to use force against Black and brown people.[1] Data from non-violent encounters (e.g., reason for the stop, type of force used, and presence of witnesses) is rarely collected or disregarded altogether.[2] Video evidence can publicize police violence. Bystander video during George Floyd's murder led to arrests and a global racial reckoning because it depicted the reality of police encounters for people of color. Although technological advancements have led to positive developments for civilian safety (e.g., body cameras and in-car videos), data collection consistency and accountability are barriers to progress. Can society benefit from innovative yet simple tools to promote safety and accountability during police encounters? Our phone application aims to support social justice and safe policing by focusing on consistent and efficient data collection. Our goals with this paper are to: (1) lay out existing policing data collection practices and current issues involving tech and policing; (2) explain and distinguish our app's functionality; (3) describe the importance of public and private partnerships; (4) examine potential privacy and data limitations; and (5) summarize how our app can magnify law enforcement accountability and reduce race-based policing.*

---

[1] *See* Elizabeth Davis, et. al., *Contacts Between Police and the Public, 2015* (U.S. DEP'T OF JUSTICE BUREAU OF JUSTICE STAT., 2018), https://www.bjs.gov/content/pub/pdf/cpp15.pdf.

[2] *See* The Stanford Open Policing Project, *Findings* (2021)https://openpolicing.stanford.edu/findings/.

**INTRODUCTION**

Technological innovation has revolutionized all aspects of human life. Technology's impact on individual liberty and criminal justice are consequential issues in Fourth Amendment jurisprudence and criminal justice scholarship.[3] Public discourse often identifies technological harms. Despite potential harms, there are also ways technology can provide security to ordinary people, improve accountability, expose flaws in policing, and collect data to enable comprehensive policymaking. Currently, there is no app on the market that distributes real-time policing data. Cell phone technology has introduced a phenomenon known as *people power*.[4] People power is defined as "power emanating from citizen-based collective action."[5] Although the term is used in the context of combating corruption, it can be applied towards police accountability and transparency. *People power* allows everyday users to report issues as they see it happening; mobilize for a cause; or promote accountability across all public and private sectors. The *people power* phenomenon is evidenced by the enhanced documentation of police brutality against communities of color.

Police brutality against Black and brown people does not begin or end with George Floyd's May 2020 murder. Despite police reforms, excessive force occurs regularly. "Although half of the people shot and killed by police are White, Black Americans are shot at a disproportionate rate. They account for less than 13 percent of the U.S. population, but are killed by police at more than twice the rate of White Americans. Hispanic Americans are also killed by police at a disproportionate rate."[6] And, "through the first four months of the year, there have been just six days in which police across the United States did not kill anyone."[7] This troublesome reality will continue until local, state, and federal governments combat systemic racism and accept responsibility for how it affects Black and brown lives. Police reform has not resulted in substantive change in large part because of obstinate reluctance for transparency within law enforcement.[8] Therefore, police reform should not solely rest in the hands of law enforcement.

---

[3] *See* Laura Hecht-Felella, *The Fourth Amendment in the Digital Age* 8-9, BRENNAN CTR. FOR JUST. (Mar. 18, 2021), https://www.brennancenter.org/sites/default/files/2021-03/Fourth-Amendment-Digital-Age-Carpenter.pdf(describing the widespread technological implications of the U.S. Supreme Court's 2018 decision in Carpenter v. United States and the exploration of new tech on Fourth Amendment law), ; *see also* Riley v. California, 573 U.S. 373, 381 (2014) (discussing the need to obtain a warrant to search an individual's smartphone during an arrest); *see also* Carpenter v. U.S., 585 U.S. __, 138 S. Ct. 2206 (2018) (determining that a search warrant is necessary when obtaining specific cellphone site location information).

[4] *See* WORLD BANK GROUP, *Citizens as Drivers of Change: Practicing Human Rights to Engage with the State and Promote Transparency and Accountability* 16 (Jul. 2017), (emphasis added) https://openknowledge.worldbank.org/handle/10986/27653.

[5] *Id.*

[6] Fatal Force, *Police Shooting Database*, WASH. POST, June 21, 2021, available at https://www.washingtonpost.com/graphics/investigations/police-shootings-database/.

[7] Nolan D. McCaskill, *Police are still killing people at the same rate as before*, POLITICO (May 21, 2021), https://www.politico.com/news/2021/05/25/police-brutality-statistics-shootings-george-floyd-489803.

[8] *See* Cynthia H. Conti-Cook, *Open Data Policing*, GEORGTOWN .L.J. ONLINE 106:1, 2 (2017) (citing Eric T. Schneiderman, *Ending the Crisis of Confidence in Our Criminal Justice System*,

Data tells a story and real-time data collection will expose the truths about policing in America, root out racist practices, protect individuals engaged in police encounters, and be a lifeline through the modicum of *people power*. While technology is not the only solution to combating police violence, it can help. We believe that responsible tech will empower those that need it most if thoughtfully implemented to benefit communities. Our application will allow any person stopped by police to activate their phone's recording capabilities. The app simultaneously notifies other app subscribers in the area, including community allies. The app uploads the recorded interaction, tracks statistics, and transmits the data to spur action on police reform. Society rightfully scrutinizes Big Tech's influence over data and at time its unwillingness to take responsibility for that power. However, by partnering with an app built on transparency and ethics, Big Tech partners can promote racial and social justice through accountability and reform.

## BACKGROUND

**Existing Data Collection Policies and Issues with Tech and Policing**

Technological development in law enforcement is often focused on crime fighting, rather than policing behavior. Police departments use tech to broaden law enforcement practices and improve "crime fighting techniques" through programs like ShotSpotter, GPS monitoring, and automatic license plate readers. These tools provide law enforcement with wide-reaching surveillance capabilities.[9] But higher scrutiny around policing and interactions with communities has led to public pressure for the police to "demonstrate greater transparency of their operations and […] willingness to be monitored by the public and external agencies."[10] Law enforcement agencies incorporate technology into community policing strategies through web-based engagement (e.g. Facebook and Instagram) in efforts to reduce tension and restore legitimacy.[11] Law enforcement adoption of body worn camera and in-car camera programs perhaps demonstrated an attitude shift toward transparency. In "2016, nearly half of all U.S. law enforcement agencies had body-worn cameras."[12] From 2007 to 2013, the percentage of local

HUFFINGTON POST (Jul. 19, 2015), https://perma.cc/S54Z- BJVK; Graham Kates, *The 'Crisis of Confidence' in Police-Community Relations*, JUST. NOT JAILS (Sep. 7, 2014), https://perma.cc/JB45-WQDB)), https://www.law.georgetown.edu/georgetown-law-journal/wp-content/uploads/sites/26/2019/10/conti-cook-open-data-policing_ACCESSIBLE.pdf.

[9] Angel Diaz, *New York City Police Department Surveillance Technology* 7-10, BRENNAN CTR. FOR JUST. (Oct. 4, 2019), https://www.brennancenter.org/our-work/research-reports/new-york-city-police-department-surveillance-technology.

[10] Rosenbaum, et. al., *Understanding Community Policing and Legitimacy-Seeking Behavior in Virtual Reality: A National Study of Municipal Police Websites*, POLICE Q. 14(1) 25-47, at 27 (2011) (citing Crank, et. al., *An institutional perspective of policing*, J. CRIM. L. CRIMINOLOGY, 83, 338-363 (1992)).

[11] *See* Cindy Clayton, *The Social Police: Facebook, Twitter Play Role in Modern Policing,* GOVERNMENT TECHNOLOGY (Aug. 31, 2015), https://www.govtech.com/gov-experience/the-social-police-facebook-twitter-play-role-in-modern-policing.html; *see also* Cindy Clayton, *To protect and serve, cops tweet and share*, THE VIRGINIAN-PILOT (Aug. 31, 2015), https://www.pilotonline.com/news/article_d1ef2861-4ecf-5b27-83ee-7d47d6ce33dd.html.

[12] Lindsey Van Ness, *Body Cameras May Not Be the Answer Everyone Was Looking For*, PEW (Jan. 14, 2020), https://www.pewtrusts.org/en/research-and-

police departments using in-car video cameras increased from 61% to 68%.[13] Civilian recording is still useful, because research suggests that body-cameras do not "meaningfully affect police behavior" and do "not have consistent or significant effects on officers' use of force, arrest activities, proactive or self-initiated activities, or other measured behaviors."[14] The civilian video that captured the nine-minute and twenty-nine second murder of George Floyd is just one of the many videos that emerged from the public sphere.

"When police departments become their own gatekeepers, deciding what to release, when, and to whom, they remain in control of the narrative surrounding videos."[15] As of 2018, at least 23 states and the District of Columbia passed body-worn camera video public disclosure laws.[16] "Few states consider body-worn camera footage exempt from public records requests, although most states have passed various exemptions associated with the disclosure — from who is allowed to view the video to the time frame in which it must be released."[17] Even laws governing disclosure can at times allow police to decide when and what to record and to whom video will be released.[18]

Unlike police-retained videos, civilian videos can go viral within minutes, reaching a global audience. The Supreme Court has acknowledged that video and audiovisual recordings are protected speech under the First Amendment.[19] "Although the Supreme Court has not squarely ruled on the issue, there is a long line of First Amendment case law that supports the right to record the police. And federal appellate courts in the First, Third, Fifth, Seventh, Ninth, and Eleventh

---

analysis/blogs/stateline/2020/01/14/body-cameras-may-not-be-the-easy-answer-everyone-was-looking-for (*citing* Shelley S. Hyland, Ph.D., *Body-Worn Cameras in Law Enforcement Agencies, 2016* (U.S. DEP'T OF JUST. BUREAU OF JUST. STAT., 2018), https://bjs.ojp.gov/content/pub/pdf/bwclea16.pdf.)

[13] *See* Brian A. Reaves, Ph.D., *Local Police Departments, 2013: Equipment and Technology* (U.S. DEP'T OF JUST. BUREAU OF JUST. STAT., 2015), https://bjs.ojp.gov/content/pub/pdf/lpd13et.pdf.

[14] Yokum, et al., *A randomized control trial evaluating the effects of police body-worn cameras*, PNAS (May 21, 2019) 116 (21) 10329-10332; first published May 7, 2019; see also Lum, et al., *Body-worn cameras' effects on police officers and citizen behavior: A systematic review*, CAMPBELL SYSTEMATIC REV., Vol. 16:3 at 2 (Sep. 2020).

[15] Jocelyn Simonson, *Beyond Body Cameras: Defending a Robust Right to Record the Police*, 104 GEORGETOWN L.J. 1559, 1567 (2015-2016).

[16] See Richard Fausset and Giulia McDonnell Nieto Del Rio, *As police body cameras become commonplace, a debate over when to release the footage*, N.Y. TIMES, May 2, 2021, https://www.nytimes.com/2021/05/02/us/police-body-cameras-andrew-brown-north-carolina.html (citing National Conference of State Legislatures).

[17] *Id.*

[18] *See Simonson, supra* note 15, at 1567.

[19] *See* Vincent Nguyen, *Watching Big Brother: A Citizen's Right to Record Police*, 28 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 637 (2018) (citing Burstyn v. Wilson, 343 U.S. 495, 502 (1952); ACLU of Ill. v. Alvarez, 679 F.3d 583, 595–96 (7th Cir. 2012), cert. denied, 133 S. Ct. 651 (2012); Turner v. Lieutenant Driver, 848 F.3d 678, 689 (2017)).

Circuits have directly upheld this right."[20] "Federal appellate courts typically frame the right to record the police as the right to record officers exercising their official duties in public."[21] Therefore, people have a First Amendment protected right to record police in their official capacities, including during police interactions.

The traffic stop is the most common police interaction.[22] Publicly available data suggests that traffic stops disproportionately burden people of color while posing significant safety risks.[23] Strong correlations between racially discriminatory practices, racial profiling, use of force, and illegal searches and community trauma support the need to record police.[24] "There have been numerous occasions when minor infractions, officer mistakes, misidentifications, and police overreaction have resulted in the injury or death of people of color."[25] Because of the racial disparity in policing, the right to record police during the traffic stop is crucial to ensuring transparency and safety for vulnerable communities. [26]

Open data provides access to government processes, decision making, and statistics. But reliable data tracking of police encounters is rarely available.[27] Despite the capability to do so, there are few active federal and state data collection practices. The absence may stem from lack of legislative priority and pushback on transparency. As of 2020, only 20 states mandate collection on every law enforcement traffic-initiated stop.[28] Encouraging state legislation and promoting community-access can lead to innovative ideas for transparency.[29]

---

[20] Sophia Cope, et. al., *You Have a First Amendment Right to Record the Police*, ELECTRONIC FRONTIER FOUND. (Jun. 8, 2020), available at https://www.eff.org/deeplinks/2020/06/you-have-first-amendment-right-record-police (discussing the Circuit Split).

[21] *Id.*

[22] The Stanford Open Policing Project, *supra* note 2.

[23] *Id.*

[24] *See* Pierson, et al., *A large-scale analysis of racial disparities in police stops across the United States*, 4 NATURE HUM. BEHAV. 736-735 (Jul. 2020), https://5harad.com/papers/100M-stops.pdf; *see also* Camille A. Nelson, *Frontlines: Policing at the Nexus of Race and Mental Health*, 43 FORDHAM URB. L.J. 615 (2016) (citing Karina L. Walters et al., *Bodies Don't Just Tell Stories, They Tell History*, 8 DU BOIS REV. 179, 181 (2011)).

[25] See Nelson, *supra* note 24, at 615.

[26] Although many police departments equip officer vehicles with dash cameras, the same issues arise because they are police-controlled recording. Dash cams may require officer activation.

[27] *See* Ous, et. al., *Is Police Behavior Getting Worse? Data Selection and Measurement of Policing Harms*, 49 J.LEGAL STUD. 153 at ___ (2020).

[28] *See* Pryor, et. al., *Collecting, Analyzing, and Responding to Stop Data: A Guidebook for Law Enforcement Agencies, Government, and Communities*, CTR. FOR POLICING EQUITY AND POLICING PROJECT 2020, https://policingequity.org/images/pdfs-doc/COPS-Guidebook_Final_Release_Version_2-compressed.pdf (citing NYU School of Law Policing Project, *It's Time To Start Collecting Stop Data: A Case For Comprehensive Statewide Legislation*, (Sep. 30, 2019), https://www.policingproject.org/news-main/2019/9/27/its-time-to-start-collecting-stop-data-a-case-for-comprehensive-statewide-legislation).

[29] *See Id.*

The 1994 Crime Bill assigns the responsibility for publishing reports on police and civilian contact and use of force statistics to the Attorney General.[30] This depends on nationwide reporting from police departments and states. Currently, there is no mechanism to compel reporting.[31] "The most widely cited national statistics come from the Police-Public Contact Survey (PPCS), which is based on a nationally representative sample of approximately 50,000 people who report having been recently stopped by the police." [32] These samples provide some insight, but fail to provide a full picture of policing, because they are voluntary and may include "selection bias and recall errors. Data released directly by police departments are potentially more complete but are available only for select agencies," "typically limited in what is reported and are inconsistent across jurisdictions." [33] The Bureau of Justice Statistics also publishes data from its Law Enforcement Management and Administrative Statistics survey. This survey collects data every three years from law enforcement agencies throughout the country. Information collected includes officer salary, demographics, training, and community policing activities.[34] Notably lacking from the survey are in-depth questions regarding police encounters (e.g. race of the detainee, why the stop occurred, or whether force was used in execution of the stop).[35]

The George Floyd Justice in Policing Act of 2020 is a recent attempt to mandate statewide action on police accountability. The Act allocates federal funds for body camera implementation, creates a nationwide misconduct registry, and requires states' use of force reporting to the federal government.[36] The Act only passed in the House. Some states have enacted legislation regulating policing data collection.[37] For example, Virginia recently passed the Community Policing Act which requires officers to collect and report stop data to the Virginia Department of State Police's Criminal Justice Information Services Division. Some of the information collected will include age, race, gender, reason for stop, location of stop, arrest outcome, and type of force used as identified by the office.[38] But it is still too early to see the legislative impact on Virginia communities. Government working groups and grassroots initiatives have tried to fill in gaps in widespread data collection through their own collection.

---

[30] *See* Violent Crime Control and Law Enforcement Act of 1994, 34 U.S.C. § 12602.
[31] *See* Vera Bergengruen, '*We Continue to Spin in Circles.' Inside the Decades-Long Effort to Create A National Police Use-of-Force Database*, TIME (Jun. 30, 2020), https://time.com/5861953/police-reform-use-of-force-database/; *see also* President's Task Force on 21st Century Policing, *Final Report* 1-116-19 (May 2015) https://cops.usdoj.gov/RIC/Publications/cops-p311-pub.pdf (DOJ has never allocated the funds necessary to fulfill the AG's mandate).
[32] Pierson (citing Davis, *supra* note 1).
[33] *See Id.*
[34] *See* 2016 LEMUS Survey, https://bjs.ojp.gov/data-collection/law-enforcement-management-and-administrative-statistics-lemas#surveys-0.
[35] *Id.*
[36] *See* Fact Sheet: George Floyd Justice in Policing Act of 2020, H.R., available at https://judiciary.house.gov/uploadedfiles/fact_sheet_for_justice_in_policing_2020.pdf.
[37] *See* NAT'L CONF. OF STATE LEGISLATURES, *Legislative Responses for Policing – State Bill Tracking Database*, (Oct. 28, 2020), https://www.ncsl.org/research/civil-and-criminal-justice/legislative-responses-for-policing.aspx.
[38] VIRGINIA OPEN DATA PORTAL, *Community Policing Act Data Collection*, https://data.virginia.gov/stories/s/Virginia-Community-Policing-Act-Data-Collection/rden-cz3h/.

The Police Data Collection Initiative (PDI) is a partnership between law enforcement agencies, researchers, and data scientists that publishes data sets from more than 130 participating agencies.[39] In 2017, the California Department of Justice launched its Open Justice portal publishing arrest data sets.[40] In 2019, the FBI launched the National Use-of-Force Data Collection, a program consisting of participating nationwide law enforcement agencies, with the goal of providing "an aggregate view of the incidents reported and the circumstances, subjects, and officers involved."[41] Currently, the Department of Justice "operates programs to collect and report data on the use of force by police officers and in-custody deaths."[42] DOJ also collects data on in-custody deaths.[43] The limitations behind these projects are their law enforcement voluntariness and geographical scope.

Several wide-ranging open-source projects aim to publish and analyze criminal justice data and increase transparency. Fatal Encounters is a national database built from public records requests.[44] CAPstat is a New York based project analyzing payroll, disciplinary, and NYPD federal lawsuit data.[45] The Citizens Police Data Project collects and publishes Chicago police misconduct data.[46] NYU School of Law's Policing Project partners with government organizations around the country to promote democratic engagement and accountability.[47] Open Data Policing, a platform run by the Southern Coalition for Social Justice "aggregates, visualizes, and publishes public records related to all known traffic stops to have occurred in North Carolina since 2002, in Maryland since 2013, and in Illinois since 2005."[48] The Stanford Open Policing Project, a partnership between the Stanford Computational Journalism Lab and the Stanford Computational Policy lab, analyzes nationwide traffic stops and searches. It has published and reviewed over 200 million records of stop and search information.[49] Again, many of these projects are regionally focused. The government working groups have partners all over the country, but participation is voluntary—thereby excluding hundreds of agencies. Smaller departments may not have the resources necessary for data collection. Obtaining data after a police encounter presents a discernible limitation—no real-time data input. The benefits of real-time data collection and publication concern accountability and transparency. If the public knows how its police are

---

[39] Police Data Initiative, *Participating Agencies*, https://www.policedatainitiative.org/participating-agencies/.

[40] STATE OF CALIFORNIA DEP'T OF JUST., *Open Justice*, https://openjustice.doj.ca.gov/.

[41] FED. BUREAU OF INVESTIGATION, *National Use-of-Force Data Collection*, https://www.fbi.gov/services/cjis/ucr/use-of-force.

[42] CONG. RSCH. SERV. REP., *Programs to Collect Data on Law Enforcement Activities: Overview and Issues*, https://fas.org/sgp/crs/misc/R46443.pdf.

[43] *See Id.*

[44] *See* Alicia Victoria Lozano, *Fatal Encounters; One man is tracking every officer-involved killing in the U.S.*, NBC NEWS (Jul. 11, 2020), https://www.nbcnews.com/news/us-news/fatal-encounters-one-man-tracking-every-officer-involved-killing-u-n1233188.

[45] *See* CAPstat, *About*, https://www.capstat.nyc/about/what/.

[46] *See* CITIZENS POLICE DATA PROJECT, https://cpdp.co/.

[47] *See* NYU SCHOOL OF LAW POLICING PROJECT, *Our Mission*, https://www.policingproject.org/use-of-force.

[48] S. COAL. FOR SOCIAL JUST., *Open Data Policing*, available at https://opendatapolicing.com/.

[49] *See supra* note 2.

interacting with communities right now, they can hold officers accountable for misconduct—not waiting months or years before a leaked video or internal report shows officer malfeasance.

Cell phone video can empower ordinary citizens to engage in police encounters.[50] Community perceptions of events may be altered by public viewing of police-citizen footage.[51] Videos may lead to arrests, whereas a lack of video may result in months of delayed arrests and conflicting factual accounts, like in the case of Breonna Taylor. In the past several years, several phone applications have emerged aimed at keeping police accountable. NYCLU Stop Frisk Watch App[52] and Five-O App[53] capture and store recordings of police interactions. The ACLU of New Jersey created an application that allows anyone to discreetly film police/citizen interactions and later upload the recording to the ACLU's website.[54] Other applications enable discreet recording during interactions, while simultaneously sending text messages/alerts to the individual's emergency contacts.[55] In August 2021, the Tallahassee Police Department launched "Tallahassee Bystander," an app that allows Tallahassee residents to record police interactions and stream the recording to Tallahassee Police Department and three emergency contacts.[56] It is unclear whether other departments or agencies will adopt similar technology, however this paper provides the potential for continued development of similar community-based technology. Our app is distinguishable because the primary subscriber will broadcast their encounter, allowing others within certain distances to be notified of the encounter. Subscribers will have the ability to broadcast the same encounter and provide different vantage points. Finally, the recordings of the encounter are stored and processed by our third-party partners for purposes of analyzing policing trends and developing policy.

## DISCUSSION

### A. Our Application and its Functionality

---

[50] *See* Joanna Stern, *They Used Smartphone Cameras to Record Police Brutality—and Change History*, WALL STREET J. (June 13, 2020), https://www.wsj.com/articles/they-used-smartphone-cameras-to-record-police-brutalityand-change-history-11592020827.

[51] *See* Flexon, et. al., *Interracial encounters with the police: findings from the NCVS police-public contact survey* 17:4 J. ETHNICITY CRIM. JUST. 299-320 (2019).

[52] *See* ACLU of New York, *Stop and Frisk Watch App*, https://www.nyclu.org/en/stop-and-frisk-watch-app.

[53] Rebecca Borison, *Three Teenagers Created An App To Document Police Abuse*, INSIDER (Aug. 15, 2014), https://www.businessinsider.com/fiveo-app-built-by-teenagers-to-document-police-abuse-2014-8.

[54] ACLU of New Jersey, ACLU-NJ LAUNCHES MOBILE JUSTICE SMARTPHONE APP (Nov. 13, 2015), https://www.aclu-nj.org/news/2015/11/13/aclu-nj-launches-mobile-justice-smartphone-app.

[55] Alessandra Ram, *It's Your Right to Film the Police. These Apps Can Help*, WIRED (May 5, 2015), https://www.wired.com/2015/05/right-film-police-apps-can-help/.

[56] Tori Lynn Schneider, *City unveils 'first of its kind' Tallahassee Bystander app to record interactions with police* (Aug. 24, 2021), https://www.tallahassee.com/story/news/local/2021/08/24/the-first-its-kind-city-reveals-new-tallahassee-bystanderapp/8254889002/?fbclid=IwAR2QvhrlQm1IPD59qqK08knslCHKoTYneQCAmSkWwImf_8cVm3jgIDies-o.

Our application expands on an existing shortcut that enables a cell phone's camera during a police encounter. This is an expansion on the existing technology to allow both the mobile user and bystander(s) to record police encounters. We aim to empower ordinary civilians through strategic public and private partnerships that can help app development.

Verbalizing "Hey Siri/Google, I'm being pulled over," or "Hey Siri/Google, I'm being detained," will trigger an instant safety tool; neighborhood alert; and police stop data collector.[57] Upon voice command activation, the phone's geolocation prompts a geotag. The application then opens to the system's video and recording function. Instantaneously, the person stopped by the police is joined by thousands of users. In real time, the application alerts the person's emergency contacts, application subscribers within a 1–5-mile radius, and community partners, like local government and policy groups. The hope is that these groups will demonstrate commitments to police reform and have direct access to stakeholders including legislators, prosecutors, and law enforcement agencies. Any recordings from the encounter will be stored for analytics. The stored data will reveal the race of the Primary subscriber[58]; number of officers involved; number of Primary subscribers; type of police stop (i.e. by car or foot) and location; presence of witnesses; existence of weapons; and use of force. The third-party app developer will provide content storage and data analytics. The developer will provide bi-weekly or monthly summaries to community partners. Big Tech partnerships will assist with creation of app features, and this partnership will be crucial for tech partners hoping for more involvement in police reform and social justice.

How does our product work?[59] By downloading our app, users will be equipped to document the police encounter. Reciting the keywords: "Hey Siri/Google, I'm being pulled over," or "Hey Siri/Google, I'm being detained," activates the application, and the phone's geolocation prompts the Primary Subscriber's geotag. By prompting the geotag, bystanders who have downloaded the application will receive an alert that tells them that there is a police encounter

---

[57] We recognize the app limitations with regards to non-verbal and non-hearing individuals. Developers are encouraged to create algorithms that prompt the app in any sign language. The app's capabilities must be effective regardless of language preference.

[58] For app purposes, "Primary Subscriber" is defined as: an individual being arrested, pulled over, stopped, or held by police officers.
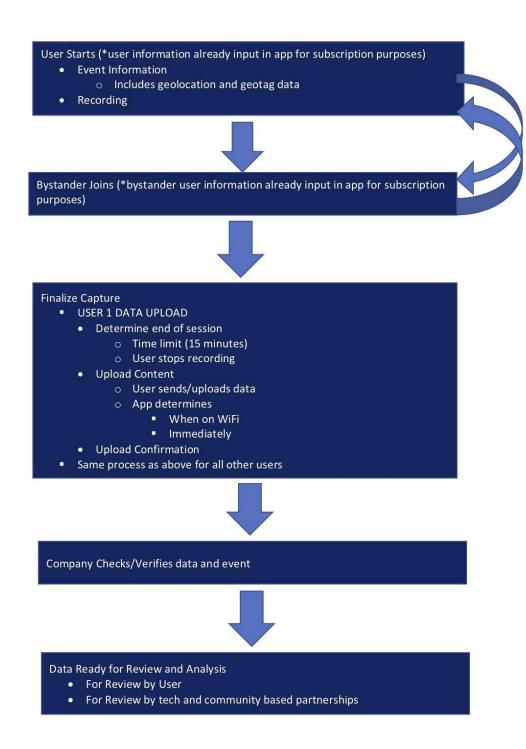
[59] Generally, the application will be developed in two stages, analogous to the software development process. The first stage involves developing an MVP ("Most Viable Product"), a fast and functional web-based application that can be accessed via computer and mobile devices, like tablets and cellphones. The second stage will involve developing a "native" application, which could then be downloaded from the specific app stores on the user's mobile device (i.e. iTunes store or Google Play). The native application will have greater interaction capabilities with the phone's actual hardware (i.e. camera). Both stages of the application will permit collection of the same information and utility, however the MVP stage invites public feedback and suggestions for improvements. In the MVP stage, our application will have the option of live video recording, cell phone data permitting, which will automatically be uploaded to the application's database while recording. However, if an individual chooses to not use their data for this app, the MVP will contain the option of recording and storing the video to later upload using Wi-Fi access.

happening within a certain distance of their location. As further described below, subscribers will have the option to select the "distance" they prefer to receive these notifications. The availability of the geotag information is targeted towards the application's data collection goals and assists potential bystanders to arrive to the location of the police stop and decide/determine if they want to stay and record. The subject of a police encounter can use their phone to record by video and voice and may notify emergency contacts. Possible expansions of the application include having it work with Bluetooth or other headphones to recite the keywords and potentially function as recording devices as well to decrease the dangers of relying solely on one's cell phone during potentially tense moments.

Location options permit subscribers within the encounter vicinity to receive notifications. If this individual observes the police encounter, they may record the event which will be posted to the application's database. Finally, partner organizations, like Civilian Review Boards and policy groups may also receive notifications. The recordings will be limited in time to 15 minutes due to mobile device battery limitations and storage. While this time frame may seem short, the goal is that by making this application more community oriented, bystander videos will fill in any gaps not recorded by the person being stopped. Since our application is more community oriented, bystanders who participate in recording the encounter will also have similar time restrictions. Moreover, by allowing bystanders to observe and record the police encounter, our application can provide potential resolutions to issues involving the Primary subscriber's cell phone confiscation. Our application could potentially safeguard the effects of confiscation through the inclusion of multiple recordings.

Finally, our application considers officer safety and magnifies accountability on both ends. Having a comprehensive picture creates a fact-based narrative. Data rather than the videos will be made publicly available. Videos pose the potential risk of showing the Primary subscriber's and/or the officer's faces and other identifying information. The data, as further described below, will not provide identifying information, thus ensuring police and citizen safety.

The application collects various data points, including, the individual's geolocation (which can provide information like the neighborhood/area of the encounter, population and makeup of the area); the individual's own demographics (including age, race, and gender); the officer's demographics (including race, gender, number of officers); the general reason for the encounter; and finally, the bystander's information (including age, race, and gender). Generally, the collection of the data will flow from the User/Subscriber to the company developing the app in five different stages. The User will experience the event and record while bystanders also record the encounter. Then the User(s) will upload the recording and related information to the app and will receive confirmation. The company will verify the data and finally, the data will be available for review both by the User and the company for purposes of providing statistical information to community partners for social justice impact. Below is a chart outlining the general flow of the data:

User Starts (*user information already input in app for subscription purposes)
- Event Information
  - Includes geolocation and geotag data
- Recording

Bystander Joins (*bystander user information already input in app for subscription purposes)

Finalize Capture
- USER 1 DATA UPLOAD
  - Determine end of session
    - Time limit (15 minutes)
    - User stops recording
  - Upload Content
    - User sends/uploads data
    - App determines
      - When on WiFi
      - Immediately
  - Upload Confirmation
- Same process as above for all other users

Company Checks/Verifies data and event

Data Ready for Review and Analysis
- For Review by User
- For Review by tech and community based partnerships

The data and information sent to partnering organizations will provide opportunities to process, report, and provide the public with a synthesized analysis and collection of police encounters within certain cities and states. The post-encounter analysis underscores the

importance of these technology and advocacy driven partnerships because they magnify systemic accountability and transparency throughout this process.

## B. Importance of Public and Private Partnerships

Big Tech partnerships are essential for app development and analysis of the collected and synthesized data. Through these partnerships, entities might be incentivized to develop in-house "data-justice" roles. Most recently, companies like Instagram and Microsoft created justice reform positions, including, a "Public Policy Manager, Civic Engagement & Racial Justice Position" and a "Strategic Partnerships Manager – Justice Reform Initiative." Our app will enable data storytelling by presenting real-time information, based on the review and synthesis of the recorded police encounters, to the world. The Big Tech partner will have the opportunity to review the data that will eventually identify patterns in policing and criminal justice implications. Thus, these partnerships can assist in filling the data gaps in current policing data.

Partnerships with local government and advocacy groups are also crucial. Entities like Civilian Review Boards and policy groups have direct access to stakeholders working in criminal justice and police reform. Our app will distribute real time alerts and bi-weekly or monthly data summaries to these government and non-governmental bodies. The public information contained within the summaries will also be the springboard for civil rights and criminal justice reform. The application has many key players all of whom magnify accountability and empower citizens through technology and public accessibility.

## C. Privacy and Data Explained

As with any technology feature, creators have an obligation to address privacy and data treatment issues early in the process. We foresee that our application's features will collect vast amounts of data, while maintaining confidence in its protection. The application will have several user controls that would allow an individual to disable several of the application's features, such as geotagging or automatic upload. As the application serves as an alert function for police interaction, our goal is to promote the safety of both the citizens (either using the application or interacting with police) and the police officers themselves. There could be a scenario where bad actors might take advantage of our application's notification feature to harm citizens or police officers. However, a scenario like this can be addressed through privacy feature incorporation and allowing an individual to disable the notification of their specific location. On the police officer side, the application does not notify users of their location, unless a stop is in progress. A bad actor could utilize this information, but notification of their presence is no different than other existing applications that notify drivers of police officers on their route.

Our application is not an outlet or avenue for harassment or misappropriation. Videos are directly stored onto the application and not shared with the application users. Once in the application, only specific data sets are analyzed and distributed for public use. There will be no functionality that would promote the sharing or disclosing the identity of individuals utilizing the application nor is there any way that these identities will be broadcasted to users of the application. Of course, we will implement all necessary security measures to minimize any data breaches and protect the identity of users. Most of the internal components of the application occur on the

backend, making it highly unlikely users could manipulate the data.[60] With that said, there may be some concern with the privacy of police officers on the recordings. Police officer identities will only be disclosed on the actual video recorded by the subject or bystander. This is consistent with the right to record police officers carrying out official police functions.

The purpose of the application is transparency and accountability—not profit. With this mindset, it is our goal to obtain and retain minimal amount of PII. Users will first experience the application's registration phase. The application will request the user's email address and they will have to enter a password. During the registration process, questions will cover race, ethnicity, geographic location, and community information, all of which will help us during the analysis in the post-data process. At registration, we will have a simplified consent request that will ask users to read over and accept. The request will explain how the application will utilize the user's cellphone geotag and location, which will only be triggered when the user shares the video or if they are being stopped.

When uploading a recording or sharing their location, reminders confirming whether the user understands that their location or geotag will be obtained. In other words, at all times that a user shares their data the application will always trigger a reminder, so as to always reinstate that the user consents. This promotes an opt-in method rather than an opt-out one. Once a user uploads a video, this consent reminder will also pinpoint that all the data will be shared with government entities and third-party non-profit groups and may be shown to law enforcement. Once the data is uploaded, the application's organization and Big Tech company will verify the data.

The recording phase is triggered only by the key words. Unlike voice assistant applications, the application itself will not monitor individuals or record on its own. Once the recording is uploaded to the application's database, only the registration information provided by the user is shared during the pre-recording phase input. At the post-recording phase, the data will be shared with all the respective entities. The data will be retained in the application organization's cloud database that can be subject to U.S. law. If the individual wishes to remove their PII from the application, they may do so by request.

The ability for citizens to access government information has been preserved in legislative mandates like the Sunshine Act [61] and the Freedom of Information Act (FOIA)[62]. A step further from a citizen's right to open access to government information is the ability to record government officials, which is rooted in the First Amendment.[63] The ability to record police officers and law

---

[60] As the application does provide the ability for users to upload the video at a later time if they are not able to obtain access to the internet, there is the question of whether users could manipulate the video. However, the application will consider implementing certain restrictive controls that will prevent video manipulation, such as disabling the editing feature of videos utilized through the application or only allowing video upload through the video function within the application.

[61] 5 U.S.C. § 552b. States have their own versions of this law that promote open and available public meetings.

[62] 5 U.S.C. § 552. States also have their own versions of the FOIA that allow for public disclosure of state records.

[63] *See* Gilk v. Cunniffe, 655 F.3d 78, 82 (1st Cir. 2011).

enforcement activities is recognized as a citizen's right, so long as the individual does not engage in activities that can jeopardize the safety of all those around, including law enforcement.[64] We also do not foresee any physical safety concerns arising from the use of this application. While our application notifies users in the general vicinity of the encounter, this is no different than citizens observing any number of the recent news-reporting police encounters.[65] In one specific instance, Congresswoman Maxine Waters made headline news when she stopped on the side of the road to observe a traffic stop in Los Angeles, California.[66] There is no evidence that more witnesses in an encounter will cause chaos, violence, or unsafe conditions. Officers are trained to adapt to distractions and public observers when investigating potential criminal activity. In fact, this application will foster transparency and reliability through the recordings.

Information collected would not fall under FOIA or state FOIL processes until the information is shared and obtained by government entities. Recently, there has been significant legal precedent concerning the level of privacy afforded law enforcement personnel. Although the federal FOIA would apply to federal law enforcement and federal documents in a federal agencies' possession, there are instances where state law enforcement personnel information is contained within these federal documents. Under the FOIA exemption of §552(b)(7)(C), protection is afforded from disclosure of personal information in law enforcement records that "could reasonably be expected to constitute an unwarranted invasion of personal privacy."[67] Most privacy protection under this exemption is afforded to third parties mentioned in law enforcement records. Although certain circuits have noted that law enforcement personnel should be afforded a level of personal privacy, especially to protect from harassment and annoyance.[68] However, this level of protection is lowered when it involves allegations of wrongdoing by law enforcement personnel. It is then that disclosure must serve a public interest that outweighs any privacy interest. An allegation of wrongdoing is not enough to overcome a privacy interest. Instead, there must be a showing of a specific evidentiary standard:[69] whether a reasonable person would believe the alleged impropriety occurred.[70] For purposes of our application, we do not anticipate issues with privacy and law enforcement officer safety unless the videos were released or shared with the public. Even if an issue arose where a video was published, we believe that the public interest in non-violent police encounters outweighs any privacy interests.

Each state has its own laws related to access to information. Most states do enact a similar process like the FOIA. As it relates to privacy and law enforcement personnel, some states do

---

[64] *See* Sharp v. Baltimore City Police Department, No. 1:11-cv-028888-BEL (D. Md. Jan. 10, 2012).

[65] *See* George Floyd's murder had more than two bystander recordings. *See* BBC, *George Floyd: What happened in the final moments of his life* (Jul. 16, 2020), https://www.bbc.com/news/world-us-canada-52861726 (To understand what occurred on that evening, videos from witnesses were obtained).

[66] *See* Gino Spocchia, *Congresswoman Maxine Waters jumps out of her car to intervene as black man stopped by police*, INDEPENDENT (Jul. 20, 2020), https://news.yahoo.com/congresswoman-maxine-waters-jumps-her-093216779.html.

[67] FOIA Exemption 7, https://www.justice.gov/archive/oip/foia_guide09/exemption6.pdf.

[68] *See* Nix v. U.S., 572 F.2d 998, 1006 (4th Cir. 1978).

[69] NARA v. Favish, 541 U.S. 157, 174 (2004).

[70] *Id*.

mimic the same mindset that disclosing information depends on whether the public interest outweighs the privacy interest.[71] Based on the legal precedent that supports the availability and transparency of the identity of law enforcement, we do not foresee any privacy issues arising out of the use of our application.

Overall, this paper takes into consideration that other applications with somewhat similar concepts may exist (i.e. ACLU's Mobile Justice). We intend to build upon existing concepts and create a central and expansive technological hub that will promote true data justice and "people power." While organizations like the ACLU is considered a powerhouse player in the criminal justice context, their resources cannot be entirely dedicated to becoming a "technology player." It is our goal that this application will streamline police accountability and promote the efficacy of data collection for police activity through tech partners. It is our belief that inconsistent reporting propels even more distrust in law enforcement. The application will encourage more transparency and community participation benefiting both citizens and law enforcement agencies. This application is neither an avenue to disparage others nor an outlet to promote negative attitudes towards law enforcement. When there is more accountability and access, cooperation and trust are possible.

<div align="center">

**<u>CONCLUSION</u>**

</div>

Our application arises from the consequences of long term and widespread police misconduct towards minority groups and people of color. The app's goal is to improve police accountability and increase safety while providing a safe mechanism for community engagement. Our app will provide an avenue and "data hub" for advocacy organizations and others to view and access statistics and information related to police encounters for policy reform. As with any new tech app, privacy is fundamental and presents hurdles to implementation. But the goal is for technology to spur societal improvement through data-driven transparency and discourse. Our app is a practical tool that is guided under the principles of police reform, racial justice, and societal accountability, which we hope will lead to concrete improvements in American policing.

---

[71] *See* Diana D. Juettner & Anthony F. Libertella, *Information Technology: The Conflict Between Freedom of Information Laws and the Right to Privacy*, 2 NE J. Legal 27, 32 (1994).