

JUSTICE REPORT

SEPT. 2024 | VOL. 18 NO. 3

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Past results are reported to provide the reader with an indication of the type of litigation in which we practice and does not and should not be construed to create an expectation of result in any other case as all cases are dependent upon their own unique fact situation and applicable law. This publication is not intended as, and should not be used by you as, legal advice, but rather as a touchstone for reflection and discussion with others about these important issues. Pursuant to requirements related to practice before the U. S. Internal Revenue Service, any tax advice contained in this communication is not intended to be used, and cannot be used, for purposes of (i) avoiding penalties imposed under the U. S. Internal Revenue Code or (ii) promoting, marketing or recommending to another person any tax-related matter.

MAKING THE WHOLE TRUTH PUBLIC

THE FIGHT TO RELEASE BODY-WORN CAMERA FOOTAGE IN SECTION 1983 LITIGATION

By: Marc E. Betinsky and Julie C. Moroney

Body-worn cameras were heralded as a promising innovation in the fight against crime and police misconduct. But in the decade since their introduction, victims of police misconduct and their advocates first had to fight to get officers to wear the cameras. Then, advocates had to fight to get officers to *turn on* the cameras. And now, the latest round of the fight lies in convincing municipalities to actually *release* the footage.

When it comes to releasing body-worn camera footage to the public, local governments routinely delay releasing it, release only partial or redacted video, or resist releasing footage at all. In our state, municipalities have tried to hide behind the Minnesota Government Data Practices Act (“MGDPA”) as a means for keeping body-worn-camera footage from public view. Yet those same government entities are quick to release footage that exonerates officers, even when doing so reveals personally sensitive information protected under that same statute. For instance, Minneapolis released body-worn camera footage *just one or two days after* the fatal police shootings of Amir Locke and Tekle Sundberg in 2022, presumably because the use of force appeared justified from the City’s perspective. Yet by contrast, it took over a year, and filing a lawsuit, for one of our clients to get the body-worn camera footage of Derek Chauvin’s use of force against her.

Our team, the Civil Rights & Police Misconduct group at Robins Kaplan, has expended needless hours engaging in motion practice to get body-camera footage released in Section 1983 cases. We’ve secured orders from both the District of Minnesota and the Eighth Circuit rejecting attempts to keep footage sealed, but the fight to stop the suppression of body-worn camera footage from public view continues unnecessarily.

THE MGDPA POSES NO OBSTACLE TO PUBLIC RELEASE

In the world of Section 1983 litigation, no one can dispute the overwhelming public interest in favor of access to body-worn-camera footage documenting police misconduct. The events in the immediate aftermath of George Floyd’s murder are a painful confirmation. Shortly after Floyd died, the Minneapolis Police Department released a statement claiming that Floyd had died due to a “medical incident” and had “physically resisted” officers. Eric Levenson, *How Minneapolis Police First Described the Murder of George Floyd, and What We Now Know*, CNN (Apr. 21, 2021), <https://www.cnn.com/2021/04/21/us/minneapolis-police-george-floyd-death/index.html>. Of course, both claims were untrue—but the world learned that only because of video recorded by a brave 17-year-old bystander, Darnella Frazier. Imagine how differently events may have transpired if Floyd’s lawyers had to first go to court and fight with the City of Minneapolis for the release of the body-worn-camera footage.

MARC E. BETINSKY

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Marc and Julie practice in the firm’s Civil Rights and Police Misconduct Group, representing plaintiffs in cases alleging police misconduct, jail neglect, and other types of unconstitutional government action and inaction.

This article originally appeared in the July 15, 2024 edition of Minnesota Lawyer. Reprinted with permission.

Despite the undeniable public interest favoring access to body-worn-camera footage, the defense bar often hides behind the MGDPA to avoid public release. The MGDPA is a state law governing data collected by government agencies; it attempts to balance the individual privacy interests of persons interacting with the government with the public's collective right to know what the government is doing. Any lawyer whose practice touches the MGDPA knows it is a byzantine statute providing complicated (and at times inconsistent) rules for classification of data.

The section governing body-worn-camera footage, however, is thankfully straightforward. Any data showing the "discharge of a firearm" by a police officer or a use of force that "results in substantial bodily harm" is designated as public data. Minn. Stat. § 13.825, subd. 2(a)(1). If the footage is part of an active criminal investigation, it is deemed confidential or nonpublic, but only until the investigation is complete. Minn. Stat. § 13.825, subd. 2(a)(3); Minn. Stat. § 13.82, subd. 7. Moreover, if the subject of body-worn camera footage wants the footage to be public, the MGDPA requires classifying the data as public, even if it does not show the discharge of a firearm or use of force resulting in substantial harm. Minn. Stat. § 13.825, subd. 2(a)(2). To protect personally identifying information of third parties, the MGDPA requires the government to redact any third-party subjects in the footage who do not consent to release. Thus, by the MGDPA's own terms, the government must publicly release body-worn camera footage to plaintiffs requesting it in litigation, with limited redactions to protect the information of nonconsenting third parties. The statute, simply put, makes that data public. Full stop.

We do not mean to say that the release of body-worn camera footage does not implicate fraught, and often conflicting, interests. But the legislature already weighed those competing interests, as documented by the MGDPA's legislative history, and arrived at the compromise embodied in section 13.825. The legislature, in other words, decided that an individual subjected to force by a police officer has a more compelling interest in the footage than the police have in keeping it shielded from view.

Nevertheless, we repeatedly see government defendants in Section 1983 litigation use the MGDPA as a justification for keeping body-worn-camera footage from the public, such as by seeking protective orders, improperly designating the footage as confidential, or otherwise restricting our clients' ability to share it publicly. This behavior is antithetical to the terms of the MGDPA, which classifies the data as public, and is also contrary to the public's qualified common-law right to access court filings.

What is most troubling, however, about government defendants invoking the MGDPA to keep body-worn camera footage under lock and key is that it wholly ignores the context of Section 1983's enactment. That statute, after all, was passed as part of the Ku Klux Klan Act of 1871—a bill Congress enacted based on its conclusion, coming out of the Civil War, that the states could not be trusted to ensure the protection of federal rights. *See Mitchum v. Foster*, 407 U.S. 225, 242 (1972). Section 1983 was intended to be a vehicle for the vindication of constitutional rights by citizens who had been wronged by state officials and thus shine light on such misconduct. The painful irony that local governments are now, more than 100 years later, leaning on state privacy laws to thwart the release of footage *documenting misconduct by state actors* reveals why Section 1983 continues to be necessary—and why courts must not allow defendants to use state law to restrict public dissemination of body-worn-camera footage produced in federal civil-rights cases.

THE FIGHT TO MAKE THE WHOLE TRUTH PUBLIC

Unsurprisingly, the cases in which a police officer's use of force appears unconstitutional are the cases in which local governments fight the hardest to keep body-worn-camera footage from public view.

We first confronted this when representing Soren Stevenson, who was shot in the head at a George Floyd protest by a Minneapolis police officer's "less lethal" launcher. The City of Minneapolis labeled all body-worn camera footage in the case as confidential, non-public data, even though the footage captured public protests being broadcast around the world. We moved to unseal our amended complaint (which contained stills from the footage) and asked the Court to change the improper confidentiality designations. The City opposed. Though the Court did not get the chance to rule on our motion before our client accepted an offer of judgment, it was a preview of what was to come and the ways in which defendants would attempt to contort the MGDPA to suit their desires.

The next installment in our fight to release body-worn camera footage arose in connection with our representation of John Pope, who was a victim of Derek Chauvin's excessive force back in 2017. Predictably, Minneapolis resisted releasing the footage publicly and moved for a protective order designating it as confidential. This time, the City argued the footage should be confidential because Pope did not make a formal request under the MGDPA to obtain it and because Chauvin's use of force (according to the City) did not result in substantial bodily harm. The City also argued that because countless other sections of the MGDPA could apply, each video needed to be independently analyzed and should be presumed confidential. U.S. Magistrate Judge Tony N. Leung rejected every one of these arguments. He ordered the City to release the footage, emphasizing that the MGDPA does not control discoverability or confidentiality in federal civil-rights actions. We finally had an order that we could use in the fight that we have now come to expect from government defendants in Section 1983 excessive force cases.



From left, the Robins Kaplan Civil Rights and Police Misconduct Group: Katie Bennett, Greta Wiessner, Andrew Noel, Marc Betinsky, Julie Moroney and Robert Bennett.

Despite this order, we were unsurprised when the Minneapolis City Attorney's Office resisted releasing body-worn-camera footage in another case involving the same officer as in *Stevenson*, who shot a 40-millimeter "less lethal" projectile into the eye of another one of our clients at a different George Floyd protest. That client, Ethan Marks, is blind in his right eye as a result of the close-range shot. The defendant officer moved for summary judgment and filed nearly all of his exhibits, including the body-worn-camera footage, in the public docket under temporary seal. The City Attorney's Office moved for continued sealing of the footage after U.S. District Judge Ann D. Montgomery denied the officer summary judgment.

This time, the fight over public access to the body-worn-camera footage made it to the Eighth Circuit. While the officer's motion for continued sealing of the footage was still pending with the district court, he pursued an interlocutory appeal of Judge Montgomery's order and moved to file his appellant brief and appendix under seal. We opposed for the same reasons we opposed continued sealing at the district court. The Eighth Circuit denied the defendant's motion in a cursory three-sentence order, requiring him to submit an unredacted version within two days. Soon after, U.S. Magistrate Judge Douglas L. Micko ordered the footage unsealed at the district court, reasoning that the MGDPA did not control the Court's analysis, and even if it did, the statute's section governing body-worn-camera footage classified the footage as public data. The trio of orders from *Pope* and *Marks* proved helpful in fighting the continued attempts to file bod

The resistance to releasing such footage publicly—and the unnecessary motion practice it has spurred—is not limited to City of Minneapolis. In another case, we represent a Champlin police officer who was attacked by an off-leash canine deployed by a Hennepin County Deputy Sheriff. Hennepin County filed the body-worn-camera footage under temporary seal at the district court, maintaining, like the City of Minneapolis, that such footage was non-public under the MGDPA.

After Judge Montgomery denied the Deputy's motion to dismiss, the County Attorney's Office lodged an interlocutory appeal and moved to file the footage under seal at the Eighth Circuit, arguing that redacting third parties would not be practicable and that the MGDPA's section on body-worn-camera footage did not apply because our client was injured through an accident and not a "use of force" governed by that provision. Astoundingly, despite claiming that the footage had to be filed under seal *to protect the identities of third parties* and that redaction would be impracticable, Hennepin County filed other, unsealed exhibits that divulged the suspect's name, birthdate, address, height, weight, license plate, and other identifying information. This removed any pretense of using the MGDPA to shield personally identifying information of third parties. It is, and always has been, about preventing damaging footage of officers' misconduct from seeing the light of day. The Eighth Circuit denied the defendant's motion to file the footage under seal in one sentence, without even providing the County Attorney the opportunity to reply to our opposition.

CONCLUSION

When the Minneapolis Police Department first began using body-worn cameras, the police chief touted them as a "layer of transparency and accountability." Similarly, when Minneapolis released footage of Dolal Idd's fatal shooting just one day after it happened (ostensibly believing the footage exonerated officers), the chief said he wanted residents to "see for themselves" what had happened, and Mayor Jacob Frey relayed that "[h]onesty and accountability are what will lead us forward." Nicholas Bogel-Burroughs, *Minneapolis Police Release Body Camera Video of Its First Killing Since George Floyd*, N.Y. Times (Dec. 31, 2020), <https://www.nytimes.com/2020/12/31/us/george-floyd-minneapolis-police-body-cam.html>.

These proclamations ring hollow. Our experience with the City of Minneapolis and other municipalities reveals they are loathe to release body-worn-camera footage when it does not exonerate the involved officers. It's long past time for government entities and the defense bar to stop using the MGDPA as a shield to keep such footage from the public. Minnesotans should be able to "see for themselves" what happened when police officers use force, regardless of whether it was justified or unjustified.

MEET OUR NEW PARTNER AND TRIAL ADVOCACY SEMINAR KEYNOTE SPEAKER:

B. Todd Jones

Robins Kaplan LLP is proud to welcome back B. Todd Jones, who has returned to the firm as a partner, bringing with him an extraordinary breadth of experience across public service, federal law enforcement, and private practice. Known for his exemplary leadership and commitment to justice, Jones will work with clients from the firm's Minneapolis and New York offices, focusing on complex business litigation, government and internal investigations, corporate governance, appellate advocacy, and white-collar criminal defense.

Jones has held some of the most prominent positions in the legal world, including U.S. Attorney for the District of Minnesota, Director of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and Senior Vice President and Special Counsel for Conduct at the NFL. His experience navigating both public and private sectors equips him with a unique, 360-degree perspective on legal strategy and leadership. From prosecuting major drug trafficking cases early on in his career as an Assistant U.S. Attorney in Minnesota to overseeing the league's risk management in the NFL, Jones' legal journey is underscored by a deep commitment to upholding the rule of law and fostering integrity in all areas of practice.

Jones' return to Robins Kaplan also comes with the exciting announcement that he will deliver the keynote address at the firm's 2024 Trial Advocacy Seminar. In his session titled, "**Law and Leadership in Public and Private Sectors,**" Jones will share insights from his distinguished career - highlighting the importance of integrity, accountability, and thorough investigation in upholding justice. Drawing from his leadership at the U.S. Attorney's Office, the ATF, and the NFL, Jones will explore how legal principles are applied across different sectors and how effective leadership can impact both public and private organizations.

Join us as we celebrate B. Todd Jones' return and look forward to his inspiring keynote at this year's seminar. We are thrilled to have him back on our team, working alongside our other attorneys to help clients tackle their most complex legal challenges.



Learn more
and register
here.



MASS TORT INVESTIGATIONS

EXACTECH

Exactech has recalled approximately 160,000 hip, knee, and ankle total replacement devices due to accelerated wear from defective packaging. The defective devices have caused the need for a revision surgery due to osteolysis (bone loss), pain, and swelling. Robins Kaplan LLP partner Rayna Kessler serves as the MDL Liaison Counsel in the multi-district litigation *In re: Exactech Polyethylene Orthopedic Products Liability Litigation*, MDL No. 3044, 1:22-md-03044-MMH.

REPORTED CHILD SEX ABUSE

Robins Kaplan LLP is investigating instances of reported child sexual abuse by individuals associated in some capacity with the American Kennel Club (AKC), an organization that hosts thousands of dog show events a year and throughout the country. News publication Business Insider recently published an article which alleges some adults, including a former AKC employee and a dog breeder, were convicted of sexually abusing minors. After they were convicted, the perpetrators were not suspended by the organization or local clubs, giving them the ability to return to the sport.

BAUSCH & LOMB AREDS 2 PRESERVISION EYE VITAMINS

Robins Kaplan LLP is investigating a potential link between the use of this nonprescription product and serious injury. Bausch & Lomb AREDS 2 Preservision Eye Vitamins are typically used for eye health – specifically macular degeneration. However, the high levels of zinc in the product can result in copper deficiency. We are investigating a potential connection between copper deficiency and serious injury, including myelopathy and neuropathy.

ELMIRON

The painful bladder syndrome drug Elmiron updated its labeling to warn that pigmentary

changes in the retina have been identified with long-term use of the drug,¹ nearly two years after the journal of the American Academy of Ophthalmology published an article linking Elmiron to pigmentary maculopathy² (which may cause permanent vision changes, such as difficulty reading, slow adjustment to changes in lighting, and blurred vision).

PHILIPS CPAP AND BILEVEL PAP RECALL

In June 2021, Philips Respironics recalled certain CPAP, BiPAP, and mechanical ventilator devices after disclosing that the sound abatement foam used in the devices was degrading, causing small particles from the foam to break loose and come through the air hose. The possible risks resulting from the particulate and chemical exposure from the recalled devices include toxic and carcinogenic effects to the liver, kidneys, and other organs.

MEGADYNE ELECTRODE RECALL

Robins Kaplan attorneys are investigating severe patient burn injuries related to certain models of Megadyne's Reusable Patient Return Electrodes recall. Products like the Megadyne MEGA 2000 and MEGA SOFT Reusable Patient Return Electrodes are soft pads used in some electrosurgeries that aim to reduce the risk of excessive heating when an electric current is used to heat, cut tissue, or stop bleeding.

BIVONA TRACHEOSTOMY TUBES

Robins Kaplan attorneys are investigating possible concerns with some types of Bivona Tracheostomy Tubes, after medical device manufacturer Smiths Medical alerted customers that certain lots of the Bivona Neonatal/Pediatric and Adult Tracheostomy products might have a defect where the flange could be torn or broken. The defect could result in serious complications, including the inability to correctly ventilate or protect the airway.

1. U.S. Food and Drug Administration, June 16, 2020 Supplemental Elmiron Package Insert. DRUGS@FDA, available at https://www.accessdata.fda.gov/drugsatfda_docs/label/2020/020193s014lbl.pdf.

2. William A. Pearce et al., Pigmentary Maculopathy Associated with Chronic Exposure to Pentosan Polysulfate Sodium. OPTHALMOLOGY. E. Pub. May 22, 2018, available at <https://doi.org/10.1016/j.ophtha.2018.04.026>.

CASE RESULTS

\$3 MILLION WRONGFUL DEATH SETTLEMENT

Robins Kaplan partner Brandon Vaughn represented the mother of a 21-year-old male who died while in the care of a hospital for severe abdominal pain, nausea, and vomiting. While admitted, the patient's heart rate remained elevated and eventually increased to around 180 beats per minute. Additionally, his blood pressure remained low throughout his stay with some periods of improvement. Despite the poor management of the high heart rate and low blood pressure, the care that ultimately led to our client's death was the administration of a medication that was contraindicated for someone with low blood pressure. In our expert's words, the medication should have never been given to someone with low blood pressure and pushed him off the cliff causing his death. Approximately 20 minutes after receiving the medication, our client was found pale, unresponsive, and ultimately was unable to be revived despite many lifesaving efforts.

\$650,000 WRONGFUL DEATH SETTLEMENT INVOLVING MENTAL HEALTH CARE AND TREATMENT

Robins Kaplan attorneys obtained a wrongful death settlement with multiple defendants totaling \$650,000, where the plaintiffs alleged the health care and service providers failed to provide appropriate mental health care and treatment.

\$600,000 SETTLEMENT; *FYLE V. CITY OF DULUTH ET AL.*

In June 2024, Duluth's City Council approved a \$600,000 settlement brought against the City and one of its officers. In September 2020, Jared Fyle was shot in the back while unarmed and inside his apartment. Two officers approached the apartment after a civil dispute. One officer blindly fired several shots through Mr. Fyle's door after hearing two loud bangs coming from inside. One of the bullets wounded the 23-year-old, hitting him in the shoulder.

TRIBAL NATIONS FILE COMPLAINTS AGAINST SOCIAL MEDIA GIANTS

The Fond du Lac Band of Lake Superior Chippewa in Minnesota filed a landmark lawsuit against major social media giants, including Meta, the parent company of Facebook, Snapchat, and TikTok. Robins Kaplan is representing this Tribal Nation, along with others, including Sisseton-Wahpeton Oyate, Spirit Lake Nation in North Dakota, the Menominee Indian Tribe of Wisconsin, and the Turtle Mountain Band of Chippewa Indians in a first-of-its-kind lawsuit that started in April 2024.

PHILIP SIEFF NAMED OUTSTANDING TRIAL LAWYER OF THE YEAR BY MINNESOTA ASSOCIATION FOR JUSTICE

Partner Philip Sieff has been honored as the “Outstanding Trial Lawyer of the Year” by the Minnesota Association for Justice (MAJ). This prestigious award, presented at the MAJ Annual Convention, recognizes Sieff’s groundbreaking work in litigation against manufacturers of aerosol dust removers.

In April 2024, Sieff was co-lead counsel and secured a landmark \$7.75 million verdict against CRC Industries for its failure to prevent the foreseeable misuse of its aerosol dust remover products. This case, which was the first of its kind to go to trial, followed the 2019 death of Cynthia McDougall, who was killed in a vehicle crash after an individual who huffed CRC Duster struck her car head-on. Aerosol dust removers, like CRC Duster, are commonly abused to get “high.” When inhaled, users experience dramatic impairment effects from the chemical used as a propellant. The case underscored the well-known risks associated with these products and CRC Industries’ neglect in preventing such abuse.



From left, Robins Kaplan attorneys Michael Reif, Rashanda Bruce, Peter Schmit, Philip Sieff, Tara Sutton and Tony Schrank.

Beyond his courtroom achievements, Sieff actively mentors younger attorneys and contributes to public awareness initiatives focused on the dangers of inhalant abuse. His leadership and dedication to public safety have made a lasting impact on the legal community and beyond.

BRANDON VAUGHN ELECTED AS AAJ COMMITTEE CHAIR

Brandon Vaughn was recently elected as Chair of the Diversity, Equity, Inclusion and Accessibility Committee for the American Association for Justice (AAJ). The group’s main priority includes identifying strategies for growing diversity within the organization.

ELIZABETH FORS ELECTED AS MAJ SECRETARY

Elizabeth Fors has been voted in as secretary for the Minnesota Association for Justice (MAJ). Elizabeth was also recently nominated to serve on the Minnesota State Bar Association’s (MSBA) Civil Litigation Council.

RASHANDA BRUCE NAMED TO THE 2024 LAWDRAGON 500 X - THE NEXT GENERATION

Rashanda Bruce has been recognized in the second edition of the Lawdragon 500 X - The Next Generation. This guide, compiled through hundreds of nominations, independent research, and peer recommendations, celebrates those “who will define where the legal profession of our country goes.”

ROBERT BENNETT RECOGNIZED WITH LIFETIME ACHIEVEMENT AWARD

Robert Bennett has been honored with The National Law Journal's Lifetime Achievement Award, recognizing trial attorneys who have demonstrated excellence over their entire career. Bennett, a partner in the firm's Civil Rights and Police Misconduct Group, is known for taking high-profile cases, shedding light on injustice, and prompting change.



SEVEN ROBINS KAPLAN ATTORNEYS NAMED TO MINNESOTA LAWYER'S POWER 30: PERSONAL INJURY LIST

Robert Bennett, Katie Bennett, Elizabeth Fors, Teresa Fariss McClain, Andrew Noel, Philip Sieff, and Tara Sutton have been selected to *Minnesota Lawyer's* POWER 30: Personal Injury list, honoring the state's top personal injury attorneys.

2025 BEST LAWYERS IN AMERICA

Multiple Robins Kaplan attorneys were named to the 2025 edition of *The Best Lawyers in America*, including Katie Bennett, Robert Bennett, Marc Betinsky, Leo Feeney, Mark Hallberg, Brendan Johnson, Rayna Kessler, Teresa Fariss McClain, Andrew Noel, Michael Reif, Peter Schmit, Tony Schrank, Philip Sieff, Tara Sutton, and Brandon Vaughn. In addition, Rashanda Bruce, Elizabeth Fors, Eric Lindenfeld, Raoul Shah, Morgan Voight, and Greta Wiessner were among those listed in the "Ones to Watch" list.

FOUR PARTNERS NAMED TO LAWDRAGON 500 LEADING CIVIL RIGHTS & PLAINTIFF EMPLOYMENT LAWYERS GUIDE

Robert Bennett, Katie Bennett, Marc Betinsky, and Andrew Noel have been recognized in the 2024 Lawdragon 500 Leading Civil Rights & Plaintiff Employment Lawyers guide. This list honors exceptional lawyers who have made significant impacts in the fields of civil rights and employment law.

EVENTS



PLAINTIFF POWER HAPPY HOUR

Robins Kaplan LLP partner Rayna Kessler co-hosted another edition of 'Plaintiff Power Happy Hour' in September with Public Justice CEO Sharon McGowan (left) and Garwin Gerstein & Fisher partner Deborah Elman (top right). The event is a long-standing networking opportunity in New York City that invites plaintiff lawyers to learn about each other's practices and foster a referral network. If you are a plaintiff attorney in New York City interested in attending a future event, contact Robins Kaplan partner Rayna Kessler at RKessler@RobinsKaplan.com.

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