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Marielle A. Moore

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## **The Next Stage of Police Accountability: Launching a Police Body-Worn Camera Program in Washington, D.C.**

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Marielle A. Moore

We are not just out here because we want police reform. We are not just out here because we want police to wear cameras, and though we think that will help, we are not out here just because we think the police department is the problem. We're out here because there is a systematic and consistent effort to dehumanize and criminalize people of color in this country that has been going on for decades in America. We are out here because yes, we want reform in the police department, but we need reform in Congress. We need reform in our States. We need reform for the cities, and our institutions . . . .<sup>1</sup>

### I. INTRODUCTION

Michael Brown, an African American teenager, was gunned down by white Ferguson, Missouri Police Officer Darren Wilson in August of 2014.<sup>2</sup> Since that time, Brown's death and the deaths of several other young, black men at the hands of police have ignited national protests. Activists across the nation have united under a shared slogan, "Black Lives Matter," and are

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<sup>1</sup> Ras Baraka, Mayor, City of Newark, *Address at the National Action Network Justice for All March*, CSPAN (Dec. 13, 2014), <http://www.c-span.org/video/?323260-1/justice-march>.

<sup>2</sup> "Michael Brown [was] shot and killed on Saturday by a police officer in Ferguson, Mo. The circumstances surrounding the shooting are in dispute. The police say Mr. Brown was shot during a skirmish with the officer. A friend who was walking with Mr. Brown, Dorian Johnson, says the officer opened fire when the young men refused to move from the middle of the street to the sidewalk. He says Mr. Brown's hands were over his head when the officer fired. All agree that Mr. Brown was unarmed." *Michael Brown's Shooting and Its Immediate Aftermath in Ferguson*, N.Y. TIMES (Aug. 25, 2014), <http://www.nytimes.com/interactive/2014/08/12/us/13police-shooting-of-black-teenager-michael-brown.html>.

demanding reform. The Department of Justice has responded to their call, launching investigations of the Ferguson, Albuquerque, and Newark police departments, among others, since Michael Brown's death.<sup>3</sup> Police and civilian experts alike have proposed an array of reforms from improved training to prototype, non-lethal weaponry. Perhaps the most popular of these reforms is the deployment of officer-worn body cameras, which many lawmakers and activists are calling a shift in the police administration paradigm.

Just how far this so-called "paradigm shift" goes merits further exploration, especially given the mounting presence of surveillance cameras in our society and the resultant likelihood that this, or similar technology, could spill over into other administrative contexts. To what extent are body camera programs "an element of the well-institutionalized legalized accountability model?"<sup>4</sup> Are body camera programs, like citizen review, merely "an adjunct to legalized accountability, neither fully part of the model or wholly separate?"<sup>5</sup> Or are they something else entirely? Analyzing the implementation of such a program in Washington, D.C. provides insight into these questions, helping to determine the direction of police accountability in the United States.

Careful analysis of body camera programs in Washington, D.C. along with elements of other programs throughout the nation reveals that the programs are at once shaped by and distinct from legalized accountability—the dominant administrative model. Though activist support for camera

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<sup>3</sup> *Special Litigation Section Cases and Matters*, U.S. DEP'T OF JUST., CIV. RTS. DIV. (Mar. 4, 2015), <http://www.justice.gov/crt/about/spl/findsettle.php#police>; *Not Just Ferguson: Many Places Facing Federal Policing Reforms*, U.S. DEP'T OF JUST. (Mar. 4, 2015), <http://www.governing.com/topics/public-justice-safety/ferguson-only-one-of-many-places-facing-federal-reforms.html>.

<sup>4</sup> CHARLES R. EPP, *MAKING RIGHTS REAL: ACTIVISTS, BUREAUCRATS, AND THE CREATION OF THE LEGALISTIC STATE* 2–3 (University of Chicago Press 2009). This paper will explore legalized accountability in greater depth in the following section.

<sup>5</sup> *Id.*

programs is less fervent than it was for the law-like reforms characteristic of legalized accountability, police departments have begun accepting and adopting this technology out of a desire to protect their reputations and maintain public trust. These reputational concerns, though not necessarily tied to civil or even criminal legal liability, are similar to the concerns that police officials had in the years leading up to the establishment of legalized accountability. Then, as now, police departments do not want the stigma of corruption. With respect to written policies, which are the cornerstone of the legalized accountability model, police departments appear to be somewhat divided. Some departments are deploying cameras without policies in place, while others are soliciting input from stakeholders before proceeding.<sup>6</sup> Training and oversight are two more building blocks of the legalized accountability structure. Body cameras are expected to enhance training and oversight. At the same time, training and oversight can act to constrain body camera use. Thus, in much the same way as legalized accountability, from a policy standpoint, the body-worn camera “is a hybrid that constrains and empowers both managerial practitioners and external activists.”<sup>7</sup>

Another important observation that emerges from this analysis is that body cameras are subject to some of the same pitfalls as the legalized accountability model. If individual officers have too much discretion regarding when to use the cameras, and if officers who fail to use them as prescribed are not sufficiently penalized, this new technology risks becoming what Charles R. Epp, a professor at the University of Kansas School of Public Affairs & Administration, refers to as “window dressing—a tool ostensibly employed to benefit the public, but which actually does little to curb police misconduct.”<sup>8</sup>

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<sup>6</sup> See *infra* part IV.

<sup>7</sup> EPP, *supra* note 4, at 4.

<sup>8</sup> *Id.* at 3.

## II. SOCIO-POLITICAL CONTEXT

### *A. Police Administration in Washington, D.C.: What Happens When a Police Department with a Well-Established Culture of Accountability Decides to Adopt Body-Worn Cameras?*

In December of 2013, the city of Washington, D.C. watched in horror as two Metropolitan Police Department (MPD) officers, Marc L. Washington and Linwood Barnhill Jr., faced criminal charges for sexually exploiting teenage girls.<sup>9</sup> Chief Cathy Lanier, head of the MPD, acknowledged in a public statement, “One action like this tarnishes us all. It only takes one cop to do one thing like this to shake everybody in our community.”<sup>10</sup> Lanier promised accountability to the public—a “deep-dive examination of what

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<sup>9</sup> “The officer who was charged Tuesday—Marc L. Washington, 32—was arrested after he had gone, on duty and in uniform, to the residence of a 15-year-old girl who had just returned after having run away, prosecutors said. The girl told police that the officer, who was on duty and in uniform, entered her bedroom, closed the door and asked her to disrobe, telling her that he needed to take photos for evidence, according to court documents.” Peter Hermann & Keith L. Alexander, *D.C. Police Chief Lanier: Sex Accusations against Two Officers Tarnish Entire Department*, WASH. POST (Dec. 6, 2013), [http://www.washingtonpost.com/local/crime/another-officer-put-on-desk-duty-in-pornography-investigation/2013/12/06/24f897da-5e96-11e3-bc56-c6ca94801fac\\_story.html](http://www.washingtonpost.com/local/crime/another-officer-put-on-desk-duty-in-pornography-investigation/2013/12/06/24f897da-5e96-11e3-bc56-c6ca94801fac_story.html). “A longtime D.C. police officer accused of prostituting teenage girls was arrested Wednesday after a week-long investigation that began when the search for a missing 16-year-old girl led police to his apartment. . . . The 16-year-old told police she had been at the apartment several times after she met the officer at a mall. She said she was photographed nude and told she would get a new hairstyle, shoes and clothes. [Officer] Barnhill told her she would go by the name ‘Juicy’ and arranged for her to have sex with an older man for \$80, the court documents say. The girl also said that she met six young women or girls at the apartment and that their services had been advertised on Backpage.com, an Internet bulletin board, court papers say. The standard fee, the girl told police, was \$80 for sex, with \$20 going to the officer.” Peter Hermann & Keith L. Alexander, *D.C. Officer Arrested in Prostitution Case*, WASH. POST (Dec. 11, 2013), [http://www.washingtonpost.com/local/crime/dc-officer-arrested-in-prostitution-case/2013/12/11/d35a8f18-6260-11e3-91b3-f2bb96304e34\\_story.html](http://www.washingtonpost.com/local/crime/dc-officer-arrested-in-prostitution-case/2013/12/11/d35a8f18-6260-11e3-91b3-f2bb96304e34_story.html).

<sup>10</sup> Hermann & Alexander, *supra* note 9.

happened”—with respect to these two instances of criminal police misconduct.<sup>11</sup>

The Committee on the Judiciary and Public Safety of the Council of the District of Columbia, chaired by councilmember and self-proclaimed “Progressive” Tommy Wells, held the chief to her promise. Wells called a special public oversight hearing “to review policies and procedures related to the MPD standards, training, internal investigations and interventions regarding police officer conduct.”<sup>12</sup>

The press clippings and the hearing record reflect two opposing views about police officer misconduct. Chief Lanier, on the one hand, insisted that most incidents of criminal police misconduct occur off duty.<sup>13</sup> Though the chief acknowledged that Washington’s conduct was particularly egregious *because* it occurred while he was on duty, she also made a point of telling the press early on that Barnhill had not worked on the streets in over a year and that his police powers had been taken away when he went on injury leave.<sup>14</sup> At the special hearing, Chief Lanier testified as follows:

Any officer engaged in criminal misconduct will be investigated and prosecuted regardless of whether that misconduct occurred while they were in uniform or on their own time. But no one should infer that the shocking actions of a few officers should

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<sup>11</sup> *Id.*

<sup>12</sup> Judiciary and Public Safety Hearing on Metropolitan Police Department Officer Conduct, COUNCIL OF THE D.C. (Jan. 24, 2014), <http://dccouncil.us/events/judiciary-and-public-safety-hearing-on-metropolitan-police-department-offic>.

<sup>13</sup> Hearing Video, Judiciary and Public Safety Hearing on Metropolitan Police Department Officer Conduct, COUNCIL OF THE D.C. (Jan. 24, 2014), [http://dc.granicus.com/MediaPlayer.php?publish\\_id=552e2a70-073b-1032-aa6a-c652466735d2](http://dc.granicus.com/MediaPlayer.php?publish_id=552e2a70-073b-1032-aa6a-c652466735d2) [hereinafter Misconduct Hearing Video].

<sup>14</sup> Peter Hermann, *Man Who Died After Being Found in Potomac is D.C. Officer Charged in Sex Case, Police Say*, WASH. POST (Dec. 11, 2013), [http://www.washingtonpost.com/local/crime/man-who-died-after-being-found-in-potomac-is-dc-officer-charged-in-sex-case-police-say/2013/12/11/f8805fca-6256-11e3-91b3-f2bb96304e34\\_story.html](http://www.washingtonpost.com/local/crime/man-who-died-after-being-found-in-potomac-is-dc-officer-charged-in-sex-case-police-say/2013/12/11/f8805fca-6256-11e3-91b3-f2bb96304e34_story.html); Hermann & Alexander, *supra* note 9.

somehow show such behavior to be a regular occurrence throughout the department. It is not. While the recent attention has been on the worst cases, it is important to put this in perspective. In the past three years, the number of police officers arrested has decreased 31 percent. Almost half of these arrests are for off-duty traffic offenses, typically impaired driving. . . . This is not the widespread police corruption that the public may imagine when they look at the headlines.<sup>15</sup>

On the other hand, Wells' intense questioning of the chief on matters of police administration, including hiring, supervising, and training, revealed a concern that these incidents may not be isolated but rather systemic,<sup>16</sup> that maybe MPD had let "a sexual predator who had a gun and a badge"<sup>17</sup> walk among them undetected, or worse, unafraid of consequences.

The spirited Q&A that characterized the committee hearing showcases the extent to which MPD has adopted the legalized accountability administrative framework. Legalized accountability, as defined by Epp, is a "law-styled attempt to bring bureaucratic practice into line with emerging legal norms."<sup>18</sup> In order to catch up with public demand for police accountability, police departments nationwide employed "written rules, formal systems of training, and internal systems of oversight to assess compliance with the rules" to varying degrees.<sup>19</sup>

Clearly, Councilmember Wells expected the chief to assure him and his constituents that MPD has rigid policies in place for dealing with officer misconduct. He asked her to explain in great detail how officers are screened and trained to comply with these policies. Finally, he tested her technical knowledge of internal oversight and disciplinary processes, showing that he expected these processes to be well-developed. The chief,

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<sup>15</sup> Misconduct Hearing Video, *supra* note 13.

<sup>16</sup> *Id.*

<sup>17</sup> Hermann & Alexander, *supra* note 9.

<sup>18</sup> EPP, *supra* note 4, at 2–3.

<sup>19</sup> *Id.* at 3.

for her part, delivered; she described a complex web of internal audits, “integrity checks,” early warning systems, and disciplinary measures designed to ensure that her officers are upholding department policies.<sup>20</sup> Her responses indicate that MPD as an institution has accepted these practices as standard. She also acknowledged the authority of and encouraged citizens to engage the District of Columbia Office of Police Complaints (OPC), a civilian review board that independently investigates complaints against MPD officers.<sup>21</sup> According to Epp, police departments have generally resisted civilian review, an adjunct to legalized accountability, even though advocates continue to press for it.<sup>22</sup> Chief Lanier’s acknowledgment of OPC is therefore one more indication of how embedded legalized accountability is within MPD. Furthermore, despite his probing inquisition, Wells’ willingness to challenge the mayor’s positions on issues of pay raises and back-pay likely won him the endorsement of the Fraternal Order of Police, the D.C. police union. Legalized accountability structures for policing thus enjoy universal acceptance in Washington, D.C.

Another concept that enjoys universal acceptance in Washington, D.C. is that of equipping officers with wearable cameras that record events from the

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<sup>20</sup> Misconduct Hearing Video, *supra* note 13.

<sup>21</sup> *Id.*

<sup>22</sup> Epp, *supra* note 4, at 126. In Fiscal Year 2013, MPD imposed discipline in 10 of 14 instances in which the Police Complaints Board sustained a complaint against an officer. See GOV’T OF THE D.C., POLICE COMPLAINTS BOARD OFFICE OF POLICE COMPLAINTS, ANNUAL REPORT, FISCAL YEAR 2013 10–13 (2013), available at <http://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/2013%20Annual%20Report%20OPC.pdf>. As of March 3, 2014, discipline was still pending in three instances. *Id.* MPD did not impose discipline in one case because the subject officer retired before MPD could take action. *Id.* In contrast, in the first six months of 2014, the NYPD declined to sanction officers in over twenty-five percent of cases in which the Civilian Complaint Review Board found cause for discipline. J. David Goodman, *Bratton Spurned 25% of Board’s Police Misconduct Findings in First Half of ‘14*, N.Y. TIMES (Aug. 26, 2014), <http://www.nytimes.com/2014/08/27/nyregion/bratton-spurned-25-of-boards-misconduct-findings-in-first-half-of-14.html?partner=rss&emc=rss&smid=tw-nytimes>.



officers' perspective as they patrol the streets. These on-officer recording systems consist of small, pager- or pen-sized cameras that can clip onto an officer's uniform or sunglasses.<sup>23</sup> Some models can be worn as a headset.<sup>24</sup> At the committee hearing, Chief Lanier announced that she is "working to implement a body camera system for police officers—a tool that more police agencies are using to establish a record of police actions."<sup>25</sup> Councilmember Wells said on the record that he strongly supports the body-worn camera program.<sup>26</sup> He even assured the chief that the Council would fund the program.<sup>27</sup> A staff attorney from the American Civil Liberties Union of the Nation's Capital (ACLU-NCA) called officer-worn cameras "a good thing" at MPD's annual performance oversight hearing before the Committee on the Judiciary and Public Safety.<sup>28</sup>

OPC also came out in support of a body camera program for MPD. At OPC's own annual performance oversight hearing before the Committee on the Judiciary and Public Safety, Executive Director Philip K. Eure, a police accountability expert who was recently selected to head the new Office of Inspector General for the New York Police Department,<sup>29</sup> told

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<sup>23</sup> Jay Stanley, ACLU, *Police Body-Mounted Cameras: With Right Policies in Place, a Win for All* 1 (Oct. 9, 2013), <https://www.aclu.org/technology-and-liberty/police-body-mounted-cameras-right-policies-place-win-all>; Tanya Eiserer, WFAA, *Body cameras coming for Dallas cops*, WFAA.COM (May 26, 2015, 7:34 PM), <http://www.wfaa.com/story/news/local/dallas-county/2015/05/26/dallas-police-move-ahead-with-body-camera-program/27988259/>.

<sup>24</sup> *Id.*; see also *MPD Body-Worn Camera Intro*, YOUTUBE (Sept. 24, 2014), [https://www.youtube.com/watch?v=ASwdEMX\\_Lgk](https://www.youtube.com/watch?v=ASwdEMX_Lgk).

<sup>25</sup> Misconduct Hearing Video, *supra* note 13.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Hearing Video, Judiciary and Public Safety Performance Oversight Hearing, COUNCIL OF THE D.C. (Feb. 28, 2014), [http://dc.granicus.com/MediaPlayer.php?publish\\_id=72518108-0672-1032-aa6a-c652466735d2](http://dc.granicus.com/MediaPlayer.php?publish_id=72518108-0672-1032-aa6a-c652466735d2) [hereinafter MPD Oversight Hearing Video].

<sup>29</sup> Kate Taylor & J. David Goodman, *New York Police Department's Oversight Office, Fought by Bloomberg, Gets First Leader*, N.Y. TIMES (Mar. 28, 2014),

Councilmember Wells that OPC would release a policy recommendation for the program within a couple of months.<sup>30</sup> OPC Deputy Director Christian J. Klossner added that OPC supports the program and thinks body-worn cameras are “a very good idea.”<sup>31</sup>

By the time of that 2013 oversight hearing, police departments nationwide had begun equipping their own officers with body-worn cameras.<sup>32</sup> The speed and ease with which these programs began rolling out are due to the overwhelming support of both the public and the police. According to Chief Lanier, “police officers who come to work every day and do a great job, they love the use of the cameras because it also justifies a lot of the times that they are in fact doing their job.”<sup>33</sup> Not only do cameras “hold officers accountable for their actions,” but they also “dissuade spurious complaints from being filed,”<sup>34</sup> as ACLU-NCA Staff Attorney John Albanes testified at MPD’s oversight hearing. “There are advantages on both sides to having the body cameras,” he explained.<sup>35</sup> The widespread acceptance and deployment of body-worn cameras constitutes

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[http://www.nytimes.com/2014/03/29/nyregion/inspector-general-for-new-york-police-department-is-named.html?\\_r=0](http://www.nytimes.com/2014/03/29/nyregion/inspector-general-for-new-york-police-department-is-named.html?_r=0).

<sup>30</sup> Hearing Video, Judiciary and Public Safety Performance Oversight Hearing, COUNCIL OF THE D.C. (Mar. 7, 2014),

[http://dc.granicus.com/MediaPlayer.php?publish\\_id=d15e0b6f-0fcb-1032-afb6-e552e9994487](http://dc.granicus.com/MediaPlayer.php?publish_id=d15e0b6f-0fcb-1032-afb6-e552e9994487) [hereinafter OPC Oversight Hearing].

<sup>31</sup> *Id.*

<sup>32</sup> See, e.g., Joel Rubin, *LAPD Begins Testing On-Body Cameras on Officers*, L.A. TIMES (Jan. 15, 2014), <http://articles.latimes.com/2014/jan/15/local/la-me-ln-lapd-cameras-20140115>; Jessica Anderson, *More Police Now Sporting Cameras on Their Bodies*, THE BALTIMORE SUN (Jan. 4, 2014), [http://articles.baltimoresun.com/2014-01-04/news/bs-md-police-body-cameras-20140104\\_1\\_police-cameras-small-video-cameras-tyrone-west](http://articles.baltimoresun.com/2014-01-04/news/bs-md-police-body-cameras-20140104_1_police-cameras-small-video-cameras-tyrone-west); Nancy Dillon, *Police Body-Worn Cameras Stop-and-Frisk Judge Suggested Have Helped Rialto Police Department*, DAILY NEWS (Aug. 13, 2013), <http://www.nydailynews.com/news/national/cameras-proposed-stop-frisk-judge-ca-police-article-1.1426025>.

<sup>33</sup> Misconduct Hearing Video, *supra* note 13.

<sup>34</sup> MPD Oversight Hearing Video, *supra* note 28.

<sup>35</sup> *Id.*

what Councilmember Wells has referred to as “changing the paradigm” of police accountability.<sup>36</sup> Indeed, Los Angeles Police Department Chief Charlie Beck said he sees the on-body cameras as “the future of policing.”<sup>37</sup>

*B. The Shooting Death of Michael Brown Makes Body Cameras a Subject of National Debate*

Flash forward to August of 2014 and the shooting death of Michael Brown, an African American teenager, by white Ferguson, Missouri Police Officer Darren Wilson.<sup>38</sup> Brown’s death spurred nationwide protests against racially discriminatory police practices. These protests continued for several months and intensified with the failure of a Ferguson grand jury to indict Officer Wilson for the shooting.<sup>39</sup> The movement drew out hundreds and sometimes thousands of peaceful protestors, but also created advantageous conditions for miscreants to engage in rioting and looting.<sup>40</sup> In April of 2015, for example, protests in response to the death of Freddie Gray in Baltimore erupted in violence.<sup>41</sup> Six Baltimore police officers were indicted

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<sup>36</sup> *Id.* “In terms of changing the paradigm, I’ve talked to the Chief about body cameras so that the majority of the interactions between police and citizens is recorded, like in L.A.” *Id.*

<sup>37</sup> Rubin, *supra* note 32.

<sup>38</sup> *Michael Brown’s Shooting and Its Immediate Aftermath in Ferguson*, N.Y. TIMES (Aug. 25, 2014), <http://www.nytimes.com/interactive/2014/08/12/us/13police-shooting-of-black-teenager-michael-brown.html>.

<sup>39</sup> Melanie Eversley, *More Protests in Wake of Grand Jury Decision on Ferguson*, USA TODAY (Nov. 26, 2014), <http://www.usatoday.com/story/news/nation/2014/11/25/ferguson-protests-grand-jury/70118232/>.

<sup>40</sup> J. David Goodman, *On Staten Island, Thousands Protest Police Tactics*, N.Y. TIMES (Aug. 23, 2014), [http://mobile.nytimes.com/2014/08/24/nyregion/on-staten-island-thousands-protest-police-tactics.html?referrer=&\\_r=0](http://mobile.nytimes.com/2014/08/24/nyregion/on-staten-island-thousands-protest-police-tactics.html?referrer=&_r=0); Matthew Barakat, *Thousands Protest Police Killings in March on DC, across US*, THE NEWS TRIBUNE (Dec. 13, 2014), [http://www.thenewstribune.com/2014/12/13/3539497\\_thousands-protest-police-killings.html?sp=99/296/358/&rh=1](http://www.thenewstribune.com/2014/12/13/3539497_thousands-protest-police-killings.html?sp=99/296/358/&rh=1).

<sup>41</sup> Matt Laslo, *Baltimore Protests Turn Violent*, NPR (Apr. 26, 2015), <http://www.npr.org/2015/04/26/402353781/baltimore-protests-turn-violent>.

in Mr. Gray's death.<sup>42</sup> Brown's death and the national wave of protests created a media frenzy, drawing attention to the deaths of several more young black men at the hands of police and calling into question police practices nationwide.<sup>43</sup> The demonstrations spurred a march on Washington, D.C. and a rally near the Capitol, both organized by the Reverend Al Sharpton's National Action Committee.<sup>44</sup>

The Ferguson controversy dovetailed with the issue of officer-worn cameras when Michael Brown's family called for "Mike Brown Laws" mandating the use of cameras by all police officers. After the grand jury failed to indict the officer who shot their son, the family released a statement calling on the nation to "join with us in our campaign to ensure that every police officer working the streets in this country wears a body camera."<sup>45</sup> The statement continued, "We need to work together to fix the system that allowed this to happen."<sup>46</sup>

The effectiveness of body-worn cameras as a deterrent to police misconduct and a way to ease the tension between communities of color and law enforcement received a fair share of the media attention that Michael Brown's death generated.<sup>47</sup> Departments with plans to implement

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<sup>42</sup> Richard Pérez-Peña, *Six Baltimore Officers Indicted in Death of Freddie Gray*, N.Y. TIMES (May 21, 2015), [http://www.nytimes.com/2015/05/22/us/six-baltimore-officers-indicted-in-death-of-freddie-gray.html?\\_r=0](http://www.nytimes.com/2015/05/22/us/six-baltimore-officers-indicted-in-death-of-freddie-gray.html?_r=0).

<sup>43</sup> *'I Can't Breathe': Eric Garner Put in Chokehold by NYPD Officer—Video*, THEGUARDIAN (Dec. 4, 2014), <http://www.theguardian.com/us-news/video/2014/dec/04/i-cant-breathe-eric-garner-chokehold-death-video>; Laura Ly & Jason Hanna, *Cleveland Police's Shooting of Tamir Rice Ruled a Homicide*, CNN (Dec. 12, 2014), <http://www.cnn.com/2014/12/12/justice/cleveland-tamir-rice/>; Dana Ford, *No Charges for Milwaukee Officer Involved in Fatal Shooting*, CNN (Dec. 23, 2014), <http://www.cnn.com/2014/12/22/us/milwaukee-police-shooting/>.

<sup>44</sup> Video, National Action Network Justice for All March, C-SPAN (Dec. 13, 2014), <http://www.c-span.org/video/?323260-1/justice-march>.

<sup>45</sup> Josh Sanburn, *The One Battle Michael Brown's Family Will Win*, TIME (Nov. 25, 2014), <http://time.com/3606376/police-cameras-ferguson-evidence/>.

<sup>46</sup> *Id.*

<sup>47</sup> See Derek Thompson, *Forcing America's Weaponized Police to Wear Cameras*, THE ATLANTIC (Aug. 14, 2014),

camera programs accelerated deployment. Other police departments began announcing their own plans to deploy cameras.<sup>48</sup> President Obama, in

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<http://www.theatlantic.com/national/archive/2014/08/americas-weaponized-police-force-could-benefit-from-one-more-weapon-cameras/376063/>; Alyona Minkovski, *How Body Cameras Affect Police Accountability*, HUFFPOST LIVE (Aug. 20, 2014), <http://live.huffingtonpost.com/r/segment/police-body-cameras/53f1e15c02a760a24f00058f>; Andrea Noble, *D.C. Cops Making Big Investment in Body Cameras for Patrol*, WASH. TIMES (Sept. 3, 2014), <http://www.washingtontimes.com/news/2014/sep/3/dc-police-to-test-costly-body-mounted-cameras-in-p/>; Peter Hermann, *D.C. Poised to Test Body Cameras for Police Officers*, WASH. POST (Sept. 6, 2014), [http://www.washingtonpost.com/local/crime/dc-poised-to-test-body-cameras-for-police-officers/2014/09/06/358ebc52-3459-11e4-a723-fa3895a25d02\\_story.html](http://www.washingtonpost.com/local/crime/dc-poised-to-test-body-cameras-for-police-officers/2014/09/06/358ebc52-3459-11e4-a723-fa3895a25d02_story.html); Martin Austermuhle, *D.C. Police To Test Body Cameras, But Civil Libertarians Raise Privacy Concerns*, WAMU (Sept. 24, 2014), [http://wamu.org/news/14/09/24/dc\\_police\\_officers\\_to\\_test\\_body\\_cameras#.VCRADOJ5vRc.email](http://wamu.org/news/14/09/24/dc_police_officers_to_test_body_cameras#.VCRADOJ5vRc.email); Peter Moskos, *Strike against Cop Cameras*, COP IN THE HOOD (Nov. 4, 2014), <http://www.copinthehood.com/2014/11/strike-against-cop-cameras.html>; Donald Scarinci, *Balancing Police Technology and Privacy Concerns*, NJ.COM (Nov. 12, 2014), [http://blog.nj.com/njv\\_donald\\_scarinci/2014/11/balancing\\_police\\_technology\\_an.html](http://blog.nj.com/njv_donald_scarinci/2014/11/balancing_police_technology_an.html); Lisa Vaas, *YouTube Channel Swamps Police with Requests for Disclosure of Body-Cam Video*, NAKEDSECURITY (Nov. 13, 2014), <https://nakedsecurity.sophos.com/2014/11/13/youtube-channel-swamps-police-with-requests-for-disclosure-of-body-cam-video/>; Alexa Van Brunt, *Mike Brown's Law Is a Start, but Police Body-Cams Are No Panacea for Violence*, THEGUARDIAN (Nov. 27, 2014), <http://www.theguardian.com/commentisfree/2014/nov/27/mike-brown-law-police-body-cams-change>; Martin Kaste, *Body Cameras For Police Officers Aren't A Panacea*, NPR (Dec. 2, 2014), <http://www.npr.org/2014/12/02/368041080/body-cameras-for-police-officers-arent-a-panacea>; Drew Harwell, *The Body-Camera Industry Is 'Feeling Phenomenal' after Ferguson*, WONKBLOG (Dec. 3, 2014), [http://www.washingtonpost.com/blogs/wonkblog/wp/2014/12/03/the-body-camera-industry-is-feeling-phenomenal-after-ferguson/?Post+generic=%3Ftid%3Dsm\\_twitter\\_washingtonpost](http://www.washingtonpost.com/blogs/wonkblog/wp/2014/12/03/the-body-camera-industry-is-feeling-phenomenal-after-ferguson/?Post+generic=%3Ftid%3Dsm_twitter_washingtonpost); Justin T. Ready & Jacob T.N. Young, *A Tale of Two Cities: Whether Body Cams Succeed in Increasing Police Transparency Depends Entirely on Training and Policies*, SLATE (Dec. 10, 2014), [http://www.slate.com/articles/technology/future\\_tense/2014/12/police\\_body\\_cams\\_wont\\_help\\_unless\\_they\\_come\\_with\\_the\\_right\\_policies.html?wpsrc=fol\\_tw](http://www.slate.com/articles/technology/future_tense/2014/12/police_body_cams_wont_help_unless_they_come_with_the_right_policies.html?wpsrc=fol_tw); Matt Bush, *Body Cameras Coming For Montgomery County Police*, WAMU (Dec. 11, 2014), [http://wamu.org/news/14/12/11/body\\_cameras\\_coming\\_for\\_montgomery\\_county\\_police](http://wamu.org/news/14/12/11/body_cameras_coming_for_montgomery_county_police).

<sup>48</sup> Drew Harwell, *The Body-Camera Industry Is 'Feeling Phenomenal' after Ferguson*, WONKBLOG (Dec. 3, 2014), [http://www.washingtonpost.com/blogs/wonkblog/wp/2014/12/03/the-body-camera-industry-is-feeling-phenomenal-after-ferguson/?Post+generic=%3Ftid%3Dsm\\_twitter\\_washingtonpost](http://www.washingtonpost.com/blogs/wonkblog/wp/2014/12/03/the-body-camera-industry-is-feeling-phenomenal-after-ferguson/?Post+generic=%3Ftid%3Dsm_twitter_washingtonpost); Matt Bush, *Body*

response to pressure from activists from across the nation, announced plans to “strengthen community policing and fortify the trust that must exist between law enforcement officers and the communities they serve.”<sup>49</sup> As part of this plan, the President proposed a \$263 million investment package to increase use of body-worn cameras, among other things.<sup>50</sup> According to a White House Fact Sheet, “As part of this initiative, a new Body Worn Camera Partnership Program would provide a fifty percent match to States/localities who purchase body worn cameras and requisite storage. Overall, the proposed \$75 million investment over three years could help purchase 50,000 body worn cameras.”<sup>51</sup> Amidst the racial tension that Michael Brown’s death catapulted to the front pages of American newspapers, the question remains whether equipping police officers with body-worn cameras will truly constitute a change in the police administration paradigm the way that Brown’s family, President Obama, and others suggest.

### III. LEGALIZED ACCOUNTABILITY DEFINED

In *Making Rights Real*, Epp explains how pressure from reformers compelled police managerial authorities to respond to profound, widespread frustration over police practices. “The activists supplied pressure for change

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*Cameras Coming for Montgomery County Police*, WAMU (Dec. 11, 2014), [http://wamu.org/news/14/12/11/body\\_cameras\\_coming\\_for\\_montgomery\\_county\\_police](http://wamu.org/news/14/12/11/body_cameras_coming_for_montgomery_county_police).

<sup>49</sup> Eyder Peralta, *Obama to Ask for \$263 Million for Police Body Cameras, Training*, THE TWO-WAY (Dec. 1, 2014), <http://www.npr.org/blogs/thetwo-way/2014/12/01/367721705/obama-to-meet-civil-rights-leader-to-talk-about-mistrust-of-police>; *Breaking: Ferguson Activists Meet with President Obama to Demand an End to Police Brutality Nationwide*, FERGUSON ACTION (Dec. 1, 2014), <http://fergusonaction.com/white-house-meeting/>; *FACT SHEET: Strengthening Community Policing*, THE WHITE HOUSE (Dec. 1, 2014), <http://m.whitehouse.gov/the-press-office/2014/12/01/fact-sheet-strengthening-community-policing>.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

in the form of lawsuit-generated publicity; the administrative professionals supplied practical tools—rules, training, and oversight mechanisms—to produce real, lasting change in bureaucratic practice.”<sup>52</sup>

Epp calls the policy framework that arose from this call-and-response “legalized accountability.” At the heart of legalized accountability are “administrative systems that are legally framed and comprehensive, encompassing a range of mechanisms for changing individual behavior and organizational culture.”<sup>53</sup> The three main characteristics of legalized accountability are “administrative policies that state an organizational commitment to legal norms,” “training and communications systems intended to convey the importance of these policies and to change organizational culture in keeping with them,” and “internal oversight aimed at assessing progress in this endeavor and identifying violations of the policy.”<sup>54</sup>

From 1980 onward, legalized accountability became “a nationwide administrative standard.”<sup>55</sup> Epp theorizes that where there are vigorous activist groups and lawyers and where agencies are closely connected to professional networks, legalized accountability is adopted in depth.”<sup>56</sup> The Council of the District of Columbia’s special hearings and the various activist groups that attended, as well as the success of OPC, among other things, demonstrate that legalized accountability thrives within MPD. Additionally, MPD’s director of strategic planning meets frequently with civil rights advocates. In March 2014, for example, she met with a staff attorney from ACLU-NCA as well as with several LGBT rights advocacy groups, including Gays and Lesbians Opposing Violence.

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<sup>52</sup> EPP, *supra* note 4, at 3, 5.

<sup>53</sup> *Id.* at 25.

<sup>54</sup> *Id.* (emphasis omitted).

<sup>55</sup> *Id.* at 29.

<sup>56</sup> *Id.* at 4.

#### IV. ACTIVIST PRESSURE, THE THREAT OF LIABILITY, AND MANAGERIAL RESPONSE

The legalized accountability framework “grew and spread from an interaction between activist pressure for law-based reforms and conflict within the managerial professions over how to respond.”<sup>57</sup> As previously explained, while “activists supplied pressure for change in the form of lawsuit-generated publicity,” administrative professionals responded with “practical tools—rules, training, and oversight mechanisms—to produce real, lasting change in bureaucratic practice.”<sup>58</sup> Epp provides the following synopsis: “focused pressure by activists in the form of liability lawsuits contributed directly to conflict among police leaders, leading to shifts in professional norms and the innovations that eventually became the legalized accountability model.”<sup>59</sup>

Officer-worn recording systems have taken a different path to acceptance, but elements of Epp’s characterization are nonetheless observable. Though body-worn cameras are not the subject of a focused campaign by most activists, they won over police by allaying fears of reputational harm in much the same way that the rules and policies characteristic of legalized accountability did.

##### *A. Activist Buy-In for Body Cameras*

Civil rights activists support police use of body-worn cameras, but in a less vociferous manner than they supported the reforms of the 1960s and 1970s. Legalized accountability became the dominant policy framework, Epp explains, because “[a]ctivists, with their demand for institutional reforms and their reliance on liability lawsuits as a lever, supplied an overarching motivating framework and steady, disruptive pressure on

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<sup>57</sup> *Id.* at 3.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 60.



managerial institutions.”<sup>60</sup> Today’s civil rights activists, by contrast, are not all demanding body cameras with abandon. Rather, they are cautiously embracing their use. Nationally, the American Civil Liberties Union (ACLU) tempers its support for these programs with concerns about privacy:

For the ACLU, the challenge of on-officer cameras is the tension between their potential to invade privacy and their strong benefit in promoting police accountability. Overall, we think they can be a win-win—but only if they are deployed within a framework of strong policies to ensure they protect the public without becoming yet another system for routine surveillance of the public, and maintain public confidence in the integrity of those privacy protections. Without such a framework, their accountability benefits would not exceed their privacy risks.<sup>61</sup>

ACLU attorney Scott Greenwood did say publicly that on-body recording systems are “the single best tool that you can have in a law enforcement agency to enhance your accountability.”<sup>62</sup> He also stated, however, that the ACLU “would not favor the use of an on-body recording system if officers had the ability to use it only when they thought it would be beneficial to them.”<sup>63</sup>

The ACLU-NCA voiced similar concerns to the Council of the District of Columbia. While the ACLU-NCA acknowledged that “there are advantages on both sides to having the body cameras . . . the limit on body camera use is going to be very important as well.”<sup>64</sup> ACLU-NCA attorney John Albanes testified that “an officer shouldn’t be allowed to spy on someone at their

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<sup>60</sup> *Id.* at 14.

<sup>61</sup> Stanley, *supra* note 23, at 2 (emphasis omitted).

<sup>62</sup> *Police Leaders Explore Growing Use of Body Cameras at PERF Town Hall Meeting in Philadelphia*, 27 SUBJECT TO DEBATE 1, 4 (2013), available at [http://www.policeforum.org/assets/docs/Subject\\_to\\_Debate/Debate2013/debate\\_2013\\_sept.pdf](http://www.policeforum.org/assets/docs/Subject_to_Debate/Debate2013/debate_2013_sept.pdf)

<sup>63</sup> *Id.*

<sup>64</sup> MPD Oversight Hearing Video, *supra* note 28.

residence, for instance, using the camera, or enter the home with the camera. That would raise privacy issues.”<sup>65</sup>

Councilmember Wells hosted two more hearings in October of 2014 regarding MPD’s stop and contact policies.<sup>66</sup> The councilmember called these hearings to order in the wake of the Ferguson-related protests, which activists in the District used to draw attention to local policing issues. Racial disparities in stops, frisks, and arrests became the primary topic of discussion at the hearings. Activists emphasized the findings of a July 2013 report on racial disparities in arrests released by the Washington Lawyers’ Committee and Chief Lanier’s failure to respond.<sup>67</sup> The first of these hearings took place at Howard University. At least 13 activist groups attended to testify.<sup>68</sup> Their testimony reflected an ambivalence toward body cameras as a solution to racial bias in law enforcement. One group, the Greater Washington Urban League, specifically called for funding of the chief’s proposed body camera program with one condition—mandatory recording of all encounters and investigations into failures to record.<sup>69</sup>

Other witnesses were less pro-camera. Attorney Alec Karakatsanis of Equal Justice Under Law, for example, testified that the problems with MPD’s stop-and-frisk procedures and policies demanded a solution well beyond body cameras.<sup>70</sup> Philip Fornaci, an attorney testifying on behalf of

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<sup>65</sup> *Id.*

<sup>66</sup> Amber Wilkie, *Wells To Hold Public Hearing on D.C. Police’s Stop-And-Frisk Policies*, DCIST (Sept. 10, 2014), [http://dcist.com/2014/09/wells\\_to\\_hold\\_public\\_hearing\\_on\\_dc.php](http://dcist.com/2014/09/wells_to_hold_public_hearing_on_dc.php).

<sup>67</sup> Hearing Notes, Judiciary and Public Safety Hearing on MPD Stop and Contact Policies at Council of the District of Columbia (Oct. 8, 2014) (on file with author) [hereinafter *Howard University Hearing Notes*]; WASH. LAWYERS’ COMM. FOR CIVIL RTS. AND URBAN AFFAIRS, *RACIAL DISPARITIES IN ARRESTS IN THE DISTRICT OF COLUMBIA, 2009-2011* (2013), available at [http://www.washlaw.org/pdf/wlc\\_report\\_racial\\_disparities.pdf](http://www.washlaw.org/pdf/wlc_report_racial_disparities.pdf).

<sup>68</sup> *Howard University Hearing Notes*, *supra* note 67.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

the Campaign Against Police Abuse (CAPA) echoed these concerns, adding that police body cameras were just one more means by which the police could surveil the public.<sup>71</sup> Mr. Fornaci announced CAPA's plan to start a D.C. Copwatch website to host citizen-submitted videos of the police.<sup>72</sup> The Copwatch model of civilian oversight originated in Berkely, California, in the 1990s.<sup>73</sup> This model espouses all of the benefits of officer-worn camera programs, including fewer incidents of use of force, without the downside of increased police surveillance and government invasion of privacy.<sup>74</sup>

Still more groups made no mention at all of body-worn cameras in their testimony before the Council, calling instead for alternative solutions to the District's policing problems. A comparison of these alternative solutions to the legalized accountability paradigm helps highlight their differences. A spokeswoman from the Washington, D.C. branch of the NAACP advocated for repealing the statute defining the crime of assaulting a police officer and suggested the use of the exclusionary rule as a penalty for racial profiling.<sup>75</sup> Another activist group that goes by the hashtag DCFerguson had three demands: (1) the establishment of a citizen review board with the power to indict police officers for acts of criminal misconduct, (2) the recruitment of police officers who live in the communities they serve, and (3) the termination of employment, arrest, and conviction of any officer who has shot an unarmed, innocent person.<sup>76</sup>

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<sup>71</sup> *Id.*

<sup>72</sup> Howard University Hearing Notes, *supra* note 67.

<sup>73</sup> SHELLEY L. SCHILIEF, *The Rodney King Beating Trial: A Landmark for Reform*, in CRIMES AND TRIALS OF THE CENTURY: FROM THE BLACK SOX SCANDAL TO THE ATTICA PRISON RIOTS 157 (Steven Chermak & Frankie Y. Bailey eds., 2007).

<sup>74</sup> Ben Kochman, *Watchdog Groups Training Citizens to Join CopWatch Movement by Catching Rogue Police in Action*, DAILY NEWS (Oct. 1, 2014), <http://www.nydailynews.com/new-york/bronx/city-watchdog-groups-training-citizens-film-rogue-cops-article-1.1960031>.

<sup>75</sup> Howard University Hearing Notes, *supra* note 67.

<sup>76</sup> *Id.*

Other activist groups demanded yet more alternatives at a December 11, 2014, town hall meeting that took place at the Shaw Library in Northwest D.C. Princess Black of Think MOOR (Movements of Organized Revolutionaries) called for a national boycott across industries that would “bring everything to a standstill.”<sup>77</sup> The policy director of the ACLU-NCA, Seema Sadanandan, also commented on the connection between racial disparities in police interactions and economic inequality. Ms. Sadanandan encouraged an outraged and eager crowd of about 100 people to envision alternative models of power that emphasized community and common ownership.<sup>78</sup> The rest of her proposed solutions were more concrete, including decriminalization of the entire range of non-violent offenses, demilitarization of police strategies and tactics, a reduction in the number of police, mass decarceration, and the reversal of a body of statutory and case law that she opined affords police too much discretion in their interactions with the public.<sup>79</sup> None of these activists called for more written police policies or training. On the contrary, all involved external action, whether in the form of economic pressure, law reform, or the imposition of discipline on individual officers from outside the department.

*B. Activist Demands Contextualized: The Shortcomings of Legalized Accountability*

Legalized accountability is an administrative model—a method by which police departments can govern themselves. Under that model, accountability to the public begins within the police department. What these activists are demanding has less to do with the business of police administration and more to do with reigning in unchecked police discretion

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<sup>77</sup> Meeting Notes, JUSTICE DENIED from Ferguson to New York and Beyond: How Can We Stop Police Terror? (Dec. 11, 2014) (on file with author).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

and changing the environment in which the police operate. According to the local activist groups, the police have failed to administer themselves properly, which may imply something important about legalized accountability in the policing context—it does not always work. Perhaps the rupture in “the trust that must exist between law enforcement officers and the communities they serve” that President Obama referenced is attributable to a failure of legalized accountability.<sup>80</sup>

Of course, to say that legalized accountability has been a total failure in the context of policing would be disingenuous. As Chief Lanier’s testimony before the Council last year illustrates, early warning systems, use of force protocols, and other internal disciplinary mechanisms help target corruption and get bad cops off the streets. When it comes to racial disparities in treatment by the police, however, recent events suggest a need for improvement. Just how much improvement is difficult to discern. No uniform method for keeping statistics on police-involved shootings currently exists, for example. As a result, the true extent of the racial divide in that particular area is difficult to know.<sup>81</sup>

Whether or not body cameras can fix some of these problems is not entirely clear either. Proponents point to a Rialto, California, study as proof of the cameras’ effectiveness.<sup>82</sup> Social media has also helped bring national attention to police misconduct and contributed to the debate over whether video cameras can curb it. Proponents insist that video is a good thing because it can provide an objective account of an incident that either

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<sup>80</sup> For a critique of the effectiveness of internal police department regulations and investigations, see Chase Madar, *Why It’s Impossible to Indict a Cop*, THE NATION (Nov. 24, 2014), <http://www.thenation.com/article/190937/why-its-impossible-indict-cop#>.

<sup>81</sup> Maya Rhodan, *Boston Police Show Racial Bias in Stops and Searches, Report Finds*, TIME (Oct. 8, 2014), <http://time.com/3482859/boston-police-racial-bias-aclu/>; WASH. LAWYERS’ COMM. FOR CIV. RTS. AND URBAN AFFAIRS, *supra* note 67.

<sup>82</sup> See, e.g., *How Body Cameras Affect Police Accountability*, HUFFPOST LIVE (Aug. 20, 2014), <http://live.huffingtonpost.com/r/segment/police-body-cameras/53f1e15c02a760a24f00058f>.

contradicts or corroborates an officer's story.<sup>83</sup> Several cell phone videos of police officers engaging with the public have gone viral, including the one that captured the unfortunate death of Eric Garner at the hands of NYPD Officer Daniel Pantaleo.<sup>84</sup> In that video, Officer Pantaleo uses a chokehold that NYPD banned from use to subdue Mr. Garner, who refused without violence to comply with another officer's verbal commands.<sup>85</sup> Despite the existence of this video, a grand jury refused to indict Officer Pantaleo in Mr. Garner's death, which spurred more protests and more public outrage. The lack of indictment in the case of Eric Garner called into question the effectiveness of cameras in curbing and helping to punish police misconduct. The Eric Garner case suggests that video footage of use of force incidents will be construed in favor of the police, regardless of whether the officers depicted violate internal regulations. Body-worn

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<sup>83</sup> For an example of how body camera footage can contradict an officer's account of an incident, see Conor Friedersdorf, *Police Officer Shoots Dog, Video Contradicts His Explanation*, THE ATLANTIC (Oct. 21, 2014), <http://www.theatlantic.com/national/archive/2014/10/policeman-shoots-dog-video-contradicts-his-explanation/381651/>. In other cases, such as the case of Tamir Rice, body camera footage does not necessarily tell the whole story. A Cleveland police officer shot 12 year-old Tamir Rice after responding to a 911 call about a male who appeared to be brandishing a firearm. The 911 caller reportedly said that the gun was "probably fake," adding, "I don't know if it's real or not." The weapon turned out to be a pellet gun. Whether or not the officer heard the 911 caller's messages is still not known. See Franko, *Police: Video of Officer Shooting Boy Is 'Clear'*, YAHOO! NEWS (Nov. 24, 2014), <http://news.yahoo.com/probe-begins-fatal-shooting-boy-officer-065908018.html>; Stephen Koff, *To Prevent More Deaths Like Tamir Rice's, Senator Introduces Fake-Gun Bill*, CLEVELAND.COM (Jan. 21, 2015), [http://www.cleveland.com/open/index.ssf/2015/01/to\\_prevent\\_more\\_deaths\\_like\\_ta.html](http://www.cleveland.com/open/index.ssf/2015/01/to_prevent_more_deaths_like_ta.html).

<sup>84</sup> *'I Can't Breathe'*, *supra* note 43.

<sup>85</sup> *Id.*; NEW YORK CITY DEPARTMENT OF INVESTIGATION OFFICE OF THE INSPECTOR GENERAL FOR THE NYPD, OBSERVATIONS ON ACCOUNTABILITY AND TRANSPARENCY IN TEN NYPD CHOKEHOLD CASES ii (2015), *available at* [http://www.nyc.gov/html/oignypd/assets/downloads/pdf/chokehold\\_report\\_1-2015.pdf](http://www.nyc.gov/html/oignypd/assets/downloads/pdf/chokehold_report_1-2015.pdf).

camera footage could therefore fall far short of its proponents' expectations as a deterrent for police misconduct.<sup>86</sup>

### C. *Why Police Departments Want Cameras*

Another way in which body camera programs diverge from the legalized accountability model is that establishment of these programs does not appear to be motivated primarily by the desire to avoid legal liability.<sup>87</sup> The threat of liability exists, but to a lesser degree than in the 1960s and 1970s. In Los Angeles, at a news conference to show off the first cameras being tested, "Police Commission President Steve Soboroff and City Councilman Mitch Englander claimed that body cameras would help the city cut down on the millions of dollars in settlements and verdicts it pays out each year in police misconduct cases."<sup>88</sup> Chicago, Philadelphia, and New York City have each paid hundreds of millions of dollars in police misconduct settlements

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<sup>86</sup> In the case of Tamir Rice, Deputy Chief Edward Tomba said surveillance video of the shooting was "very clear" about the incident and weighed in favor of the police officer. Others have disputed that interpretation of the video. *Police: Video of Officer Shooting Boy Is 'Clear'*, YAHOO! NEWS (Nov. 24, 2014), <http://news.yahoo.com/probe-begins-fatal-shooting-boy-officer-065908018.html>; Mark Gillespie, *Group Derides Behavior in Video of Police Shooting Aftermath*, YAHOO! NEWS (Jan. 9, 2014), <http://news.yahoo.com/group-derides-behavior-video-police-shooting-aftermath-203826864.html>.

<sup>87</sup> Fear of criminal charges does not provide much of a deterrent either. As previously mentioned, the Garner and Brown cases each went before grand juries in their respective jurisdictions, but neither officer was indicted. The difficulties associated with successfully indicting police officers for incidents that occurred while on duty received much attention in the aftermath of these two incidents. See Chase Madar, *Why It's Impossible to Indict a Cop*, THE NATION (Nov. 24, 2014), <http://www.thenation.com/article/190937/why-its-impossible-indict-cop#>; Lizette Alvarez, *Florida Prosecutors Face Long Odds When Police Use Lethal Force*, N.Y. TIMES (Sept. 3, 2014), <http://www.nytimes.com/2014/09/04/us/challenges-seen-in-prosecuting-police-for-use-of-deadly-force.html?partner=rss&emc=rss&smid=tw-nytimes>.

<sup>88</sup> Rubin, *supra* note 32.

in recent history.<sup>89</sup> Washington, D.C. also pays out for police misconduct cases. MPD reported that it was a party in fiscal year 2013 to approximately 150 lawsuits with potential to “expose the city to significant liability in terms of money and/or change in practices.”<sup>90</sup> The list includes claims of “False Arrest/Civil Rights,” “Excessive Force/Civil Rights,” and “Illegal Search/Civil Rights,” among others.<sup>91</sup>

Two recent court cases in New York also confirm that the threat of liability has not disappeared altogether. In *Ligon v. City of New York*, a federal judge concluded that the plaintiffs showed “a clear likelihood of establishing that defendants’ longstanding failure to train officers regarding the legal standards for trespass stops outside [certain] buildings in the Bronx, despite actual or constructive notice that this omission was causing city employees to violate individuals’ constitutional rights, ha[d] risen to the level of deliberate indifference.”<sup>92</sup> The judge made her finding of deliberate indifference despite evidence that the NYPD had taken numerous steps to train its officers and implement policies relating to NYPD’s “stop and frisk” practices.<sup>93</sup> According to the judge, NYPD’s efforts in this area were not sufficient to avoid liability. In *Floyd v. City of New York*, the same judge held New York City liable for violating the Fourth and Fourteenth Amendment rights of members of the plaintiff class, black and Hispanic New Yorkers who were stopped by NYPD.<sup>94</sup> She held that the City acted “with indifference toward the NYPD’s practice of making unconstitutional

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<sup>89</sup> Jim Avila & Serena Marshall, *U.S. Cities (and Taxpayers) Paying Millions in Police Misconduct Settlements*, ABC NEWS (Nov. 17, 2014), <http://abcnews.go.com/US/us-cities-paying-millions-police-misconduct-settlements/story?id=26916697>.

<sup>90</sup> Letter from Cathy Lanier, Chief, Metro. Police Dep’t, to the Hon. Tommy Wells, Councilmember, Council of D.C. 26 (Feb. 10, 2014), *available at* [http://dccouncil.us/files/performance\\_oversight/Resubmission\\_FINAL\\_MPD\\_Response\\_With\\_Attachments\\_Perf\\_Hrg\\_02\\_20\\_14.pdf](http://dccouncil.us/files/performance_oversight/Resubmission_FINAL_MPD_Response_With_Attachments_Perf_Hrg_02_20_14.pdf) [hereinafter letter from Cathy Lanier].

<sup>91</sup> *Id.* at 26–30.

<sup>92</sup> *Ligon v. City of New York*, 925 F. Supp. 2d 478, 523 (S.D.N.Y. 2013).

<sup>93</sup> *Id.* at 533–39.

<sup>94</sup> *Floyd v. City of New York*, 959 F. Supp. 2d 540, 556 (S.D.N.Y. 2013).



stops and conducting unconstitutional frisks.”<sup>95</sup> As a joint remedy for the two cases, the judge ordered immediate reform, including revisions to NYPD policies and training materials relating to stop and frisk and racial profiling.<sup>96</sup> Interestingly, she also ordered NYPD “to institute a pilot project in which body-worn cameras will be worn for a one-year period by officers on patrol in one precinct per borough.”<sup>97</sup>

The media blitz in the 1960s and 1970s that Epp describes in his book focused on creating hype around lawsuits of this nature against police departments.<sup>98</sup> A quick inspection of the *Washington Post* website, however, reveals that lawsuits against MPD, for example, are hardly front-page news anymore.<sup>99</sup> Civil rights attorney Constance Rice, who brought many of these kinds of suits against the Los Angeles Police Department in the 1990s, recently told NPR that this strategy of “going to war” against the police with a barrage of civil rights lawsuits “doesn’t solve

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<sup>95</sup> *Id.* at 562.

<sup>96</sup> *Floyd v. City of New York*, 959 F. Supp. 2d 668, 678–690 (S.D.N.Y. 2013), *appeal dismissed* (Sept. 25, 2013).

<sup>97</sup> *Id.* at 685.

<sup>98</sup> See EPP, *supra* note 4, at 72. “Although the police ended the turbulent 1960s with wide support from the white public, by the mid-1970s, in the context of growing litigation against the police, this support began to erode. The news media increasingly covered high-profile lawsuits dramatizing police shootings and other abuses, and as a consequence the public climate began to change in favor of heightened police accountability.” *Id.*

<sup>99</sup> A trend towards federal intervention into and oversight of police misconduct investigations suggests that the Department of Justice could become the scourge that replaces the flurry of lawsuits. The Department of Justice is currently investigating the shooting death of Michael Brown and recently announced plans to conduct a federal investigation into the chokehold death of Eric Garner. *Justice Department to Investigate Eric Garner Case*, FOXNEWS.COM (Dec. 4, 2014), <http://www.foxnews.com/politics/2014/12/04/justice-department-to-investigate-eric-garner-case/>. When a New York grand jury refused to indict the officer who killed Mr. Garner, Attorney General Eric Holder called the event “one of several recent incidents that have tested the sense of trust that must exist between law enforcement and the communities they are charged to serve and protect.” *Id.*

anything,” because lawsuits are limited in their reach.<sup>100</sup> Ms. Rice herself has abandoned this strategy, preferring instead to help train officers on how to build trust in the communities they serve.<sup>101</sup>

What makes the front page now are stories of outrageous police misconduct, like those of Barnhill and Washington, and, as of late, the deaths of young African American men and the massive protests in New York, California, Washington, D.C., and Ferguson, Missouri, that these deaths sparked. The first type of story reflects negatively on the entire police force and elicits suspicion that the behaviors they expose are widespread and systemic. The second set of stories has generated much debate over whether or not each death involved police misconduct at all.

These debates revealed a deep divide along racial lines in perceptions of police fairness and accountability. President Obama touched on the problem in his address following the announcement of the Ferguson grand jury’s decision not to indict Darren Wilson:

We need to recognize that the situation in Ferguson speaks to broader challenges that we still face as a nation. The fact is that in too many parts of this country, a deep distrust exists between law enforcement and communities of color. Some of this is the result of the legacy of racial discrimination in this country, and this is tragic because nobody needs good policing more than poor communities with higher crime rates. . . . We need to recognize that this is not just an issue for Ferguson, this is an issue for America. We have made enormous progress in race relations over the course of the past several decades. I have witnessed that in my own life, and to deny that progress, I think, is to deny America’s capacity for

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<sup>100</sup> *Civil Rights Attorney On How She Built Trust With Police*, NPR (Dec. 5, 2014), <http://www.npr.org/blogs/codeswitch/2014/12/05/368545491/civil-rights-attorney-on-how-she-built-trust-with-police>.

<sup>101</sup> *Id.*

change. But what is also true is that there are still problems, and communities of color aren't just making these problems up.<sup>102</sup>

Now, as during the period leading up the establishment of legalized accountability, reputational considerations appear to be the primary motivation behind police support for body-worn cameras. According to Epp, "Agency managers feared liability not primarily for its financial cost but for its risk to professional reputation: no city . . . wanted to be publicly exposed as employing abusive police officers."<sup>103</sup> President Obama's statements recast the issue of institutional reputation as one of trust, and the Department of Justice under the leadership of Eric Holder followed suit.<sup>104</sup> Similarly, Seattle Police Chief Kathleen O'Toole recently announced "major reforms to bring greater fairness, independence and transparency to the police discipline and accountability system, and to rebuild public trust."<sup>105</sup> According to Chief O'Toole, "Independent oversight makes us stronger, and it leads to increased trust and legitimacy with the people we serve."<sup>106</sup> Even though the threat of liability is not as strong and visible now as it was then, the fear of losing the public trust and being seen as corrupt remains.

This fear is evident in Chief Lanier's responses to the heinous criminal misconduct of officers Barnhill and Washington. In a letter to the Editor of the *Washington Post*, the chief insisted, "No one should infer that the

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<sup>102</sup> *President Obama's Full Statement on Ferguson Grand Jury Decision*, YOUTUBE (Nov. 24, 2014), <https://www.youtube.com/watch?v=PnVoqXflaxk>.

<sup>103</sup> EPP, *supra* note 4, at 3.

<sup>104</sup> *FACT SHEET: Strengthening Community Policing*, *supra* note 49. "As the nation has observed, trust between law enforcement agencies and the people they protect and serve is essential to the stability of our communities, the integrity of our criminal justice system, and the safe and effective delivery of policing services." *Id.*

<sup>105</sup> Brandi Kruse, *Seattle Announces New Efforts to Rebuild Public Trust in Police Department*, MYNORTHWEST.COM (Nov. 13, 2014), <http://mynorthwest.com/11/2643156/Seattle-announces-new-efforts-to-rebuild-public-trust-in-police-department>.

<sup>106</sup> *Id.*

misguided actions of a handful of officers somehow show such behavior to be a regular practice of the department. It is not.”<sup>107</sup> In her initial comments to the press about the sexual misconduct allegations, Chief Lanier expressed with acute awareness that “[o]ne action tarnishes us all. It only takes one cop to do one thing like this to shake everybody in our community.”<sup>108</sup>

Generally speaking, police departments appear eager to implement body camera programs in order to avoid this type of “tarnish.” As Chief Lanier told Councilmember Wells, good cops “love the use of the cameras.”<sup>109</sup> Charles Ramsey, Philadelphia Police Commissioner and president of the Police Executive Research Forum (PERF) recently found that officers are buying and using body-worn cameras on their own “in order to protect themselves.”<sup>110</sup> Officer acceptance of the cameras is part of what makes them a “win-win,” in the words of the ACLU. The cameras have a dual function: “helping protect the public against police misconduct, and at the same time helping protect police against false accusations of abuse.”<sup>111</sup>

## V. WRITTEN POLICIES

According to Epp, the cornerstone of the legalized accountability model is detailed, written departmental policies.<sup>112</sup> In the context of policing, the first of such policies were developed to address concerns over officers’ use of force. In 1967, President Lyndon B. Johnson’s Commission on Law Enforcement and the Administration of Justice issued a report

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<sup>107</sup> Cathy Lanier, *The Big Obstacle in Building a Better D.C. Police Department*, WP OPINIONS (Dec. 24, 2013), [http://www.washingtonpost.com/opinions/the-big-obstacle-in-building-a-better-dc-police-department/2013/12/24/42df1772-68e3-11e3-997b-9213b17dac97\\_story.html](http://www.washingtonpost.com/opinions/the-big-obstacle-in-building-a-better-dc-police-department/2013/12/24/42df1772-68e3-11e3-997b-9213b17dac97_story.html)

<sup>108</sup> Hermann & Alexander, *supra* note 9.

<sup>109</sup> Misconduct Hearing Video, *supra* note 13.

<sup>110</sup> *Police Leaders Explore Growing Use of Body Cameras at PERF Town Hall Meeting in Philadelphia*, *supra* note 62.

<sup>111</sup> Stanley, *supra* note 23, at 1–2.

<sup>112</sup> EPP, *supra* note 4, at 3.

recommending, “Departments, relying on careful internal research into ‘problem areas,’ should systematically develop clear internal administrative rules governing officer discretion. Departments . . . should employ internal legal advisers to aid in developing and implementing such policies.”<sup>113</sup> Policies of this nature are now issued often by police departments nationwide, as an informal survey of police department websites reveals.

In a manner consistent with the legalized accountability model, union representatives, police officials, and civil liberties experts nationwide agree that deploying body-worn cameras with no official policy in place could undermine public confidence in the programs, as well as threaten the privacy rights of both officers and civilians.<sup>114</sup> At a PERF town hall meeting in Philadelphia, police officials from across the nation agreed that policies and procedures must be formulated in advance of body camera deployment.<sup>115</sup> Said one police commissioner, “If you don’t have a policy in place, eventually you’re going to have a problem.”<sup>116</sup> PERF nevertheless found that while 63 of 254 departments surveyed deployed body-worn cameras, one-third of those departments had no written policies in place.<sup>117</sup>

PERF, with support from the Justice Department’s Office of Community Oriented Policing Services, developed guidelines to help formulate model policies.<sup>118</sup> PERF recommends that police agencies develop their own

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<sup>113</sup> *Id.* at 49.

<sup>114</sup> See Tami Abdollah, *Officers’ Body Cameras Raise Privacy Concerns*, FOX NEWS (Mar. 15, 2014), <http://www.foxnews.com/us/2014/03/15/officers-body-cameras-raise-privacy-concerns/>.

<sup>115</sup> *Police Leaders Explore Growing Use of Body Cameras at PERF Town Hall Meeting in Philadelphia*, *supra* note 62.

<sup>116</sup> *Id.* at 2.

<sup>117</sup> Donald Scarinci, *Balancing Police Technology and Privacy Concerns*, NJ.COM (Nov. 12, 2014), [http://blog.nj.com/njv\\_donald\\_scarinci/2014/11/balancing\\_police\\_technology\\_an.html](http://blog.nj.com/njv_donald_scarinci/2014/11/balancing_police_technology_an.html).

<sup>118</sup> See PowerPoint, Police Executive Research Forum, *Guidelines to Help Formulate Model Policy for An Evolving Technology: Body-Worn Cameras* (2013), [http://www.policeforum.org/assets/docs/Free\\_Online\\_Documents/Technology/presentati](http://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/presentati)

“comprehensive written policy” to govern body-worn camera usage.<sup>119</sup> According to PERF, policies should cover basic camera usage, designated staff members responsible for ensuring cameras are charged and in proper working order, when to activate and deactivate the characters, the process for downloading camera data, maintaining and documenting the chain of custody, retention times, processes and policies for accessing and viewing recorded data, policies for releasing recorded data to the public, and property and contract issues regarding third-party cloud storage venues.<sup>120</sup>

Some police departments in the United States have issued written policies outlining procedures for the use of officer-worn cameras. The Oakland Police in California, for example, issued a Departmental General Order covering their “Portable Video Management System.”<sup>121</sup> The document includes rules governing who shall operate recording equipment, when officers should activate recording equipment, when officers may stop recording, and when officers should obtain consent from recording subjects.<sup>122</sup> The policy also provides rules for officer, supervisory, and investigatory review of camera footage.<sup>123</sup>

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on%20%20guidelines%20to%20help%20formulate%20model%20policy%20for%20body-worn%20cameras%202013.pdf.

<sup>119</sup> POLICE EXECUTIVE RESEARCH FORUM & THE OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, U.S. DEP’T OF JUST., IMPLEMENTING A BODY-WORN CAMERA PROGRAM: RECOMMENDATIONS AND LESSONS LEARNED 37 (2014), <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>.

<sup>120</sup> *Id.* at 37–8.

<sup>121</sup> OAKLAND POLICE DEP’T, DEPARTMENTAL GENERAL ORDER I-15.1: PORTABLE VIDEO MANAGEMENT SYSTEM 1 (2011), *available at* <http://www2.oaklandnet.com/oakcal/groups/police/documents/webcontent/oak032276.pdf>. “The purpose of this order is to set forth Departmental policy and procedures for the Portable Video Management System (PVMS), which includes a portable digital recording device (PDRD) designed to record both audio and video of field activity in the course of official police duties.” *Id.*

<sup>122</sup> *Id.* at 1–2. Interestingly, even though the General Order lists specific instances when officers must record, it also allows officers to “activate the PDRD before/during any other incident at their discretion.” *Id.*

<sup>123</sup> *Id.* at 4.

Likewise, the Bay Area Rapid Transit Police Department (BPD) in San Francisco, California has issued a policy called “Use of AXON Flex.”<sup>124</sup> AXON Flex is an officer-worn camera manufactured by TASER.<sup>125</sup> BPD declares, “Officers shall utilize the AXON Flex in accordance with the provision of this Policy in order to maximize the effectiveness of the device, enhance transparency, and ensure the integrity of evidence.”<sup>126</sup> The policy governs retention periods for camera footage, uniformed officer responsibilities, activation of video recorders, operating procedures, and review of recorded media.<sup>127</sup> According to the Office of the Independent Police Auditor, in creating its policy, BPD “consulted with its two police unions as well as the BART Citizen Review Board (CRB) prior to the implementation of [the] policy.”<sup>128</sup> Before the policy was final, BPD “discussed its then-prospective policy” at a 2012 CRB meeting and “received feedback from CRB members.”<sup>129</sup> The OIPA also “took the

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<sup>124</sup> SAN FRANCISCO BAY AREA RAPID TRANSIT POLICE DEP’T, BAY AREA RAPID TRANSIT POLICE DEPARTMENT POLICY MANUAL 395–400 (2013), *available at* [http://www.bart.gov/sites/default/files/docs/PolicyManual20131025\\_0.pdf](http://www.bart.gov/sites/default/files/docs/PolicyManual20131025_0.pdf). Note that BPD issued this policy “in conjunction with the deployment, over time, of Mobile Video Recorders (MVRs) to all BPD patrol officers and sergeants,” rather than strictly in advance of deployment. San Francisco Bay Area Rapid Transit District Memorandum from Independent Police Auditor to BART Citizen Review Board, *Policy Recommendation –BPD Policy 450 1* (2013), [http://www.bart.gov/sites/default/files/docs/OIPA\\_Policy\\_Recommendation\\_for\\_BPD\\_Policy\\_450.pdf](http://www.bart.gov/sites/default/files/docs/OIPA_Policy_Recommendation_for_BPD_Policy_450.pdf). The Independent Police Auditor (OIPA) acknowledged that the policy could have been “more directly incorporated into the BPD Policy Manual” and “that some adjustments to the most recently issued policy (both in format and content) might appear in the finalized version that is incorporated into the manual.” *Id.*

<sup>125</sup> *Body Worn Cameras, Point of View Cameras, Single Unit Cameras*, TASER.COM, <https://www.taser.com/products/on-officer-video> (last visited Oct. 15, 2015).

<sup>126</sup> SAN FRANCISCO BAY AREA RAPID TRANSIT POLICE DEP’T, *supra* note 124, at 395.

<sup>127</sup> *Id.* at 396–400.

<sup>128</sup> Memorandum from Independent Police Auditor to BART Citizen Review Board, *Policy Recommendation –BPD Policy 450 1* (May 8, 2013), *available at* [http://www.bart.gov/sites/default/files/docs/OIPA\\_Policy\\_Recommendation\\_for\\_BPD\\_Policy\\_450.pdf](http://www.bart.gov/sites/default/files/docs/OIPA_Policy_Recommendation_for_BPD_Policy_450.pdf).

<sup>129</sup> *Id.*

opportunity to participate in the discussion and verbally raise some . . . concerns.”<sup>130</sup>

The Los Angeles Police Department (LAPD) also took a collaborative approach to formulating its body-worn camera policies. LAPD recently purchased 30 cameras from three different vendors for testing.<sup>131</sup> The city plans to buy 600 cameras using already raised private funds and petition the city for public funding to distribute cameras to the entire police force.<sup>132</sup> The department is currently in the process of developing a body-worn camera policy, but the president of the Police Commission that oversees LAPD has called for “a wide array of groups, including the union representing officers” and “civil rights advocates” to be involved in the discussions.<sup>133</sup>

In Pennsylvania, Susquehanna Township Director of Public Safety, Robert Martin, has said that the township will look at a law enforcement study on the issue of body-worn cameras before developing a policy.<sup>134</sup> Martin recognized, “We are going to have to be careful as law enforcement to write the policies properly. There would be a lot of policy development. How are we using them? When we are using them? There are a lot of questions that need to be answered from law enforcement.”<sup>135</sup>

Other police departments, however, opted to deploy cameras first and formulate policies later, if at all.<sup>136</sup> Some police officers in Hallandale Beach, Florida wear cameras during patrols, but no policy for the use of

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<sup>130</sup> *Id.*

<sup>131</sup> Rubin, *supra* note 32.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> Valerie Pritchett, *Police Body Cameras Heading to Pennsylvania*, ABC27.COM (Feb. 10, 2014), <http://www.abc27.com/story/24686416/police-body-cameras-heading-to-pennsylvania>.

<sup>135</sup> *Id.*

<sup>136</sup> If these departments did write policies governing the deployment of their camera programs, they did not release the policies online.



these cameras appears on the police department's website.<sup>137</sup> According to a recent editorial, "the department is in testing phase, the first city in Broward County to deploy the devices."<sup>138</sup> The article further states, "cop shops in Boynton Beach, Daytona Beach and Orlando already outfit their officers with body cameras."<sup>139</sup> If the Boynton Beach Police Department has a policy, it does not appear to be public. The 2012 Annual Report of the Daytona Beach Police Department announced that the department upgraded its body cameras.<sup>140</sup> "Expansion of Police Department body cameras" also appears as one of the department's "2012-2013 Long Range Goals, Objectives, and Initiatives."<sup>141</sup> No governing policies could be found online. The Orlando Police Department is planning a "Body-Worn Camera Study," in collaboration with the University of South Florida.<sup>142</sup> As part of the study, 50 officers will wear cameras for 12 months.<sup>143</sup> Neither the police department website nor the website of the University of South Florida has

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<sup>137</sup> Sun Sentinel Editorial Board, *Body Cameras on Police Protect Everybody*, SUNSENTINEL (Feb. 20, 2014) [http://articles.sun-sentinel.com/2014-02-20/news/fl-editorial-hallandale-beach-cop-cams-dv-20140220\\_1\\_body-cameras-fort-lauderdale-police-police-video](http://articles.sun-sentinel.com/2014-02-20/news/fl-editorial-hallandale-beach-cop-cams-dv-20140220_1_body-cameras-fort-lauderdale-police-police-video); Hallandale Beach Florida Police Police Department, <http://www.hallandalebeachfl.gov/index.aspx?NID=17> (last visited Oct. 28, 2015).

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> DAYTONA BEACH POLICE DEP'T, 2012 DAYTONA BEACH POLICE DEPARTMENT ANNUAL REPORT 19 (2012), available at <http://fl-daytonabeach.civicplus.com/DocumentCenter/View/10176>.

<sup>141</sup> DAYTONA BEACH POLICE DEP'T, DAYTONA BEACH POLICE DEPARTMENT STRATEGIC PLAN 2012-2013 9 (2012-2013), available at <http://fl-daytonabeach.civicplus.com/DocumentCenter/Home/View/10175>.

<sup>142</sup> PowerPoint, City of Orlando, *The Community Police Continue to Work Together to Reduce Crime in Orlando*, available at <http://www.cityoforlando.net/police/wp-content/uploads/sites/3/2014/03/PP-EYR-v2.pdf>; Gema Mora, *Department of Criminology to Study Effectiveness of Body Cameras on Police Officers*, UNIV. OF SOUTH FLA. COLL. OF BEHAVIORAL AND CMTY. SCIENCES, <http://www.cbcs.usf.edu/NewsEvents/ViewNews.cfm?NewsID=908> (last visited Oct. 15, 2015).

<sup>143</sup> *Id.*

any guidelines for the use of these cameras, though the study itself could contribute valuable information to the formation of a future policy.

In Washington, D.C., MPD took a hybrid approach—initially deploying some cameras and fixing some policy points while soliciting outside input with respect to others. In a meeting with Gays and Lesbians Opposing Violence and other LGBT advocacy groups, Chief Lanier announced that MPD would implement a body-worn camera program by the end of the upcoming fiscal year.<sup>144</sup> The chief also previously classified the project as one of the department’s top five priorities.<sup>145</sup> At the meeting with LGBT advocacy groups in March of 2014, the Chief revealed that MPD had already made some significant policy determinations. She told the advocates that MPD had selected cameras for the program that can capture video for up to eight minutes an officer turns it off.<sup>146</sup> She also revealed that officers who turn cameras off when they are supposed to be switched on would incur penalties.<sup>147</sup>

OPC issued a policy recommendation on May 8, 2014 entitled, “Enhancing Police Accountability through an Effective On-Body Camera Program for MPD Officers.”<sup>148</sup> In this document, OPC made several recommendations, including the establishment of an advisory panel of D.C. stakeholders to assist in developing a policy for a body-worn camera pilot program.<sup>149</sup> OPC further recommended that this proposed advisory panel

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<sup>144</sup> Notes from MPD Meeting with Gays and Lesbians Opposing Violence (GLOV) and Other LGBT Advocates (March 19, 2014) (on file with author).

<sup>145</sup> Letter from Cathy Lanier, *supra* note 90.

<sup>146</sup> Notes from MPD Meeting with Gays and Lesbians Opposing Violence (GLOV), *supra* note 144.

<sup>147</sup> *Id.*

<sup>148</sup> D.C. OFFICE OF POLICE COMPLAINTS, ENHANCING POLICE ACCOUNTABILITY THROUGH AN EFFECTIVE ON-BODY CAMERA PROGRAM FOR MPD OFFICERS 10–11 (May 8, 2014), <http://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Final%20policy%20rec%20body%20camera.pdf>.

<sup>149</sup> *Id.*

review the efficacy of the pilot program, identify any concerns about processes or policies, and suggest changes and improvements.<sup>150</sup> OPC also asked for “the opportunity to provide real-time input and feedback to MPD as the expedited pilot program takes shape and is implemented.”<sup>151</sup>

MPD partially followed these recommendations. On September 3, 2014, high-ranking MPD officials met with Councilmember Wells and representatives from the ACLU-NCA and the Public Defender Service for the District of Columbia.<sup>152</sup> According to the Deputy Director of OPC, Christian J. Klossner, this meeting provided stakeholders with an opportunity to voice their concerns about the implementation of the program.<sup>153</sup> Mr. Klossner further indicated that the MPD special order governing the body-worn camera pilot program was indeed responsive to these concerns.<sup>154</sup> Furthermore, MPD shared multiple drafts of the special order with OPC, incorporating many of the agency’s substantive suggestions into the final version.<sup>155</sup>

The written policy governing the District’s body-worn camera pilot program itself fits into the legalized accountability mold. The policy sets forth a list of specific instances when the cameras must be activated, as well as a list of instances in which recording is forbidden. For example, MPD members equipped with these cameras must record all dispatched and self-initiated calls for service, but cannot record confidential informants or undercover officers.<sup>156</sup> The policy also details procedures for annotating videos with descriptive labels like “contact or stop” and “violent incident,

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<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> Notes from Meeting with Christian J. Klossner, Deputy Dir., D.C. Office of Police Complaints (Nov. 18, 2014) (on file with author).

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> METRO. POLICE DEP’T, Special Order SO-14-14, *Body-Worn Camera Pilot Program* 5, 7 (Dec. 9, 2014), [https://go.mpdconline.com/GO/SO\\_14\\_14.pdf](https://go.mpdconline.com/GO/SO_14_14.pdf).

no arrest.”<sup>157</sup> As detailed and specific as the policy is in parts, it also allows officers to use their discretion in recording “any incident that [he or she] deems it appropriate to activate the [body-worn camera] in accordance with this order or upon direction from an official.”<sup>158</sup>

According to Epp, “police departments vary considerably in how fully they have adopted the [legalized accountability] model’s elements.”<sup>159</sup> Washington, D.C., along with several other jurisdictions, has taken the legalized accountability approach of detailed, written rules with respect to the deployment of body-worn cameras. Epp says, “variations in departments’ commitment to legalized accountability are best explained by variations in the presence of local infrastructures of support for police misconduct litigation (activists and lawyers) and in the strength of departments’ connections to professional networks.”<sup>160</sup> As previous sections of this paper demonstrate, Washington, D.C. has a healthy network of lawyers and activists and has deep connections to professional networks. Deployment of cameras without written directives does appear to be the practice in other US jurisdictions, however. In places like Orlando, Florida, and Rialto, California, these initial deployments take the form of studies that could inform later policy statements.<sup>161</sup>

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<sup>157</sup> *Id.* at 10.

<sup>158</sup> *Id.* at 8.

<sup>159</sup> EPP, *supra* note 4, at 116.

<sup>160</sup> *Id.*

<sup>161</sup> In order to determine whether the cameras would reduce the use of police force, the Rialto Police Department assigned some of its officers to wear cameras that captured all of their encounters with citizens for the duration of each shift. See BARAK ARIEL ET AL., SELF-AWARENESS TO BEING WATCHED AND SOCIALLY DESIRABLE BEHAVIOR: A FIELD EXPERIMENT ON THE EFFECT OF BODY-WORN CAMERAS ON POLICE USE-OF-FORCE (2013), available at <http://www.policefoundation.org/content/body-worn-camera>.

## VI. TRAINING AND COMMUNICATIONS SYSTEMS AND INTERNAL OVERSIGHT

More than just written rules, legalized accountability in policing hinges on training requirements, discipline, and dismissal of officers for violating the rules. Epp explains, “departments have widely adopted especially visible policies but have less widely adopted internal or hidden procedures and practices, particularly those that intrude significantly on police discretion.”<sup>162</sup> “Thus,” he continues, “virtually all departments have adopted written rules regulating most types of the use of force, but departments less commonly have incorporated ongoing internal legal consultation.”<sup>163</sup> Training and communications systems and internal oversight structures are “some of the more intrusive and searching components” of legalized accountability.<sup>164</sup>

These components are also the key to the success of legalized accountability as an administrative model in the context of police work. Without training to communicate policies and consequences for failing to adhere to them, the policies become what Epp calls “mere window dressing.”<sup>165</sup> In the case of Eric Garner, for example, Officer Pantaleo put his arm around Mr. Garner’s neck even though an NYPD policy prohibits chokeholds.<sup>166</sup> Initially, the press and supporters of NYPD made much of the fact that NYPD had banned the practice. Apologists tried to argue that the ban did not apply to this particular tactical takedown maneuver. Months later, the brand new Office of the Inspector General for the NYPD released

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<sup>162</sup> EPP, *supra* note 4, at 117.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.* at 116.

<sup>165</sup> *Id.* at 3. “[W]indow dressing”—adopting policies on paper but doing little to implement them.” *Id.*

<sup>166</sup> N.Y. CITY DEP’T OF INVESTIGATION OFFICE OF THE INSPECTOR GEN. FOR THE NYPD, OBSERVATIONS ON ACCOUNTABILITY AND TRANSPARENCY IN TEN NYPD CHOKEHOLD CASES ii-vi (2015), *available at* [http://www.nyc.gov/html/oignypd/assets/downloads/pdf/chokehold\\_report\\_1-2015.pdf](http://www.nyc.gov/html/oignypd/assets/downloads/pdf/chokehold_report_1-2015.pdf).

its first report, which confirmed that in 10 cases surveyed, NYPD officers were quick to resort to banned chokeholds and faced few or no consequences for doing so.<sup>167</sup>

#### *A. Training and Communications Systems*

The 1967 report of the President's Commission on Law Enforcement and the Administration of Justice, the first to formally lay out the legalized accountability model for police departments, recommended that "[a]fter adopting rules, departments should systematically disseminate them so that all officers are well aware of them, and should provide ongoing training so that officers know how to follow the policies in practice."<sup>168</sup>

Police departments nationwide have well-developed training programs through which to disseminate information about how and when to use body-worn cameras. MPD recruits, for example, spend 28 weeks training at the Metropolitan Police Academy.<sup>169</sup> Beginning in 1999, the Academy began delivering mandatory annual professional development training for sworn members of the police department.<sup>170</sup> In addition to training at the Police Academy, MPD officers receive "roll call training." According to MPD General Order 404.06,

[i]n-service roll call training is instruction or informational sessions of short duration administered to sworn members, usually during their tour of duty at roll call. It supplements other Department training and provides an open forum for discussion of crime and disorder, safety, and policy issues. The goal of daily roll call training is to keep members up-to-date between formal

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<sup>167</sup> *Id.*

<sup>168</sup> EPP, *supra* note 4, at 49.

<sup>169</sup> Metropolitan Police Academy, METRO. POLICE DEP'T, <http://mpdc.dc.gov/page/metropolitan-police-academy> (last visited Oct. 28, 2015).

<sup>170</sup> Maurice J. Turner Metropolitan Police Academy, METRO. POLICE DEP'T, <http://mpdc.dc.gov/page/maurice-t-turner-jr-metropolitan-police-academy> (last visited Oct. 28, 2015).

retraining sessions; therefore it must be well managed and supervised.<sup>171</sup>

Officers must also complete training modules on procedure-driven rule or law changes.<sup>172</sup>

MPD did not communicate the body-worn camera pilot program and its procedures through all available training channels, opting instead to make only the officers and supervisors participating in the program undergo pre-deployment training.<sup>173</sup> The more a police department has adopted the legalized accountability model, the more accustomed its officers will be to policy-based training.

The use of body-worn camera footage can also supplement officer training, a fact of which policymakers are aware. The University of South Florida, for one, has recognized that this new technology “has the potential to expose any training deficiencies for the Orlando Police Department.”<sup>174</sup> Body camera recordings serve as a remedial training tool, such as to correct the behavior of individual officers against whom misconduct allegations have been filed. When an officer engages in inappropriate conduct on camera, the officer’s supervisor can use the recording of that incident to show the officer what she did incorrectly, how she should have acted in the situation, and how to handle similar situations in the future. Video from body-worn cameras can also help to train other officers. Body-worn camera footage can provide real-life examples of appropriate and inappropriate officer conduct.

MPD’s pilot program also accounts for use of body-worn camera footage for training purposes. The policy states that the members of MPD “are

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<sup>171</sup> METRO. POLICE DEP’T, GENERAL ORDER 404.06, ROLL CALL TRAINING 1 (2002), available at <http://www2.justiceonline.org/dcmpd/GOPER40406.pdf>.

<sup>172</sup> Notes from Meeting with Christian J. Klossner, Deputy Dir., D.C. Office of Police Complaints (Nov. 18, 2014) (on file with author).

<sup>173</sup> *Id.*

<sup>174</sup> Mora, *supra* note 142.

encouraged” to notify their officials of any recordings that may be of value for training purposes.”<sup>175</sup> Officers recommending footage for use in training must “submit the request through the chain of command to the Commanding Official, Metropolitan Police Academy (MPA).”<sup>176</sup> The commanding official then has the discretion to approve or disapprove the request, “taking into consideration the identity of the persons involved, the sensitivity of the incident, and the benefit of using the file versus other means.”<sup>177</sup>

### *B. Internal Oversight*

After adopting and implementing rules, the Law Enforcement Commission’s report recommended that “departments should carry out ongoing review of the policies’ effectiveness and should devise appropriate methods of ‘internal control’ over officers’ actions.”<sup>178</sup> As is the case with training, police departments that have more fully adopted the legalized accountability model are more likely to employ methods of internal control and oversight with respect to body-worn cameras.

MPD’s pilot program creates a complex internal oversight structure. A body-worn camera coordinator designated by the chief of police oversees all aspects of the pilot program.<sup>179</sup> Body-worn camera unit coordinators assist with the implementation of the cameras within their respective districts.<sup>180</sup> Watch commanders must review body-worn camera recordings upon receipt of allegations of serious misconduct.<sup>181</sup> The policy also provides for a categorization or labeling system for the recordings, including “requires

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<sup>175</sup> METRO. POLICE DEP’T, *supra* note 156, at 5.

<sup>176</sup> *Id.*

<sup>177</sup> *Id.*

<sup>178</sup> EPP, *supra* note 4, at 49.

<sup>179</sup> METRO. POLICE DEP’T, *supra* note 156, at 2.

<sup>180</sup> *Id.* at 3.

<sup>181</sup> *Id.* at 4.



supervisory review” and “retain” categories.<sup>182</sup> “Requires supervisory review” applies to any recording that could require “possible extended retention,” such as when an officers is killed or injured, force is used, or an in-custody death occurs.<sup>183</sup> “Retain” is a secondary category for use by officials, the MPD body-worn camera coordinator, the Internal Affairs Bureau, and the Court Liaison Division.<sup>184</sup> Furthermore, officers must document “any delay or failure to activate their [body-worn camera] and any interruption of a required recording.”<sup>185</sup>

Police departments can also use body cameras to enhance internal oversight, though that use appears to be rather unpopular. The National Institute of Justice Sensor, Surveillance, and Biometric Technologies Center of Excellence, a center within the National Law Enforcement and Corrections Technology Center System, warns, “If officers feel that the video cameras are being used as a tool to monitor officer behavior . . . they may be resistant to using the cameras.”<sup>186</sup>

MPD’s policy specifically states, “Recorded data *shall not* be routinely or randomly viewed by officials for the sole purpose of enforcing policy violations” [emphasis in original].<sup>187</sup> The policy also contains a reminder to administrative captains that body-worn cameras “provide valuable information for training and counseling employees on performance. administrative captains shall coordinate through the Body-Worn Camera

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<sup>182</sup> *Id.* at 11.

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

<sup>185</sup> *Id.* at 12.

<sup>186</sup> The Center of Excellence provides scientific and technical support to the National Institute of Justice’s research and development efforts. The National Institute of Justice is a program under the U.S. Department of Justice’s Office of Justice Programs; U.S. DEP’T OF JUST. OFFICE OF JUST. PROGRAMS NAT’L INST. OF JUST. SENSOR, SURVEILLANCE, AND BIOMETRIC TECHNOLOGIES CTR. OF EXCELLENCE, A PRIMER ON BODY-WORN CAMERAS FOR LAW ENFORCEMENT 9 (2012), *available at* <https://www.justnet.org/pdf/00-Body-Worn-Cameras-508.pdf>.

<sup>187</sup> METRO. POLICE DEP’T, *supra* note 156, at 13.

Unit Coordinators periodic reviews of recorded video to ensure that the members are recording mandatory events as outlined in this order. These periodic reviews are *not* intended as a means to identify rule violations” [emphasis in original].<sup>188</sup>

## VII. CONCLUSION

In Washington, D.C. and several other US jurisdictions, police departments are implementing officer-worn camera programs. Experts widely acknowledge that these body cameras will change the nature of police administration and represent a new era of police accountability. This change, however, does not appear to go so far as to make a complete break from legalized accountability, the dominant administrative model. Rather, body-worn camera programs are both influenced by, and distinct from, legalized accountability.

These programs are distinct from legalized accountability in their capacity to provide an objective account of what a particular officer saw and did at a particular moment in time. The availability of body camera footage to investigate incidents of use of force, for example, has great potential to enhance accountability to the public as a supplement to the policies and internal enforcement mechanisms already in place. The police can take advantage of existing training and oversight structures to implement these programs, which will also reinforce the very same training and oversight structures. Deployment of these programs must coincide with an acknowledgment that current training and oversight structures do not always work, however, especially in communities of color. If police departments fail to acknowledge the realities of racial profiling and discriminatory law enforcement, body-worn cameras could be reduced to mere “window dressing.”

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<sup>188</sup> *Id.* at 16.