



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W

A nonprofit, nonpartisan legal organization formed at the request of President Kennedy in 1963



TESTIMONY OF

THE LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW

SUBMITTED TO:

COUNCIL of the DISTRICT OF COLUMBIA
COMMITTEE ON THE JUDICIARY

Public Roundtable on the Metropolitan Police Department's
Body-Worn Camera Program

May 7, 2015

**Testimony of the Lawyers' Committee for Civil Rights Under Law
Submitted by Tanya Clay House, Director of Public Policy**

**Before the Council of the District of Columbia Committee on the Judiciary
Public Roundtable on the Metropolitan Police Department's Body-Worn Camera Program**

May 7, 2015

I. Introduction

Chairman McDuffie and all of the Councilmembers in attendance today, thank you for holding this critical public roundtable to examine the Metropolitan Police Department's Body-Worn Camera Program. We appreciate this opportunity to express our qualified support for body-worn cameras. The use and expansion of body-worn cameras is an extremely important component of a comprehensive strategy to improve the culture of policing, particularly in communities of color. However, we want to emphasize to the Council that they are not a panacea for correcting police abuse or building community trust in police.

The Lawyers' Committee for Civil Rights Under Law ("Lawyers' Committee") was established in 1963 as a nonpartisan, nonprofit organization at the behest of President John F. Kennedy. Our mission is to involve the private bar in providing legal services to address racial discrimination and to secure, through the rule of law, equal justice under law. For over 50 years, the Lawyers' Committee has advanced racial equality in areas such as educational opportunities, fair employment and business opportunities, community development, fair housing, voting rights, environmental justice, and criminal justice. With particular relevance to this hearing, the organization is committed to ending the over-criminalization and over-incarceration of individuals and communities of color. Through this work, we have learned a great deal about the challenges confronting our nation as it continues to tackle issues of race and equality of opportunity for all. Additionally, as part of the Lawyers' Committee's work on criminal justice issues, as Policy Director, I help to coordinate the Civil Rights Coalition on Police Reform which is comprised of over 50 civil and human rights, faith-based and community leaders from the federal, state and local level. The Coalition has released a Unified Statement to Promote Reform and Stop Police Abuse (see attachment) which outlines a comprehensive strategy, including the use of body-worn cameras by police officers.

The Lawyers' Committee is pleased that Mayor Muriel Bowser has included \$5.1 million in her proposed Fiscal Year 2016 budget to fund implementation of a full-scale program to outfit all patrol officers with body-worn cameras. While we know that certain guidelines have been developed regarding the use of these cameras, we urge this Council to seriously consider our recommendations to ensure existing guidelines and to best ensure accountability and

transparency while protecting citizens' privacy and civil rights. The Lawyers' Committee believes that body-worn cameras can be valuable tools for transparency, accountability, and improving police conduct, provided they are accompanied by the appropriate policies and procedures which protect the privacy rights of police and communities alike.

II. Body-Worn Cameras Are Not a Substitute for Comprehensive Reform

The nation's outrage at the killing of unarmed African Americans has cast a spotlight on police practices and more broadly, on the crisis of mass incarceration in the United States. While the taping of interactions between police and civilians with the proper privacy protections is a positive step forward, it is not the panacea for correcting police brutality hoped for by many. The most illustrative example of this is Eric Garner, whose killing by police in Staten Island was taped in brutal clarity by bystanders, and yet the officers involved were not indicted nor held accountable.

Body-worn cameras will record interactions between police and individuals, but cameras alone will not address the disproportionate targeting of poor and minority individuals by police. Policies and practices governing body-worn cameras must reinforce the ability of policymakers and the public to analyze and use the data from these interactions to reform factors underlying disproportionate law enforcement against certain communities in Washington, D.C.

For example, a recent report by the Lawyers' Committee's local affiliate organization, the Washington Lawyers' Committee for Civil Rights and Urban Affairs, along with the ACLU of the Nation's Capital, found that eight out of ten arrests made by MPD from 2009 to 2011 were of African Americans, despite the fact that the group comprises less than half the city's population. Recording these racially disparate arrests will not directly stop the targeting of certain Washington communities, but it may help illuminate factors not obvious in the numbers alone, such as overt or implicit racial bias. Creating policies and practices around body-worn cameras that encourages the public, the MPD, and policymakers like members of the City Council to address these underlying factors is necessary to the success of any body-worn camera program in building community-police trust and making Washington, D.C. safer.

III. Civil Rights Implications of Body-Worn Cameras

The adoption of a department-wide body-worn camera program by the Metropolitan Police Department (MPD) has significant implications for the civil rights of Washington, D.C. residents. The use of body-worn cameras by police can be an effective tool to promote transparency and accountability, and to improve police conduct by deterring excessive use of force and damaging behavior towards individuals and communities which disproportionately come into contact with police. However, the videotaping of civilians during police interactions implicates significant privacy concerns, especially when considering that not all communities

come into contact with police with the same frequency, or in the same way. Specifically, poor and minority communities have greater contact with police, meaning the burden of intrusion into privacy disproportionately falls upon these communities. Proper policies and procedures that protect the privacy interests of these communities is critical to the implementation to a department-wide body-worn camera program in Washington, D.C.

IV. Policies and Practices Designed to Meet the Needs of a Department-Wide Body-Worn Camera Program

A body-worn camera program should be implemented across the MPD with the goals of deterring bad behavior by police and citizens, increasing transparency of police-citizen interactions, holding citizens and police officers accountable when bad conduct occurs, and improving policing methods, tactics and training. A body-worn camera program should not be designed or utilized by MPD or any other law enforcement agency as a surveillance or prosecution tool.

Equipping the 4,000 sworn MPD officers with body-worn cameras would shed light on the encounters between police and the D.C. residents with whom they are charged to protect and serve. In order to maximize transparency and thus any deterrent effect on bad behavior by police officer and citizens, police officers should be required to record every significant interaction with a member of the public, including stops, frisks, searches, arrests, interviews and interrogations, enforcement actions, and any other significant confrontation. Police should also be required to give notice to subjects being recorded. Strong accountability, including disciplinary provisions should be put into place to ensure proper compliance with these procedures.

There should be specific guidelines in place for the maintenance and storage of the footage captured by body-worn cameras. As this Council discusses the expansion of the use of body-worn cameras, the adoption of systems to monitor and audit access to recorded footage, and secure footage against unauthorized access and tampering is extremely important. Significant video, such as that capturing a police officer's use of force, or an interaction that is later the subject of a citizen complaint, should be kept and released to the complainant. On the other hand, privacy interests demand that video that has no public value – not the subject of any complaint, case, or use in training or performance review – should be deleted after a short amount of time. Other considerations include the development of:

- Chain of custody procedures,
- Procedures regarding the viewing of video footage to ensure public trust,
- Automatic upload or plug in upload,
- Safeguards in place to make data tamper-proof and prevent officer access after incidents/shifts, and
- Accountability and disciplinary actions for failure to follow procedures.

A body-worn camera program which aims to restore public trust in police should have policies which allow for liberal release of video to the public. Specifically, body-worn camera videos that are newsworthy, are the subject of a citizen complaint, contain a shooting, lesser use of force, or other significant event, and should be available to the public. Videos containing evidence regarding a criminal defendant – whether exculpatory and inculpatory – should be immediately provided to the defendant and his or her legal representative.

Guidelines should also be fully developed to preserve the independent evidentiary value of officer reports by prohibiting officers from viewing footage before filing their reports. Such guidelines are necessary for all parties involved. Footage of an event does not always present a comprehensive and unbiased perspective of how events unfolded. To the contrary, allowing an officer to preview video could cause her to conform the report to what the video appears to show, rather than what the officer actually saw.

Conclusion

The Lawyers' Committee supports the adoption of a body-worn camera program across the Metropolitan Police Department as an important measure to improve transparency of police-public interactions, deter police and civilian misconduct, increase officer accountability for abuse and excessive use of force, and develop better training and police tactics. Furthermore, implementation of a well-designed body-worn camera program across the MPD provides the city with the opportunity to use video of exemplary police conduct in training and performance reviews.

Development of this program must be seen not as a cure-all for police misconduct or the building of community trust, but as a means to better understand and address underlying factors causing disproportionate policing of the poor and minority communities in the District of Columbia.

Attachment: Unified Statement of Action to Promote Reform and Stop Police Abuse