



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:

U.S. SENATE JUDICIARY SUBCOMMITTEE ON CRIME AND
TERRORISM

Hearing on:

Body Cameras: Can Technology Increase Protection for Law
Enforcement Officers and the Public?

May 19, 2015

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

**Before the U.S. Senate Judiciary Subcommittee on Crime and Terrorism
Hearing: Body Cameras: Can Technology Increase Protection for Law Enforcement
Officers and the Public?**

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I. Introduction

Chairman Charles Grassley and all of the members of the Senate Judiciary Committee and Subcommittee on Crime and Terrorism, thank you for holding this critical hearing to examine body-worn cameras by law enforcement. 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, 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 access to education, fair employment, community development and fair housing, criminal justice, immigration reform, judicial diversity, and voting rights. With particular relevance to this hearing, the organization is committed to ending the over-criminalization and over-incarceration of individuals, particularly communities of color. Through our work, we have learned a great deal about the challenges confronting our nation as it continues to tackle issues of race and public safety. As part of this work, the Lawyers' Committee organized and coordinates the Civil Rights Coalition on Police Reform, which is comprised of over 50 organizational and individual leaders in civil and human rights and advocates for national, community, and faith-based efforts to reform law enforcement on the federal, state, and local level. The Coalition has released a [Unified Statement to Promote Reform and Stop Police Abuse](#) outlining a comprehensive strategy which includes the use of body-worn cameras by police officers.

According to a 2014 report released by the U.S. Justice Department's Office of Justice Programs Diagnostic Center, recent studies have shown that body-worn cameras do in fact improve police behavior during encounters with citizens.¹ For example, a 2013 evaluation of a

¹Michael D. White, *Police Officer Body-Worn Cameras: Assessing the Evidence*, Office of Community Oriented Policing Services (Aug. 2014), available at <https://www.ojpdagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf>.

body-worn camera program in Rialto, California, found that citizen complaints against police declined by 88% following the implementation of this technology, while police use of force fell by 60%.² However, while the use of body-worn cameras is rapidly expanding, a 2013 study of 500 nationwide police departments by the Police Executive Research Forum found that, among 254 completed surveys, only 63 of the departments actually reported using body-worn cameras.³ The Lawyers' Committee is pleased with increased federal efforts to expand body-worn camera programs, such as the Justice Department's Body-Worn Camera Pilot Partnership Program.⁴ While we know that certain guidelines have been established regarding the state and local implementation of body-worn cameras through this matching grant program, we urge the Committee to seriously consider our recommendations to ensure the effective proliferation of such policies and the protection of privacy and civil rights. The Lawyers' Committee believes that body-worn cameras can be valuable tools for transparency, accountability, and improving police conduct, so long as they are accompanied by the appropriate guidelines and procedures to protect the individual 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 videotaping of interactions between police and civilians with the proper privacy protections is a positive step forward, it is not the much hoped-for panacea for rectifying excessive use of force by law enforcement or repairing police-community relations. 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 neither indicted nor held accountable.

Body-worn cameras will record interactions between police and civilians, 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.

For example, an analysis of arrest records by USA Today found that, among 70 police departments across the country, black people were arrested 10 times more than non-black people.⁵ While recording these racially disparate arrests will not directly stop the targeting of certain communities, it may help illuminate factors that are not obvious from the numbers alone, such as

² *Id.* at 20.

³ Lindsay Miller, Jessica Toliver & Police Executive Research Forum, *Implementing a Body-Worn Camera Program: Recommendations & Lessons Learned* 5, Office of Community Oriented Policing Services (Sep. 2014), available at <http://ric-zai-inc.com/Publications/cops-p296-pub.pdf>.

⁴ Press Release, U.S. Department of Justice, Justice Department Announces \$20 Million in Funding to Support Body-Worn Camera Pilot Program (May 1, 2015), available at <http://www.justice.gov/opa/pr/justice-department-announces-20-million-funding-support-body-worn-camera-pilot-program>.

⁵ Brad Heath, *Racial gap in U.S. arrest rates: 'Staggering disparity'*, USA TODAY (Nov. 19, 2014), available at <http://www.usatoday.com/story/news/nation/2014/11/18/ferguson-black-arrest-rates/19043207>.

overt or implicit racial bias. Thus, creating policies and practices around body-worn camera usage that encourage the public, law enforcement, and policymakers to address these underlying influences is necessary to achieving the potential of body-worn cameras to make our nation safer and build trust between civilians and the police.

III. Civil Rights Implications of Body-Worn Cameras

Federal facilitation of the nationwide adoption of body-worn camera programs has significant implications for the civil rights of private citizens. The use of body-worn cameras by police can be an effective tool to promote transparency and accountability, and to improve officer conduct by deterring the use of excessive force and other forms of bad behavior. However, the videotaping of civilians during law enforcement interactions raises major privacy concerns, especially considering the varying rates and manners of police interaction in different communities. Specifically, poor and minority populations have greater contact with law enforcement, so these communities disproportionately carry the burden of privacy intrusion resulting from the use body-worn cameras. Thus, the protection of the right to privacy among members of these communities requires the development of proper policies and procedures regarding the use body-worn cameras.

IV. Policies and Practices Designed to Meet the Needs of State and Local Law Enforcement Body-Worn Camera Programs

Body-worn camera programs should be nationally implemented 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. Body-worn cameras should not, however, be designed or utilized by any law enforcement agency as a tool for public surveillance or prosecution.

Equipping officers with body-worn cameras would shed light on the encounters between police and the citizens they are charged to protect and serve. In order deter bad behavior by maximizing transparency through body-worn cameras, officers should be required to record every significant interaction with a member of the public, including stops, frisks, searches, arrests, interviews, interrogations, enforcement actions, and any other significant confrontations. Police should also be required to give notice to subjects being recorded. Strong accountability measures, including disciplinary provisions, must likewise be established so as to ensure proper compliance with these procedures.

Specific guidelines for the maintenance and storage of footage captured by body-worn cameras are also necessary to the implementation of this technology. With their expanded use, the sensitive material recorded during police interactions may be increasingly subject to tampering and unauthorized access. Thus, the adoption of secure systems to monitor and audit access to footage is extremely important, and significant video, such as recordings of police use of force or

an interaction that becomes the subject of a citizen complaint, should be preserved and released to the complainant. On the other hand, where the footage is of activity that will not likely be applicable to any complaint, case, training, or performance review, it holds no public value and should be deleted after a short amount of time in the interest of privacy. Other considerations include the development of:

- chain of custody procedures;
- methods for viewing video footage that ensure public trust;
- automatic upload or plug-in upload capabilities;
- measures to safeguard data from tampering and prevent continued access by officers after an incident/shift; and
- accountability and disciplinary action for failure to comply with procedures.

A body-worn camera program which aims to restore public trust in police should include broad policies that allow footage to be made publically available. Specifically, there should be public access to videos that are newsworthy, are the subject of a citizen complaint, or contain evidence of a shooting, lesser use of force, or any other significant event. Furthermore, recordings that provide exculpatory or inculpatory evidence in a criminal case should be immediately provided to the defendant and his or her legal representative.

Guidelines that prohibit officers from viewing footage before filing reports should also be fully developed, as this preserves the independent evidentiary value of police reports. Such policies and procedures are necessary for all parties involved, as footage of an event does not always present a comprehensive and unbiased perspective on the progression of an incident. To the contrary, allowing police to preview videos could cause an officer to conform his or her subsequent report to what appears in the footage, rather than what s/he actually witnessed.

V. Conclusion

The Lawyers' Committee supports the federal facilitation of national body-worn camera programs as an important measure to improve transparency in 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, the implementation of well-designed body-worn camera programs would provide law enforcement agencies with the opportunity to use videos of exemplary police conduct in training and performance reviews.

Development of this program must be seen not as a cure-all for police misconduct and broken community trust in law enforcement, but as a means to better understand and address the underlying factors that cause racially and economically disparate policing.