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# ESSAY

## Body-mounted Police Cameras: A Primer on Police Accountability vs. Privacy

KAMI CHAVIS SIMMONS\*

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## INTRODUCTION

Immediately following the shooting death of Michael Brown in Ferguson, Missouri and the death of Eric Gardner at the hands of a New York Police Department officer, criminal justice advocates called for greater measures to hold police officers accountable for their actions.<sup>1</sup> For many observers, the failure to secure criminal indictments against the officers involved in each of these deaths of unarmed citizens suggested various shortcomings in the criminal justice system.<sup>2</sup> In the wake of these deaths and others, President Obama signed an order establishing the President's Task Force on 21st Century Policing, a body of scholars, practitioners, and policymakers that would examine ways to improve distrust between communities and police.<sup>3</sup> Yet in the weeks following the release of the Task Force's report, a North Charleston police officer fatally shot Walter Scott in the back and protests erupted in Baltimore, Maryland after Freddie Gray died of injuries sustained while in police custody.<sup>4</sup> These deaths have reignited many debates about myriad reform proposals that experts have discussed throughout history. For example, numerous advocates noted that local prosecutors face inherent conflicts of interest; for this reason, these advocates call for independent agencies or special prosecutors to prosecute these cases.<sup>5</sup> Reformers urged for more training

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1. More than a dozen states are considering legislation aimed at increasing police accountability following the deaths. Reid Wilson, *Police Accountability Measures Flood State Legislatures After Ferguson, Staten Island*, WASH. POST (Feb. 4, 2015), <http://www.washingtonpost.com/blogs/govbeat/wp/2015/02/04/police-accountability-measures-flood-state-legislatures-after-ferguson-staten-island/>.

2. See, e.g., Katrina vanden Heuvel, *Fixing a Broken Justice System*, WASH. POST (Dec. 16, 2014), [http://www.washingtonpost.com/opinions/katrina-vanden-heuvel-fixing-a-broken-justice-system/2014/12/16/76239b2e-8496-11e4-b9b7-b8632ae73d25\\_story.html](http://www.washingtonpost.com/opinions/katrina-vanden-heuvel-fixing-a-broken-justice-system/2014/12/16/76239b2e-8496-11e4-b9b7-b8632ae73d25_story.html).

3. Establishment of the President's Task Force on 21st Century Policing, 79 Fed. Reg. 246 (Dec. 23, 2014), available at <http://www.gpo.gov/fdsys/pkg/FR-2014-12-23/pdf/2014-30195.pdf>; *President's Task Force on 21st Century Policing*, OFFICE OF CMTY. ORIENTED POLICING SERVS., U.S. DOJ, <http://www.cops.usdoj.gov/policingtaskforce> (last visited May 28, 2015).

4. Michael S. Schmidt & Matt Apuzzo, *South Carolina Officer is Charged With Murder of Walter Scott*, N.Y. TIMES (Apr. 7, 2015), <http://www.nytimes.com/2015/04/08/us/south-carolina-officer-is-charged-with-murder-in-black-mans-death.html>; Reuters, *Marchers Protest Police Violence in Baltimore, New York*, N.Y. TIMES (Apr. 29, 2015, 9:03 PM), <http://www.nytimes.com/reuters/2015/04/29/us/29reuters-usa-police-baltimore.html>.

5. It is argued by some that special prosecutors can dampen or eliminate real and perceived conflicts of interest that occur when a local office prosecutes a police officer. See, e.g., Editorial, *Police Abuse Cases Need Special Prosecutors*, WASH. POST (Dec. 6, 2014), [http://www.washingtonpost.com/opinions/police-abuse-cases-need-special-prosecutors/2014/12/06/fcf57e28-7cd6-11e4-b821-503cc7efed9e\\_story.html](http://www.washingtonpost.com/opinions/police-abuse-cases-need-special-prosecutors/2014/12/06/fcf57e28-7cd6-11e4-b821-503cc7efed9e_story.html).

for officers focused on de-escalation techniques and bias.<sup>6</sup> Others called for greater statistical tracking to measure the breadth of the problem of officer-involved deaths.<sup>7</sup> One of the most hotly contested reform proposals involves requiring police officers to wear body cameras.<sup>8</sup> The NAACP, the ACLU, and The Lawyers' Committee for Civil Rights Under Law have supported initiatives requiring police to wear body cameras.<sup>9</sup> In addition, President Obama announced that \$75 million of federal money would be made available for local law enforcement to purchase and train officers to use body cameras.<sup>10</sup>

Body-mounted cameras are not a new technology, and the number of police departments using them is increasing. However, a 2013 study conducted by the Police Executive Research Forum found that less than 25 percent of the 254 departments surveyed were using the cameras.<sup>11</sup> Even many of the agencies that are using the cameras are racing to develop sound policies for their use.<sup>12</sup> Similarly, a number of state legislatures have introduced bills to regulate the use of police body cameras. This essay highlights some of the emerging issues and policy implications with respect to body cameras and raises questions for future study.

A recurring theme throughout the discourse regarding the Brown shooting was that there were truly only two people who knew what occurred – Officer Darren Wilson and Michael Brown, who could no longer speak for himself.<sup>13</sup> In either a criminal or civil case against

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6. MICHAEL D. WHITE, POLICE OFFICER BODY-WORN CAMERAS: ASSESSING THE EVIDENCE 10 (2014), <https://www.ojpdagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf>.

7. LINDSAY MILLER, JESSICA TOLIVER & POLICE EXECUTIVE RESEARCH FORUM, IMPLEMENTING A BODY-WORN CAMERA PROGRAM: RECOMMENDATIONS AND LESSONS LEARNED 48 (2014), available at <http://ric-zai-inc.com/Publications/cops-p296-pub.pdf>.

8. See James S. Muller, *To Police the Police, Body Cameras are a Must*, L.A. TIMES (May 11, 2015), <http://www.latimes.com/opinion/op-ed/la-oe-muller-body-camera-data-shows-unnecessary-force-20150508-story.html>. But see Janet Vertesi, *The Problem With Police Body Cameras*, TIME (May 4, 2015), <http://time.com/3843157/the-problem-with-police-body-cameras/>.

9. See *Civil Rights Coalition Urges National Reforms and Recommendations to Address Police Abuse*, NAACP, <http://www.naacp.org/press/entry/civil-rightscoalition-continues-to-urge-national-reforms-and-recommendation> (last visited May 30, 2015) (describing the Department of Justice's National Initiative for Building Community Trust and Justice and providing statements from the ACLU, Lawyers' Committee, and NAACP supporting the program).

10. Nolan Feeney, *Obama Requests Funds for Police Body Cameras to Address 'Simmering Distrust' After Ferguson*, TIME (Dec. 1, 2014), <http://time.com/3613058/obama-ferguson-police-body-cameras-funding/>.

11. *Supra* note 7, at 2.

12. *Id.* at 51.

13. Jonathan Cohn, *What We Still Don't Know About Ferguson – and Probably Never Will*, NEW REPUBLIC (Dec. 1, 2014), <http://www.newrepublic.com/article/120443/ferguson-prosecutor-and-witness-testimony-bias-and-lots-ambiguity>.

Darren Wilson, the officer who shot Brown, whether Wilson used reasonable or unreasonable force would always come down to the officer's word or that of any possible eyewitnesses.<sup>14</sup> In that case, eyewitnesses were discredited before the grand jury, and the grand jury failed to indict Wilson for his actions.<sup>15</sup> Many have argued that had Wilson been wearing a body camera, the footage of the incident would have settled this matter.<sup>16</sup> Alternatively, many skeptics point to the video footage of Eric Garner's death, which, to the surprise of many, did not result in an indictment of the officer who applied the restraint that killed him.<sup>17</sup> This particular case has caused critics to question the utility of requiring officers to wear body cameras.<sup>18</sup> Perhaps the harshest criticism of body cameras is how and whether any possible benefit of these cameras could outweigh the substantial privacy concerns.<sup>19</sup> Even though we, as a society, are increasingly subject to surveillance, these cameras pose intrusions, and thus privacy is a consideration that policymakers must address.<sup>20</sup> The central issue in this debate is whether citizens are willing to give up a bit of their privacy in order to reap the potential benefits of body camera technology.<sup>21</sup>

## I. POTENTIAL BENEFITS OF USING BODY-MOUNTED CAMERAS

### A. Body-Mounted Cameras Offer an Objective Basis for Determining Whether an Officer Used Excessive Force

There are several potential ways in which body-worn cameras promote police accountability and increase transparency. First, the cameras can help resolve factual disputes. Whether an officer has used a "reasonable amount of force" is a threshold question when deter-

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14. *Id.*

15. Elisha Fieldstadt, *Should Every Police Officer be Outfitted With a Body Camera?*, NBC News (Nov. 26, 2014, 3:30 PM), <http://www.nbcnews.com/storyline/michael-brown-shooting/should-every-police-officer-be-outfitted-body-camera-n256881>.

16. *Id.*

17. Eliot C. McLaughlin, *After Eric Garner: What's Point of Police Body Cameras?*, CNN (Dec. 8, 2014, 7:41 PM), <http://www.cnn.com/2014/12/04/us/eric-garner-ferguson-body-cameras-debate/>.

18. *Id.*

19. See Aamer Madhani, *States, Civil Liberty Advocates Collide Over Police Body Camera Policy*, USA TODAY (May 5, 2015, 10:17 PM), <http://www.usatoday.com/story/news/2015/05/05/police-body-camera-legislation-increases/26586739/>.

20. *Id.*

21. *Id.*

mining whether an officer has violated a suspect's Fourth Amendment right to be free of unreasonable seizure.<sup>22</sup> If the use of force was determined to be reasonable, the possibility of criminal or civil liability is foreclosed. There are numerous factors relevant to the "reasonable" inquiry, such as the immediacy of the threat to the officer, the actions and demeanor of the subject, the proximity of weapons, and the extent to which the subject is restrained or has the possibility of escape.<sup>23</sup> Unfortunately, many cases of police brutality turn on the word of the police officer involved and the suspect who is harmed during the encounter.<sup>24</sup> It has long-been said that individuals who find themselves in the midst of a police seizure are not sympathetic victims and issues of credibility do not work in their favor.<sup>25</sup> It can be even more difficult to assess when the subject has died during, or as a result of, the use of force. Body-mounted police cameras, however, can resolve many factual disputes.<sup>26</sup> Footage from these cameras could objectively illustrate the proximity of the subject to the officer and whether the subject had a weapon or anything that could reasonably be construed as a weapon. Essentially, the footage could eliminate issues of credibility, or at least show one version of the event that reasonable jurors could interpret. This type of evidence is particularly important where witnesses tell very different versions of the same event.

#### B. Body-Mounted Cameras Serve as a Deterrent for Police Misconduct and Promote Officer Safety

There is a growing body of research that demonstrates that police body cameras can help deter police misconduct. One particular study, conducted in 2012 in Rialto, California, analyzed whether body cameras would impact officers' uses of force or the number of citizen com-

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22. "[A]ll claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard . . ." *Graham v. Connor*, 490 U.S. 386, 395 (1989). "[T]he 'reasonableness' inquiry in an excessive force case is an objective one: the question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Id.* at 397.

23. *Id.* at 396.

24. See Laurie L. Levenson, *Police Corruption and New Models for Reform*, 25 *SUFFOLK U. L. REV.* 1, 19 (2001).

25. See John V. Jacobi, *Prosecuting Police Misconduct*, 2000 *WIS. L. REV.* 789, 798 (2000).

26. See Mary Knollenberg, *On-Body Cameras Will Protect Citizens and Police*, *DETROIT FREE PRESS* (Dec. 11, 2014, 10:42 AM), <http://www.freep.com/story/opinion/contributors/2014/12/11/police-body-cameras/20214223/>.

plaints against officers.<sup>27</sup> During the course of a year, the police department randomly assigned cameras to officers across various shifts. Within that year, there were twice as many use of force incidents on shifts without cameras than on shifts where officers were using cameras.<sup>28</sup> Overall, there was a 60 percent reduction in use of force incidents.<sup>29</sup> Similarly, there was an 88 percent decrease in the number of citizen complaints between the year the department instituted the camera program and the year following the issuance of the cameras.<sup>30</sup>

A study in Mesa, Arizona yielded similar findings. In October 2012, the Mesa Police Department began a one-year pilot program in which it assigned 50 officers to wear the cameras, while the control group consisted of 50 officers who were not issued cameras.<sup>31</sup> Eight months after the program began, researchers found that there were three times more complaints against the officers without cameras.<sup>32</sup> Overall, there were 40 percent fewer total complaints for officers who wore the cameras and 75 percent fewer use of force complaints for officers who wore the cameras.<sup>33</sup> The reduced number of complaints could be attributed to several things, including increased professionalism of officers, and the fact that citizens are less likely to file unfounded complaints if they are aware that footage of the incident exists.

In addition to the deterrent effect, the body-mounted cameras may improve officer safety. Just as officers behave differently when wearing the cameras, members of the public may also alter their behavior if they know the cameras are capturing their actions. One police chief noted that his department encouraged officers to let people know that they are recording “[b]ecause we think it elevates behavior on both sides of the camera.”<sup>34</sup>

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27. Stav Ziv, *Study Finds Body Cameras Decrease Police's Use of Force*, NEWSWEEK, (Dec. 28, 2014, 2:31 PM), <http://www.newsweek.com/amidst-debate-study-finds-body-cameras-decrease-polices-use-force-295315>; see WILLIAM FARRAR, SELF-AWARENESS TO BEING WATCHED AND SOCIALLY-DESIRABLE BEHAVIOR: A FIELD EXPERIMENT ON THE EFFECT OF BODY-WORN CAMERAS ON POLICE USE-OF-FORCE 9 (2013), available at <http://www.policefoundation.org/sites/g/files/g798246/f/201303/The%20Effect%20of%20Body-Worn%20Cameras%20on%20Police%20Use-of-Force.pdf>; see also *supra* note 7, at 5.

28. *Supra* note 7, at 5.

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.* at 6.

C. Body Cameras Can be a Powerful Training Tool and Can Correct Structural Problems Within a Police Department

As noted above, body cameras offer increased transparency and accountability to the general public. Yet the benefits of this transparency also extend to the internal structures within the police department. Even if officers display behaviors that are not actionable or subject to disciplinary proceedings, supervisors can use the footage to determine which officers may be in need of additional training, or whether the entire department might benefit from particular training. A Police Executive Research Forum survey found that 94 percent of the respondents use footage gleaned from body cameras to train officers and to assist them in administrative reviews.<sup>35</sup> Police cameras also help supervisors identify officers whose conduct may exhibit a lack of professionalism but does not yet rise to an actionable level, which may prevent serious abuses before they occur.

Although body-mounted cameras could deter multiple types of impermissible conduct, these cameras could be extremely helpful in deterring racial profiling. To highlight this point, it may be useful to refer to recent figures from Ferguson. During 2012 to 2014, in Ferguson, Missouri, data shows that although African-Americans constitute only 67% of Ferguson's population, they account for 85% of vehicle stops, 90% of citations, and 93% of arrests made by the Ferguson police officers.<sup>36</sup> African-Americans were more than twice as likely as white drivers to be searched during vehicle stops even after controlling for non-race based variables, such as the reason the vehicle stop was initiated. However, they are found in possession of contraband 26% less often than white drivers. The U.S. Department of Justice noted that this data suggests, "officers are impermissibly considering race as a factor when determining whether to search."<sup>37</sup> Proponents of body cameras argue that if officers wore body cameras, it would be more difficult for them to engage in impermissible stops and searches of minorities because they could not hide their disparate choices.<sup>38</sup>

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35. *Id.* at 7.

36. CIVIL RIGHTS DIVISION, U.S. DEP'T OF JUSTICE, INVESTIGATION OF THE FERGUSON POLICE DEP'T 4 (Mar. 4, 2015), available at [http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf).

37. *Id.*

38. See Joseph Goldstein, *Judge Rejects New York's Stop-and-Frisk Policy*, N.Y. TIMES (Aug. 12, 2013), <http://www.nytimes.com/2013/08/13/nyregion/stop-and-frisk-practice-violated-rights-judge-rules.html?ref=NYregion> (discussing Judge Scheindlin's decision in *Floyd v. City of*

## II. ADDRESSING THE SHORTCOMINGS OF BODY-MOUNTED CAMERAS

### A. Critics Argument that Body-Mounted Cameras are Not an Adequate Accountability Measure and May Negatively Impact Community Policing

Despite the benefits of body-mounted cameras, like many policy proposals, the cameras do not represent a panacea. First, skeptics have noted that body-mounted cameras, unless they are set to run 100 percent of the time, tend to rely on an officer's discretion with respect to when a scenario is filmed.<sup>39</sup> In contrast, many police cars are equipped with dashboard cameras which, in many instances, automatically begin capturing footage when the lights and sirens are activated (or some other mechanism outside of the officer's discretion).<sup>40</sup> Thus, for accuracy, a police department should set forth specific guidelines as to what events an officer is expected to tape.<sup>41</sup>

Second, critics are right to be concerned that, if adequate internal regulations are not in place, valuable footage could be altered or destroyed. Thus, lawmakers and police officials must work to draft guidelines that help maintain the integrity of the footage. Some policies have particular stipulations regarding the chain of custody for the video or limit the officer's ability to access the tape.<sup>42</sup>

Fierce critics of body cameras contend that they will, in fact, do very little to increase accountability.<sup>43</sup> Specifically, opponents have argued that despite the fact that the actions of the officers involved in the Eric Gardner death were on videotape, the grand jurors still failed to indict.<sup>44</sup> They claim that such an outcome does not deter officers

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*New York*, in which she ordered the police use of body-worn cameras because they can provide an objective record of whether or not an officer has engaged in racial profiling).

39. JAY STANLEY, ACLU, POLICE BODY-MOUNTED CAMERAS: WITH RIGHT POLICIES IN PLACE, A WIN FOR ALL (Mar. 2015), <https://www.aclu.org/police-body-mounted-cameras-right-policies-place-win-all>.

40. *Considering Police Body Cameras*, 128 HARV. L. REV. 1794 (Apr. 10, 2015), available at <http://harvardlawreview.org/2015/04/considering-police-body-cameras/>.

41. Christopher Mims, *What Happens When Police Officers Wear Body Cameras*, WALL STREET J. (Aug. 18, 2014, 5:28 AM), <http://www.wsj.com/articles/what-happens-when-police-officers-wear-body-cameras-1408320244>.

42. Radley Balko, *Police Cameras are Important, But They're Useless Without Policies to Ensure They're Used Properly*, WASH. POST (Aug. 19, 2014), <http://www.washingtonpost.com/news/the-watch/wp/2014/08/19/police-cameras-are-important-but-theyre-useless-without-proper-policies-to-ensure-theyre-used-properly/>.

43. See Vertesi, *supra* note 8.

44. *Id.*

from acting with impunity.<sup>45</sup> However, one must recall that even though the grand jury in that case did not indict, the officers themselves were not wearing cameras. In that case, it was bystander video that captured the officers' actions. One cannot be sure, but it is possible that had the officers themselves been wearing body cameras, they would have behaved in a different manner, just as the research above suggests.

Finally, one of the under-analyzed issues with respect to requiring police to wear cameras is the potential impact on police-citizen relations. It is unknown what effect an officer's use of a camera has on the willingness of community members to engage in casual conversation with officers. These casual one-on-one encounters are the smallest building blocks of community policing, a model whose basic principles rely on establishing strong partnerships with community members. Thus, this is an area for future study. While the technology is not perfect, many agree that they can play a vital role in a police department's effort to increase accountability.<sup>46</sup>

## B. Privacy Concerns

By far, the fiercest opposition to body cameras has come from groups concerned about the implications these cameras have on privacy. The privacy concerns present complicated issues.

Unsurprisingly, there is a tension between balancing privacy and promoting police accountability. For instance, a bill introduced in the Florida Legislature contained a number of circumstances in which police body camera footage would be exempt from a public records law. Specific examples include "when the video is taken in a home; includes footage of someone under 14 or 18 if taken in a school; has information obtained at emergency scenes; describes events on property used by medical or social service agencies; or is recorded anywhere there is an expectation of privacy."<sup>47</sup> Several groups, including the Florida Chapter of the ACLU, withdrew support from this bill because they believed that these exceptions could serve to shield the

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45. *Id.*

46. *Supra* note 7.

47. See Mitch Perry, ACLU, *Other Groups Withdraw Support of Police Body Camera Bill*, FLA. POLS. (Mar. 6, 2015), <http://floridapolitics.com/archives/10459-aclu-other-groups-now-oppose-police-body-camera-bill-in-tallahassee>.

police from releasing the video in many circumstances and was thus overbroad in terms of protecting privacy.<sup>48</sup>

### CONCLUSION

Policymakers and researchers should continue to study the empirical data with respect to body camera technology. Should officers turn off their cameras when talking to particular witnesses or victims? Should the officer turn her camera off if the witnesses or victims do not wish to be taped? Should the officers be allowed to film once they enter a residence? Should the video recordings be made public and for what purposes? Many draft body camera policies give an officer discretion as to whether or not to tape certain classes of victims, such as sexual assault victims. As the number of exceptions increases, one would expect the accountability benefits to decrease. All of these questions present areas ripe for future study and researchers should continue to study body-mounted camera technology and the implications for privacy. Body-worn cameras represent a potentially powerful tool in the efforts to increase accountability and transparency within law enforcement agencies. However, without addressing the cultural and organizational characteristics that contribute to police misconduct, these cameras will only continue to document the shortcomings of individuals within the organization rather than spur meaningful reform.

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48. *Id.*