

## The Body Camera: The Language of our Dreams

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*Alec Karakatsanis*

*Of course, the wise and the learned  
Who pen editorials in the papers,  
And the gentlemen with Dr. in front of their names  
White and black,  
Who make surveys and write books  
Will live on weaving words to smother the kids who die,  
And the sleazy courts,  
And the bribe-reaching police,  
And the blood-loving generals,  
And the money-loving preachers  
Will all raise their hands against the kids who die,  
Beating them with laws and clubs and bayonets and bullets*

— Langston Hughes<sup>1</sup>

*How do you defend yourself from a fantasy—a fantasy that shoots real bullets?*

— Fred Moten<sup>2</sup>

### INTRODUCTION

The United States has the largest bureaucracy of policing, prosecution, and prisons in world history. One of the most important things to know about the “punishment bureaucracy”<sup>3</sup> is that police, prosecutors, prisons, probation and parole departments, judges, and the multi-billion dollar industries and unions that evolve in symbiosis with them use their own violence and ineffectiveness to get more resources in a recurring cycle of “reform.” Each failure means doing it again with more money.

Most people would prefer a society with less government surveillance, violence by employees of the state, and waste of public resources. And yet they all keep growing despite decades of “reform.” It is my uncomfortable suggestion in this article that they all keep expanding in part *because of* these “reforms.”

These reforms get well-intentioned people who lack substantial relevant knowledge but who feel bad about overt state violence to support policies that do not challenge the size, power,

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<sup>1</sup> Langston Hughes, *Kids Who Die*, ALLPOETRY, <https://allpoetry.com/poem/14326876-Kids-Who-Die-by-Langston-Hughes> [<https://perma.cc/JX6Q-GXLF>] (last visited July 31, 2023).

<sup>2</sup> BAK, Basis for Actual Knowing, *Stefano Harney and Fred Moten – Propositions for Non-Fascist Living – Video Statement – October 2017*, VIMEO (Oct. 15, 2017), <https://vimeo.com/238275888> [<https://perma.cc/PJW5-3K28888>].

<sup>3</sup> See Alec Karakatsanis, *The Punishment Bureaucracy: How to Think About “Criminal Justice Reform,”* 128 YALE L. J. F. 848, 848 (2019).

or profits of the punishment bureaucracy.<sup>4</sup> To understand how the cycle of violence, waste, profit, and public delusion happens, I'm going to look at the remarkable example of the police body camera.

By situating the rise of the police body camera within its actual legal, political, and economic contexts, I suggest that the body camera is one of the most important Trojan horses in contemporary U.S. history. What follows is a case study of how the police bureaucracy used its own violence as the perfect alibi to get well-meaning people who lacked sufficient information to support greater police procurement budgets, more advanced and efficient technologies of control and incarceration, an explosion of profit for a small group of companies, and an expansion of the capacity of the government to surveil us. And most remarkably: All of it happened under the guise of making the police bureaucracy more “accountable” and “transparent.”

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In August 2014, a police officer shot Michael Brown in Ferguson, Missouri.<sup>5</sup> The city exploded in protest over police violence. Every night, people around the country watched as the news covered confrontations between ordinary people and militarized police on the streets of a small town almost no one had ever heard of. The protests spread across the country.<sup>6</sup> People demanded accountability and change.

One of the key responses by political leaders was a coordinated national effort to buy body cameras for police departments from several large corporate vendors. Following the lead of President Barack Obama—who quickly sought hundreds of millions of dollars for purchasing body cameras<sup>7</sup>—a lot of politicians, “experts,” and news outlets championed body cameras as a “reform” in direct response to Michael Brown’s homicide. They portrayed body cameras as a way to make police more “accountable” and “transparent.” As a result, they presented body cameras as a primary answer to the question of police violence. But internal documents, public statements, and industry materials reveal that police—working with the for-profit manufacturers of the cameras and related software—had been desperate to get them for years.

Police and their corporate contractors had a problem: They were unable to get local governments to spend the billions of dollars needed to outfit every cop in the U.S. with a mobile surveillance camera that the cops themselves would control. Local police bureaucracies and carceral tech companies were also unable to procure the public money to fulfill their dream of integrating vast amounts of government surveillance data into expensive new cloud-based computing databases that would connect reservoirs of police data to facial and voice recognition software, license plate trackers, and proprietary behavior prediction algorithms.

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<sup>4</sup> See Amna A. Akbar, *Non-Reformist Reforms and Struggles Over Life, Death, and Democracy*, 132 YALE L. J. 2518-27 (2023) (criticizing “prevailing liberal and neoliberal conceptions of reform” as oriented towards “entrenching, rather than overthrowing or substituting, a fundamentally corrupt system, institution, or set of relations.”)

<sup>5</sup> *Timeline of Events in Shooting of Michael Brown in Ferguson*, ASSOC. PRESS NEWS (Aug. 8, 2019, 1:28 PM), <https://apnews.com/article/shootings-police-us-news-st-louis-michael-brown-9aa32033692547699a3b61da8fd1fc62> [<https://perma.cc/PKR5-TBHY>].

<sup>6</sup> Ellen Wulforst, Daniel Wallis, Edward McAllister, *More Than 400 Arrested as Ferguson Protests Spread to Other U.S. Cities*, REUTERS (Nov. 25, 2014, 7:02 PM), <https://www.reuters.com/article/us-usa-missouri-shooting/more-than-400-arrested-as-ferguson-protests-spread-to-other-u-s-cities-idUSKCN0J80PR20141126> [<https://perma.cc/D4JF-3MRJ>].

<sup>7</sup> Carrie Dann & Andrew Rafferty, *Obama Requests \$263 Million for Police Body Cameras, Training*, NBC NEWS (Dec. 2, 2014), <https://www.nbcnews.com/politics/first-read/obama-requests-263-million-police-body-cameras-training-n259161> [<https://perma.cc/X7NP-CNC6>].

After Officer Darren Wilson killed Michael Brown, these sophisticated actors were savvy: they used a moment of public outrage and the many calls for change to get self-professed “progressives” in local and national government and well-meaning people in the general public to support one of the most lucrative expansions of surveillance technology in modern history.

How did they do it? As I show in this article, they portrayed Orwellian government surveillance infrastructure as a “reform” for police violence at a moment of extreme uncertainty over what had exactly happened to Brown. In reporting on this “reform,” journalists almost always cut out of media coverage the views of scholars, social movement leaders, and directly impacted people who were warning that unprecedented investment in mobile surveillance cameras, cloud computing networks, and proprietary biometric algorithms controlled by police bureaucrats would have little effect on police violence but instead usher in a more totalitarian era of state repression. *Virtually every post-2014 mainstream news article that exists on the subject omits the history of how and why the body cameras were developed and marketed, removing the ability of the general public to understand the primary reasons that the devices were being promoted.* When the full story is understood, the scope of propaganda surrounding police body cameras is staggering.

According to their own statements, police and their profit-seeking industry allies used the media to focus the public on the supposed need to capture incidents of police violence on video. They repeated the talking point that police lacked funding for technology that could provide the public with “accountability” and “transparency” surrounding those police-initiated incidents.<sup>8</sup>

In reality, in addition to a new surveillance infrastructure, police and prosecutors wanted body cameras because the cameras gave them the most powerful new form of evidence: outward looking videos that bureaucrats could create, direct, curate, edit, and control both in terms of what is captured, what is left out, and at which political moment what is captured is publicly released. Body camera videos are now routinely used in almost every prosecutor office in the U.S. as evidence to get mostly poor people to quickly plead guilty to things like drug possession and trespassing. They are almost *never* used against police officers. To the contrary, the videos are often given privately to police officers prior to those officers’ internal statements about controversial incidents in which they used violence to create and standardize initial police narratives with the goal of reducing potential civil and criminal liability. The benefits of body cameras to the punishment bureaucracy unfolded exactly as police chiefs and corporate sales representatives from the companies discussed the devices over a decade ago when formulating their goals *before* Michael Brown’s death.

This process is not only still happening, it is expanding. As with Michael Brown, the state killings of Freddie Gray, Walter Scott, Eric Garner, and many more human beings were added to the public relations chorus that body cameras were a “reform” solution to police violence.<sup>9</sup> After the murder of George Floyd, the idea of body cameras as “accountability” and “transparency” became supercharged. At the height of the largest protest movement in generations, the cameras were presented as a centerpiece of the Democratic Party’s policing agenda as a key part of their

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<sup>8</sup> See *infra* Part II, Part VI. A related feature of this coverage was the assertion—or sometimes the assumption—that it was necessary to capture each instance of violence on a video in order to determine objectively if that incident of violence were justified, and therefore, by an unstated causal chain, to stop police violence once and for all.

<sup>9</sup> See *infra* note 158 and associated text (describing body camera proposals after police killed Freddie Gray); *infra* note 159 and associated text (describing body camera proposals after police killed Walter Scott); Marc Santora & Nikita Stewart, *Police Cameras Could Come to New York Soon*, N.Y. TIMES (Dec. 3, 2014), <https://www.nytimes.com/2014/12/04/nyregion/new-york-city-police-speeding-up-effort-to-give-officers-body-cameras.html> [<https://perma.cc/Q4A6-T9DB>] (describing body camera proposals after police killed Eric Garner).

failed George Floyd Justice in Policing Act.<sup>10</sup> Despite the Act not passing due to separate provisions to which Republicans objected (such as modifications to the civil liability standard of “qualified immunity”),<sup>11</sup> the government money continued to flow for body cameras. In the subsequent years, body cameras have remained one of the primary, reflexive “accountability” responses to police violence promoted by politicians, the police bureaucracy, corporate profiteers, “reform” consultants, and the news media.<sup>12</sup>

And yet, body cameras have not prevented police killings: In each year after the murder of George Floyd in Minneapolis, U.S. police have killed *more* people than they had the previous year<sup>13</sup> despite deploying hundreds of thousands more body cameras.

After a decade-long public relations campaign, police obtained more cameras than they ever dreamed, investors in multi-billion-dollar companies got a lot richer, and body cameras are routinely used to gather evidence to convict poor Black people. Perhaps most significantly, I show below how the public discourse about government violence has been distorted away from discussion of material changes that could *actually* reduce all forms of violence.

The story of the body camera is more important than one technological boondoggle. The body camera is part of a larger dynamic in powerful institutions are able to preserve the worst parts of our society, including not only unjustifiable (and unpopular) inequalities, but also the promise that they are always working hard to address them.

The progression from violent, ineffective bureaucracy → “reform” → delusion of well-meaning people → more powerful bureaucracy → even more violence and inequality has been and will be the cycle of virtually every “reform” to the punishment bureaucracy until we recognize and stop it.<sup>14</sup>

## I. WHY DID PUNISHMENT BUREAUCRATS WANT BODY CAMERAS?

*It is said that the camera cannot lie, but rarely do we allow it to do anything else, since the camera sees what you point it at: the camera sees what you want it to see. The language of the camera is the language of our dreams.*

— James Baldwin<sup>15</sup>

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<sup>10</sup> Justice in Policing Act of 2020, H.R. 7120, 116th Cong. (2020); Lindsey Van Ness, *Body Cameras May Not Be the Easy Answer Everyone Was Looking For*, STATELINE (Jan. 14, 2020), <https://stateline.org/2020/01/14/body-cameras-may-not-be-the-easy-answer-everyone-was-looking-for/> [<https://perma.cc/RHP9-3D6L>].

<sup>11</sup> Joan E. Greve, *What is the George Floyd Justice in Policing Act and Is It Likely to Pass?*, GUARDIAN (Feb. 6, 2023, 6:00 AM), <https://www.theguardian.com/us-news/2023/feb/06/george-floyd-justice-in-policing-act-explainer-tyre-nichols#:~:text=Democrats%20and%20civil%20rights%20activists,Act%20that%20passed%20the%20House> [<https://perma.cc/FC2K-YBEM>].

<sup>12</sup> See *infra* Part VI.

<sup>13</sup> *Fatal Force: 1,017 People Have Been Shot and Killed by Police in the Past 12 Months*, WASH. POST, [https://www.washingtonpost.com/graphics/investigations/police-shootings-database/?itid=lk\\_inline\\_manual\\_19](https://www.washingtonpost.com/graphics/investigations/police-shootings-database/?itid=lk_inline_manual_19) [<https://perma.cc/AZ4P-N8JD>] (last updated July 31, 2023).

<sup>14</sup> Alec Karakatsanis, *How the Media Enables Violent Bureaucracy*, ALEC’S COPAGANDA NEWSL. (Jan. 27, 2023), <https://equalityalec.substack.com/p/how-the-media-enables-violent-bureaucracy> [<https://perma.cc/54TG-839B>].

<sup>15</sup> James Baldwin, *The Devil Finds Work*, in JAMES BALDWIN: COLLECTED ESSAYS 504 (Toni Morrison ed., 1998).

*Policing links the governance of the past with the governance of the future.*

— Stuart Schrader<sup>16</sup>

*they drew lines in blood and tell me which lines are my garden  
they have chains if someone with no lines takes one of my tomatoes  
police mean “All Lines Matter.”*

— Anonymous

Government officials throughout the punishment bureaucracy wanted body cameras for years, and not to make themselves more democratically “accountable” for their violence or more open to “transparent” public oversight of what they do every day. The proliferation of this technology was something of a holy grail for punishment bureaucrats for several reasons.

### **1. Prosecution, Guilty Pleas, and Sentencing**

Perhaps the most exciting thing about body cameras for punishment bureaucrats was that they would provide historically novel and compelling evidence that could be used against the predominantly poor people that police arrest for low-level crimes. This new treasure trove of highly controllable evidence could make it possible to prosecute many more people for low-level offenses through increased leverage for quick guilty pleas and corresponding efficiency of bureaucratic resources. Increased leverage for guilty pleas not only moves crowded dockets for judges, prosecutors, police, probation, and parole officers because it helps secure waivers of important rights that could slow the system,<sup>17</sup> but it also means longer prison sentences and more onerous, lucrative periods of supervision. (Many of the same financial interests who profit from body cameras profit from the growing world of mass supervision.)<sup>18</sup>

Body cameras also increase the speed of high-volume processing. This efficiency is key to sustaining a court system in which formal legal rights (i.e. zealous individualized defense investigation, numerous pretrial legal motions and hearings, expert witnesses, jury trials, appeals, etc.) were never designed to accommodate modern mass incarceration.<sup>19</sup>

### **2. Surveillance**

Police and a small number of surveillance companies understood that a dramatic expansion of the amount of surveillance video they could create and control could be used to create a digital

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<sup>16</sup> Stuart Schrader, *Against the Romance of Community Policing*, A WORLD WITHOUT POLICE (Aug. 10, 2016, 4:37 PM), <http://aworldwithoutpolice.org/2016/09/07/against-the-romance-of-community-policing/> [https://perma.cc/SP3J-8U8J].

<sup>17</sup> The punishment bureaucracy “tends to resemble more of an administrative process than an adversarial one.” Erin Murphy, *The New Forensics*, 95 CAL. L. REV. 721, 761 (2006) (citing Gerald E. Lynch, *Our Administrative System of Criminal Justice*, 66 FORDHAM L. REV. 2117 (1998)).

<sup>18</sup> See generally *Policing and Profit*, 128 HARV. L. REV. 1723 (2015) (describing the network of companies and organizations profiting from probation technologies).

<sup>19</sup> See Karakatsanis, *supra* note 3.

archive linked to artificial intelligence databases for facial and voice recognition.<sup>20</sup> All of this technology could be linked to new police cameras in patrol cars, public street corners, traffic lights, stationhouse interrogation rooms, and increasingly broad police access to private surveillance footage from private security companies and individual home devices like Amazon Ring.<sup>21</sup>

### 3. *Protection From Liability and Expanded Control Over Public Reaction*

Every cop in the U.S. could be equipped with a personal surveillance camera that looks outward away from an officer's chest, allowing police to *protect* themselves from liability through control of how an incident is filmed and documented.<sup>22</sup> Not only is controlling what is filmed,<sup>23</sup> when it is filmed, from what perspective it is filmed, what is said on film, and what parts of an interaction are not filmed<sup>24</sup> vital for guarding against civil and criminal liability by creating alternative perspectives or doubt about what happened, but it is also vital for public relations.

The videos produced by the body camera could be manipulated by the cops themselves—even edited and narrated to great effect by teams of specialized public relations officers.<sup>25</sup> They could control the content created, the audio soundtrack that officers can add given that their bodies and faces are not shown in the videos (to take one example: the common observation among public defenders who analyze videos as part of their jobs that officers are trained to say, from behind the camera, “stop resisting”<sup>26</sup> such that the video's audio can create a contemporaneous, but false, justification for police violence), and the *timing* of the public release. The police could choose who and what were filmed and where (e.g. poor people accused of possessing a substance the government made illegal as opposed to consultants in a corporate board room discussing antitrust

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<sup>20</sup> See, e.g., Michael Kwet, *The Microsoft Police State: Mass Surveillance, Facial Recognition, and the Azure Cloud*, THE INTERCEPT (July 14, 2020, 3:42 PM), <https://theintercept.com/2020/07/14/microsoft-police-state-mass-surveillance-facial-recognition/> [<https://perma.cc/9G2F-4KAL>] (describing the close, long-standing relationship between police departments and facial and license plate recognition programs at Microsoft).

<sup>21</sup> Jason Kelley & Matthew Guariglia, *Ring Reveals They Give Videos to Police Without User Consent or a Warrant*, ELEC. FRONTIER FOUND. (July 15, 2022), <https://www.eff.org/deeplinks/2022/07/ring-reveals-they-give-videos-police-without-user-consent-or-warrant> [<https://perma.cc/2FD7-AXZW>]; Elizabeth Fiedler, *Philadelphia Police Enlist Private Cameras To Capture Crime*, NAT'L PUB. RADIO (Aug. 31, 2011), <https://www.npr.org/2011/08/31/140089176/philadelphia-police-enlist-private-cameras-to-capture-crime> [<https://perma.cc/3C2V-YV4T>]. For example, after the murder of Tyre Nichols in Memphis, police used the opportunity to boost their access to a potentially vast network of private security cameras throughout the city. Memphis City Council, *Memphis City Council Committee Meetings—February 21, 2023*, YOUTUBE (Feb. 21, 2023), <https://www.youtube.com/watch?v=PhARNOiuSLY> [<https://perma.cc/U9JU-SLKD>].

<sup>22</sup> This extends to audio manipulation. For example, officers off camera can be trained to make false statements like “stop resisting” or “I think I see a gun” in order to create a supposed contemporary documentation that a person was resisting or that the officer reasonably feared getting shot when they were not. See *Considering Police Body Cameras*, 128 HARV. L. REV. 1794, 1798 (2015).

<sup>23</sup> It is helpful to contrast the enthusiasm among police departments for body cameras with the pervasive practice of police threatening, retaliating against, beating, and arresting individuals who are trying to record them. Police themselves understand that it matters a great deal what actions of police, and from what perspective, are captured on video.

<sup>24</sup> Libor Jany, *Internal LAPD Reports Show Body Camera Misuse More Widespread Than Chief Alleges*, L.A. TIMES (Sept. 21, 2023), <https://www.latimes.com/california/story/2023-09-21/internal-lapd-reports-show-body-cam-misuse-issue-more-widespread-than-chief-alleges> [[perma.cc/WKR8-JUL9](https://perma.cc/WKR8-JUL9)].

<sup>25</sup> Lynn La, *Police Videos Don't Always Tell the Whole Story*, CALMATTERS (Apr. 10, 2023), <http://calmatters.org/newsletters/whatmatters/2023/04/police-videos-california/> [<https://perma.cc/R4F3-4LNS>].

<sup>26</sup> See *Considering Police Body Cameras*, *supra* note 22.

or child labor violations), as well as the rules surrounding such filming (e.g. when and whether an officer was required to turn on the camera during an interaction). Additionally, they could determine when and whether the footage was released publicly and how that release was edited. This is why, across the U.S., it can take years of litigation to get videos released that police do not want to release, but police immediately release within hours the videos that they want the public to see.<sup>27</sup> This is also why an industry of boutique for-profit public relations firms has sprung up to specialize in helping police departments use body camera footage to manipulate public opinion.<sup>28</sup> As public relations specialists understand, controlling the editing of videos and the precise moment of their release can be used to either foment or diffuse a potential scandal. Any public relations specialist understands that preventing or delaying virality can be among the most important things in diffusing a potential controversy.<sup>29</sup> The same video released at two different moments can have very different resonance with the public. Thus, body cameras provide police and police unions huge potential to shape news, and therefore to shape public understanding of what they do. For example, a single video of a shoplifting incident released at the right time and into the right political or electoral moment may achieve tens of millions of views and shape an entire public narrative about a “wave” of retail theft, whereas a video of the police murder of a child may be withheld for many months until being released, if at all, after a mayoral election.<sup>30</sup>

#### 4. *Control of Protest and Dissidents*

The knowledge that all cops could be recording people at any moment can change the behavior of people in public.<sup>31</sup> This constant threat was attractive to punishment bureaucrats because it could help control progressive social justice protests, discourage marginal people on the fence from attending protests, and *enable police to make comprehensive digital archives* of who attends protests, who associates with which other people at which protests, and whose behavior suggests a leadership role in that political activity.

For example, the U.S. Army Field Manual 3-19.15—which sets forth official military tactics for controlling civil disturbances—was written before the rise of body cameras. It is an

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<sup>27</sup> Cf. *Considering Police Body Cameras*, *supra* note 22, at 1807-08 (describing other factors that dictate when or whether police can release video footage, such as state public record and investigation disclosure laws).

<sup>28</sup> See David Debolt, *Bay Area Police Shooting Videos Follow Same Recipe; Critics Call It ‘Slick Marketing,’* MERCURY NEWS (May 16, 2021, 11:02 AM), <https://www.mercurynews.com/2021/05/16/police-pr-video-machine-criticized/> [<https://perma.cc/36LD-7NYJ>]; @OLAASM, TWITTER (May 16, 2021, 8:59 PM), <https://twitter.com/OLAASM/status/1394095172472819714> [<https://perma.cc/QQV8-RW72>].

<sup>29</sup> Jamie Kalven and Ayel Weizman conducted a remarkable forensic investigation into the use of body cameras to shape public perception after the Chicago police killing of Harith Augustus. See Jamie Kalve & Eyal Weizman, *How Chicago Police Created a False Narrative After Officers Killed Harris Augustus*, THE INTERCEPT (Sept. 19, 2019, 7:19 AM), <https://theintercept.com/2019/09/19/harith-augustus-shooting-chicago-police/> [<https://perma.cc/THR3-M7HT>].

<sup>30</sup> Compare Alec Karakatsanis, *The Volume of News*, ALEC’S COPAGANDA NEWSL. (Jan. 9, 2023), <https://equalityalec.substack.com/p/the-volume-of-news> [<https://perma.cc/2NAC-6P3D>], with Jessica Glenza, *Chicago Officials Delayed Release of Laquan McDonald Shooting Video*, GUARDIAN (Jan. 1, 2016), <https://www.theguardian.com/us-news/2016/jan/01/chicago-officials-delayed-release-laquan-mcdonald-shooting-video> [<https://perma.cc/U5AB-F7KY>].

<sup>31</sup> “When civilians are aware they are being monitored through a body-worn camera, they are less likely to be aggressive and more inclined to cooperate with law enforcement officers.” *Practice Profile: Body-Worn Cameras’ Effects on Police Officer Behavior*, NAT’L INST. JUST. CRIME SOL. (Jan. 7, 2022) <https://crimesolutions.ojp.gov/ratedpractices/122#pd> [<https://perma.cc/TDX5-RAML>].

important document for understanding why police want body cameras.<sup>32</sup> The Field Manual explains:

“2-85. Taking still pictures or videotaping the faces of individuals within a crowd may prevent or reduce unlawful and violent acts. This could *lessen their sense of anonymity*. If needed, photographs or *video tapes can be used as evidence for prosecution*. To be effective, *crowd members must see their presence being recorded*. The photographer or cameraman should be in uniform to let the crowd know who he or she is. Recorders must be close enough to the crowd to be seen easily, but not close enough to be endangered.”<sup>33</sup>

The possibilities for police to use body cameras to control crowds are far more extensive now that body cameras can be linked to facial and voice recognition databases. In May of 2023, for example, a high-ranking NYPD officer was caught removing his body camera and lifting it above the crowd inside the subway in order to capture the faces of people who had shown up to protest the vigilante killing of Jordan Neely.<sup>34</sup>

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And so, despite what we have been told in news articles about the body camera, it is no surprise that the punishment bureaucracy’s interest in body cameras *preceded* national media interest in police “accountability.” But the story does not start with police or prosecutors.

## II. BEHIND EVERY “REFORM,” THERE IS SOMEONE WITH A BAG OF CASH

*Mankind barely noticed when the concept of massively organized information quietly emerged to become a means of social control, a weapon of war, and a roadmap for group destruction.*

*Self-gripped by a special amoral corporate mantra: if it can be done, it should be done. To the blind technocrat, the means were more important than the ends.*

— ‘Edwin Black, IBM and the Holocaust’<sup>35</sup>

The punishment bureaucracy has been commercialized for profit.<sup>36</sup> Many people know vaguely about privatized prisons,<sup>37</sup> but even bigger industries exist to profit off nearly every aspect

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<sup>32</sup> DEPT. OF THE ARMY, CIVIL DISTURBANCE OPERATIONS 2-17—2-18 (2005) (emphasis added) <https://irp.fas.org/doddir/army/fm3-19-15.pdf> [<https://perma.cc/3Z8F-AP6C>].

<sup>33</sup> *Id.* at 2-17—2-19.

<sup>34</sup> @isabelle\_leyva, TWITTER (May 8, 2023, 7:16 PM), [https://twitter.com/isabelle\\_leyva/status/1655713376574615554](https://twitter.com/isabelle_leyva/status/1655713376574615554) [<https://perma.cc/48N7-KQVN>].

<sup>35</sup> EDWIN BLACK, IBM AND THE HOLOCAUST 7-8 (2001).

<sup>36</sup> See generally, TONY MESSENGER, PROFIT AND PUNISHMENT: HOW AMERICA CRIMINALIZES THE POOR IN THE NAME OF JUSTICE (2021) (explaining how debtor’s prisons illustrate the commercialization of poverty). See also Karakatsanis, *supra* note 3, at 852.

<sup>37</sup> See Kristen M. Budd & Niki Monazzam, *Private Prisons in the United States*, SENT’G PROJECT (June 15, 2023), <https://www.sentencingproject.org/reports/private-prisons-in-the-united-states/> [<https://perma.cc/3U6H-74A2>].



of the administration of public prisons, including prison medical care,<sup>38</sup> food,<sup>39</sup> telephone calls,<sup>40</sup> digitized mail,<sup>41</sup> cash transfer systems,<sup>42</sup> tablets,<sup>43</sup> and prison industries that make products for the world's largest businesses with legalized slave labor.<sup>44</sup>

But the industry is far bigger than the profit that can be extracted directly from prisons. Private companies profit from making the guns, jail cells, handcuffs, tasers, batons, uniforms, body armor, tanks, chemical weapons, and military equipment used by police.<sup>45</sup> A multi-billion-dollar industry—which is legal only in the U.S. and its former colony, the Philippines—exists to profit from discretionary arrests and resulting pretrial release decisions by selling bail bonds.<sup>46</sup> Even larger profits come from thousands of surveillance equipment products, software contracts, training programs, drug tests, electronic monitors, car towing schemes, police auctions of property they seize from property owners, private halfway houses and group homes, forensic consultants, big data databases, debt collection contracts, and case management systems used by courts, prosecutors, police, probation and parole departments, and prisons. And then there is the constellation of profiteering outside the direct extraction of corporate profit, such as the civil forfeiture industry<sup>47</sup> and the thousands of organizations, such as police unions, probation and parole officer unions, prison guard unions, and prosecutor unions, that are devoted to maximizing wages, overtime, pensions, and benefits worth hundreds of billions of dollars.<sup>48</sup> This ecosystem of profit is necessary for understanding the appeal of the body camera to this entire ecosystem.

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<sup>38</sup> See Jason Szep et al., *U.S. Jails Are Outsourcing Medical Care – and the Death Toll Is Rising*, REUTERS (Oct. 26, 2020, 11:00 AM), <https://www.reuters.com/investigates/special-report/usa-jails-privatization/> [https://perma.cc/ELM8-2K8D].

<sup>39</sup> See Natalie Delgadillo, *Maggots With a Side of Dirt? What Privatization Does to Prison Food*, GOVERNING (Jan. 26, 2018), <https://www.governing.com/archive/gov-private-food-service-prisons-aramark-trinity-ohio-michigan.html#:~:text=Many%20state%20prison%20systems%2C%20in, costs%20as%20low%20as%20possible> [https://perma.cc/9RWX-W2ZG].

<sup>40</sup> See Katrina vanden Heuvel, Opinion, *The Staggeringly High Price of a Prison Phone Call*, WASH. POST (Nov. 30, 2021, 8:04 AM), <https://www.washingtonpost.com/opinions/2021/11/30/staggeringly-high-price-prison-phone-call/> [https://perma.cc/P8QG-DMG3].

<sup>41</sup> See Mansa Musa, *The For-Profit Companies Charging Prisoners To Read Their Own Mail*, REAL NEWS NETWORK (Mar. 28, 2022), <https://therealnews.com/the-for-profit-companies-charging-prisoners-to-read-their-own-mail> [https://perma.cc/GF7L-8HCV].

<sup>42</sup> See Stephen Raher, *The Multi-Million Dollar Market of Sending Money to an Incarcerated Loved One*, PRISON POL'Y INITIATIVE (Jan. 18, 2017), <https://www.prisonpolicy.org/blog/2017/01/18/money-transfer/> [https://perma.cc/MDP7-EDNA].

<sup>43</sup> See Tomasso Bardelli et al., *How Corporations Turned Prison Tablets Into a Predatory Scheme*, DISSENT MAG. (Mar. 7, 2022), [https://www.dissentmagazine.org/online\\_articles/corporations-prison-tablets-predatory-scheme/](https://www.dissentmagazine.org/online_articles/corporations-prison-tablets-predatory-scheme/) [https://perma.cc/AW4V-82CT].

<sup>44</sup> See *Captive Labor: Exploitation of Incarcerated Workers*, ACLU (June 15, 2022), <https://www.aclu.org/news/human-rights/captive-labor-exploitation-of-incarcerated-workers> [https://perma.cc/59MC-U5QM].

<sup>45</sup> See, e.g., *The Prison Industry Corporate Database*, WORTH RISES, <https://data.worthrises.org/> [https://perma.cc/NQ9W-K5HX] (last visited Aug. 1, 2023) (offering a database of corporations profiting from the punishment bureaucracy).

<sup>46</sup> Gillian B. White, *Who Really Makes Money Off of Bail Bonds?*, ATLANTIC (May 12, 2017), <https://www.theatlantic.com/business/archive/2017/05/bail-bonds/526542/> [https://perma.cc/ZSP9-T7WV].

<sup>47</sup> Sarah Stillman, *Taken*, THE NEW YORKER (Aug. 5, 2015), <https://www.newyorker.com/magazine/2013/08/12/taken> [https://perma.cc/F34U-LCRV].

<sup>48</sup> See, e.g., Noam Scheiber et al., *How Police Unions Became Such Powerful Opponents to Reform Efforts*, N.Y. TIMES, <https://www.nytimes.com/2020/06/06/us/police-unions-minneapolis-kroll.html> [https://perma.cc/CXZ7-3PUD]; *Jobs We Do: Probation and Parole*, AM. FED'N OF STATE, CNTY., & MUN. EMPS., <https://www.afscme.org/about/jobs-we-do/probation-and-parole> [https://perma.cc/2GT5-DFVM] (last visited Aug. 1,

Well before you ever heard of the body camera, a small group of companies who profit from police contracts were working on what they realized was a multi-billion dollar industry: mobile surveillance cameras connected to cloud computing contracts and artificial intelligence software.<sup>49</sup> Indeed, in their business model, the cost of the cameras themselves is dwarfed by the potential for ongoing future contracts with the government. Potential billing for proprietary algorithms, customized analytics, cloud server storage space, ongoing maintenance, training, and customized software to process and organize the data for sharing with prosecutors, courts, and other agencies is almost limitless. In a marketing slogan that captures the corporate ethos surrounding “Body Worn Cameras” (BWC), one company sells its body camera products to police with the phrase: “CONVERT YOUR BWC DATA INTO AN ASSET.”<sup>50</sup>

It is worth pausing for a moment to consider the sheer scope of the data created by every police officer in the U.S. recording their interactions. In order to catalog, analyze, and make easily accessible hundreds of millions of videos, the police bureaucracy must contract with companies to build data infrastructure to make it all possible. Body camera contracts are a foundation for this larger opportunity.

While much is still unknown about the web of interconnections between these companies, consultants, and academics who began promoting body cameras, we know that these for-profit groups began recruiting key leaders in the policing bureaucracy. Together, they championed the use of body cameras as beneficial for police *years before* body cameras came widely into the public imagination as the “reform” *du jour* after the August 2014 shooting of Michael Brown.<sup>51</sup>

As early as 2009, the body camera market began to expand significantly, and Taser International (later renamed to Axon after the company received negative attention for its eponymous “Tasers” killing people because of the electric current that they enable government

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2023); Whitney Bennis, *Unholy Union: St. Louis Prosecutors and Police Unionize to Maintain Racist State Power*, 35 HARV. BLACK LETTER L. J. 39 (2019).

<sup>49</sup> See, e.g., *Body Cameras for Police Departments Need Cloud Computing Storage to be Effective*, DIAMOND IT, <https://www.diamondit.pro/body-cameras-for-police-departments-need-cloud-storage-to-be-effective/> [<https://perma.cc/4NB7-R7E8>] (last visited Aug. 3, 2023). In their marketing, Diamond IT notes that “connectivity between our officers and the community . . . isn’t free.” *Id.*; see also Andrew Paul, *Police Are Paying for AI to Analyze Body Cam Audio for “Professionalism,”* POPULAR SCI. (Feb. 10, 2023, 10 AM), <https://www.popsci.com/technology/police-body-cam-ai-truleo/> [<https://perma.cc/C3X8-B47G>]. But see Matt Cagle, *California Just Blocked Police Body Cam Use of Facial Recognition*, ACLU (Oct. 11, 2019), <https://www.aclu.org/news/privacy-technology/california-just-blocked-police-body-cam-use-face> [<https://perma.cc/QCD4-NW88>].

<sup>50</sup> TRULEO, <https://www.truleo.co/> [<https://perma.cc/3LBU-6RVR>] (last visited July 21, 2023). Disgraced former Houston and Miami Police Chief Art Acevedo is now helping a major body camera software profiteer market its services to police departments as a way of standardizing the behavior of officers. Press Release, Truleo, Former Major Cities Police Chief Art Acevedo Joins Truleo as a Strategic Advisor (July 21, 2022, 8:05 AM), (<https://www.prnewswire.com/news-releases/former-major-cities-police-chief-art-acevedo-joins-truleo-as-a-strategic-advisor-301590967.html>) [<https://perma.cc/UM4W-BBZ5>]; Chris Sansone, *Q&A: Cultural Change in Law Enforcement with Chief Art Acevedo*, TRULEO (Aug. 25, 2022), <https://www.truleo.co/post/cultural-change-in-law-enforcement-with-chief-art-acevedo> [<https://perma.cc/HN3K-JG7T>]. After recording a debate with me in a podcast studio, Acevedo once threatened me that officers were following me, touched my neck, smiled, looked at his finger, and told me that he now had my DNA. E-mail from Truleo (on file with author). Truleo advertising slogan, TRULEO, <https://www.truleo.co/> [<https://perma.cc/3LBU-6RVR>] (last visited July 21, 2023).

<sup>51</sup> Across a wide range of sectors, including most prominently the military industrial complex, but also hundreds of other areas from social security to healthcare to education to management consulting, there exists an entire ecosystem dependent on procuring government contracts for profit. See Part III. Obviously, this ecosystem is dependent on a symbiotic relationship with bureaucrats who want to increase their own budgets and power. *Id.*

employees to shoot into people's bodies)<sup>52</sup> and Digital Ally<sup>53</sup> were the original main players in the market.<sup>54</sup> Indeed, Taser/Axon originally promoted its body cameras to police as "one way to defuse the controversies" in cases where people claimed to be injured by the company's best-selling Taser product.<sup>55</sup> (Before controversies about its role in increasing police violence, Taser itself was previously marketed as a way to reduce police violence by giving officers a supposedly non-lethal way to immobilize people.) And, of course, body cameras are just one of many new video and audio surveillance devices the companies wanted to link to similar cloud databases and artificial intelligence, facial recognition, and biometric software.<sup>56</sup> Indeed, there is now an entire sub-industry of for-profit companies that help police departments identify grants and fill out grant applications for government money for body cameras.<sup>57</sup>

Because of the veneer of "public safety" expertise surrounding police bureaucrats, it is easy to overlook that public police assertions about what policies and investments are necessary to improve "public safety" are often pre-determined in a technical sense and framed in a marketing sense by the *business decisions* of corporate actors who are not primarily motivated by "public safety." Then, these assertions by police experts about which investments are necessary are filtered through the language of good public policy to everyday people. This kind of "expertise" is not unlike the financial and marketing relationships between big pharmaceutical companies and doctors.<sup>58</sup>

As in pharmaceuticals, on the corporate side, Taser/Axon devoted a lot of time and energy to creating a market *among police leaders* for their new gadgets. They paid for police travel to conferences, offered police chiefs who purchased their products lucrative consultancy gigs after

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<sup>52</sup> Quentin Hardy, *Taser's Latest Police Weapon: The Tiny Camera and the Cloud*, N.Y. TIMES (Feb. 21, 2012), <https://www.nytimes.com/2012/02/21/technology/tasers-latest-police-weapon-the-tiny-camera-and-the-cloud.html> [https://perma.cc/R2LV-VDGS]; Alex Berenson, *As Police Use of Tasers Soars, Questions Over Safety Emerge*, N.Y. TIMES (July 18, 2004), <https://www.nytimes.com/2004/07/18/us/as-police-use-of-tasers-soars-questions-over-safety-emerge.html> [https://perma.cc/WR4P-WZMF].

<sup>53</sup> Digital Ally showcased its new body cameras as early as 2009. *Digital Ally to Feature New Products, John Elway at IACP Conference*, POLICE MAG. (Sept. 30, 2009), <https://www.policemag.com/technology/news/15344158/digital-ally-to-feature-new-products-john-elway-at-iacp-conference> [https://perma.cc/6JZL-M692].

<sup>54</sup> The industry is actually far larger than body cameras. After Taser/Axon introduced its original body camera model in 2009, the company later began marketing interview-room and patrol-car cameras to police departments. David Gelles, *Taser International Dominates the Police Body Camera Market*, N.Y. TIMES (July 12, 2016), <https://www.nytimes.com/2016/07/13/business/taser-international-dominates-the-police-body-camera-market.html> [https://perma.cc/8BQJ-J5A4]; Doug Wyllie, *TASER Announces New Solution for Managing Interview Room Videos in the Cloud*, POLICE1 (Oct. 21, 2015) [hereinafter Wyllie, *TASER Announces New Solution*], <https://www.police1.com/iacp-2015/articles/taser-announces-new-solution-for-managing-interview-room-videos-in-the-cloud-JO2iQWAX0QAkzT3t/> [https://perma.cc/9BVG-8LFD]; Doug Wyllie, *TASER's Axon Fleet Brings Affordable in-Car Video Solution to Police*, POLICE1 (Oct. 26, 2015) [hereinafter Wyllie, *TASER's Axon Fleet*], <https://www.police1.com/iacp-2015/articles/tasers-axon-fleet-brings-affordable-in-car-video-solution-to-police-hEjMa5UjtyPNmzhv/> [https://perma.cc/PXZ5-4Y8R].

<sup>55</sup> Hardy, *supra* note 52.

<sup>56</sup> Chris Woodyard, *Latest Tech Gear Turns Police into RoboCop*, USA TODAY (Oct. 15, 2012), <https://www.usatoday.com/story/money/cars/2012/10/15/robocop-raytheon-motorola-police/1629989/> [https://perma.cc/M95J-2VG9].

<sup>57</sup> See Body Cameras, *WWW.POLICEGRANTSHelp.COM*, available at <https://www.policegrantshelp.com/products/Body-Cameras/> [https://perma.cc/B7VG-LY8B].

<sup>58</sup> See, e.g., Press Release, N.Y.U. Langone Health, *New Study Shows Physician-Targeted Marketing Is Associated with Increase in Opioid Overdose Deaths* (Jan. 18, 2019), <https://nyulangone.org/news/new-study-shows-physician-targeted-marketing-associated-increase-opioid-overdose-deaths> [https://perma.cc/9D89-9LHZ].

retirement, and worked with cities to skip lengthy procurement processes for sole-source contracts with little oversight compared to competitive or transparent bidding processes.<sup>59</sup> Although these behind-the-scenes maneuvers are not frequently discussed in news media stories about body cameras, anyone who has seen the booths at trade conferences catering to the punishment bureaucracy or anyone who spends any time reading government procurement documents knows that these early corporate sales and marketing efforts are often some of the most consequential activity in predicting future public policy. If you build it, they will come. (Especially if you also pay them to come.)

In contrast to post-Ferguson public relations, prior to 2014, corporate marketing advocated for body cameras as *a critical policing tool*, touting the following benefits:

- **Increasing and speeding up criminal convictions** with the readily available evidence that could force people to plead guilty quickly (read: poor people).
- **Changing civilian behavior** among people who interact with police (read: poor people, protesters, and people thinking about going to a protest).
- **Protecting officers** from supposedly false or frivolous civilian complaints (read: police get to control what is filmed and what is conveniently not filmed when interacting with who they choose to interact with).
- **Increasing digital surveillance** of priority targets (read: poor neighborhoods in which police patrol disproportionately and protests).

It worked. In Los Angeles, for example, police departments started wanting body camera technology as soon as they heard this sales pitch. In 2013, a wealthy Los Angeles businessman, who was appointed to be President of the Police Commission, launched a private fundraising campaign to buy body cameras for the LAPD.<sup>60</sup> In a joint letter with the police chief, the two men called body cameras “a historic and transformative opportunity for the LAPD.”<sup>61</sup> In what the Los Angeles Times called an “unusual fundraising campaign,” the effort “exceeded its goal of collecting \$1 million from private donors,” eventually raising \$1.2 million.<sup>62</sup> This private cash gave LAPD “enough funds to buy about 600 cameras and to pay for video storage capabilities, repairs and other related costs over about two years.”<sup>63</sup> The police campaign for private cash even convinced Steven Spielberg to donate money to buy body cameras for LAPD cops.<sup>64</sup>

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<sup>59</sup> See Ryan J. Foley, *Body-Camera Maker Has Financial Ties to Police Chiefs*, AP NEWS (Mar. 3, 2015), <https://apnews.com/article/6b5594a2735e48579358a72cd70cc5df> [https://perma.cc/KD66-LPZD]; Dan Frosch & Zusha Elinson, *After Ferguson, Cities Face a Body-Cam Dilemma*, WALL ST. J. (Mar. 7, 2016), <http://www.wsj.com/articles/for-cities-after-ferguson-a-body-camera-dilemma-1457381795> [https://perma.cc/U7V9-5RKN] (last visited July 19, 2023).

<sup>60</sup> Joel Rubin, *LAPD Surpasses Fundraising Goal for Officers' on-Body Cameras*, L.A. TIMES (Nov. 6, 2013), <https://www.latimes.com/local/lanow/la-me-ln-lapd-cameras-20131106-story.html> [https://perma.cc/HG2K-TLW6].

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

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

<sup>64</sup> *Id.* The fundraiser included money raised from large corporations (e.g. the Dodgers), as well as high-profile and wealthy LA residents. *Id.* Individuals who contributed included Steven Spielberg (director), Phil Anschutz (billionaire businessman), Arthur Coppel (CEO of Macerich), Jeffrey Katzenberg (CEO Dreamworks), and Casey Wasserman (media mogul). *Id.*; Kelly Goff, *Move Toward LAPD Body Cameras Gets Big Boost*, L.A. DAILY NEWS (Sept. 19, 2013), <https://www.dailynews.com/2013/09/19/move-toward-lapd-body-cameras-gets-big-boost/> [https://perma.cc/2JXE-4JJ5].

Therefore, Taser/Axon and other companies succeeded with corporate sales by marketing the product as helpful for police. On a 2013 quarterly investment call, Taser/Axon's CEO noted: "Many of our customers will tell us that TASER has been the biggest revolution in law enforcement certainly in this century. And we believe we are positioned to do it again. Digital video and multimedia is the opportunity to become the centerpiece of law enforcement records of the future, so this goes even beyond just defending against complaints."<sup>65</sup> One of the company's board members told the *New York Times* in 2012: "This is at least a \$1 billion opportunity."<sup>66</sup>

But the product was costly for strapped local government budgets. And finding a few thousand Steven Spielbergs to donate a few billion dollars for the next decade was hard. Body cameras can cost several thousand dollars per officer given the cost of the equipment, video data storage, IT support, and officer training. Although police across the U.S. were praising the new technology and desperate to get it, by 2013, only 32% of departments were using body cameras in some fashion.<sup>67</sup> And many officers in those departments still didn't have them: they were a surveillance luxury.<sup>68</sup> The vast majority of U.S. police forces couldn't afford them, and even the richest police departments could not get them for every officer.<sup>69</sup>

However, after Ferguson in 2014, the public discussion about body cameras changed. The companies and their consultants in academia and non-profits (which the industry itself sometimes funded) seized the opportunity to shift from primarily quiet marketing of body cameras as a *tool to help police*, to portraying the cameras as a tool to advance police *reform* through "accountability" and "transparency."

Funding for body cameras exploded.<sup>70</sup> A few months after Michael Brown was gunned down and while the country discussed police violence in the wake of the Ferguson uprising, President Barack Obama requested \$263 million in funding to match and incentivize state funding for 50,000 body cameras.<sup>71</sup> Federal matching funds were crucial to obtaining funds at the local level and in helping police get state governments to begin their own matching grant programs. As

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<sup>65</sup> Audio tape: TASER Int'l, Inc. Quarter One 2013 Earnings Conference Call (Apr. 25, 2013, 3:45 PM), <https://seekingalpha.com/article/1372511-taser-internationals-ceo-discusses-q1-2013-results-earnings-call-transcript> [<https://perma.cc/BW4V-9ZPT>].

<sup>66</sup> Hardy, *supra* note 52.

<sup>67</sup> BRIAN A. REAVES, LOCAL POLICE DEPARTMENTS, 2013: EQUIPMENT AND TECHNOLOGY 1 (Lynne McConnell & Jill Thomas, eds., Bureau of Just. Stat., Local Police Dep'ts. No. NCJ 248767, 2015).

<sup>68</sup> In order to attract police customers, TASER/Axon offered the software technology on a sliding scale cost, with the first year of service free in order to attract customers. Even with deals like this, the long-term costs were daunting. Hardy, *supra* note 52; Gelles, *supra* note 54.

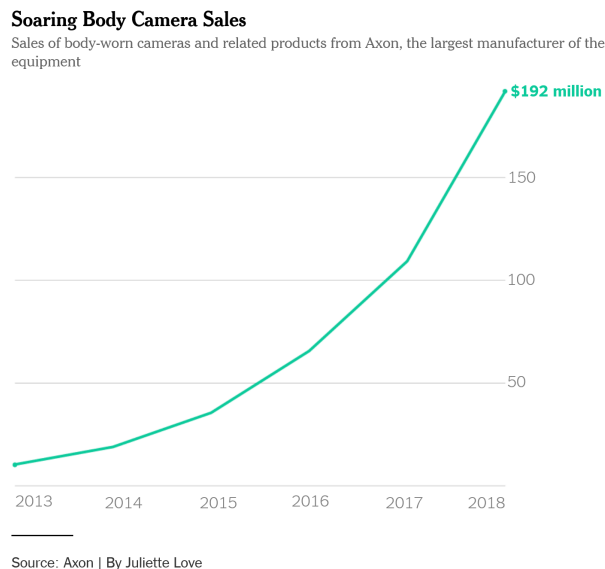
<sup>69</sup> SHELLEY S. HYLAND, BODY-WORN CAMERAS IN LAW ENFORCEMENT AGENCIES, 2016 3 (Caitlin Scoville & Jill Thomas, eds., Bureau of Just. Stat., No. NCJ 251775, Nov. 2018). This was particularly true for smaller police department with fewer resources. Roll-out of the technology would not be possible without federal and state government funding. Police departments still considering whether or not to invest in body cameras cite cost as the main deterrent. *Research on Body-Worn Cameras and Law Enforcement*, NAT'L INST. OF JUST. (Jan. 7, 2022), <https://nij.ojp.gov/topics/articles/research-body-worn-cameras-and-law-enforcement> [<https://perma.cc/EFV3-4CSD>]. Indeed, Dallas police made public that maintenance and cloud computing costs are 400% the cost of purchasing a camera. Candice Norwood, *Body Cameras Are Seen as Key to Police Reform. But Do They Increase Accountability?*, PBS NEWSHOUR (June 25, 2020), <https://www.pbs.org/newshour/politics/body-cameras-are-seen-as-key-to-police-reform-but-do-they-increase-accountability> [<https://perma.cc/99AD-XNLK>]. Although of course even a group as organized as police are not entirely monolithic. Some right-wing police union groups have, at times, expressed concerns about body cameras. But the vast bulk of the police bureaucracy supports them, and concerns raised about them by police bureaucrats are largely limited to worrying that budgets are too small to pay for their costs.

<sup>70</sup> Gelles, *supra* note 54.

<sup>71</sup> Dann & Rafferty, *supra* note 7.

“reform” momentum grew, state governments, also under the guise of “accountability,” began offering body camera grant funding to local and state police forces.<sup>72</sup> Within a couple years, the cash was flowing beyond the wildest dreams of corporate investors.<sup>73</sup>

For Taser/Axon in particular, the marketing of body cameras was an “opportunity” to rebrand away from its primary public identity, the company was associated with selling the device that police used to shoot electric current at disproportionately poor and marginalized people. Now, Taser/Axon has grown its business dramatically as a name people instead associated in the public imagination with “accountability” and “transparency.”<sup>74</sup> Here is a chart from the Washington Post showing annual sales from Taser/Axon (by now fully re-branded as “Axon”) which, by 2016, had become the leading distributor of body cameras and associated cloud storage software (“Evidence.com”), capturing three-quarters of the market:<sup>75</sup>



<sup>72</sup> See *Police Body-Worn Camera Legislation Tracker*, URBAN INST. (2022), <https://apps.urban.org/features/body-camera-update/> [https://perma.cc/UCH7-XLV6].

<sup>73</sup> Ferguson was “widely cited as the moment that propelled law enforcement agencies across the country to start buying the devices.” Ben Miller, *Data Pinpoints the Moment When Police Body Cameras Took Off*, GOVTECH (Jan. 4, 2019, 11:38 PM), <https://www.govtech.com/data/Data-Pinpoints-the-Moment-When-Police-Body-Cameras-Took-Off.html> [https://perma.cc/NL55-24UJ]. As the New York Times explains: “body cameras have become the most tangible legacy of Ferguson. In major cities and rural sheriff’s offices, millions of dollars’ worth of cameras were bought with great fanfare, and sometimes with federal assistance.” Mitch Smith, *Policing: What Changed (and Didn’t) Since Michael Brown Died*, N.Y. TIMES (Aug. 7, 2019), <https://www.nytimes.com/2019/08/07/us/racism-ferguson.html> [https://perma.cc/J5S8-AVFF]. But looking at the data, it would be more accurate to say that purchases took off even more significantly about 18 months later, after the Obama administration provided DOJ grant funding to pay for them. In 2015, the Obama administration began offering federal funding, with \$23 million in federal grants that year alone. Press Release, U.S. Dept. of Just. Off. of Pub. Aff’s., Justice Department Awards over \$23 Million in Funding for Body Worn Camera Pilot Program to Support Law Enforcement Agencies in 32 States (Sept. 21, 2015), <https://www.justice.gov/opa/pr/justice-department-awards-over-23-million-funding-body-worn-camera-pilot-program-support-law> [https://perma.cc/4BWM-7ZGM]. Between 2015 and 2019, the DOJ’s body camera program awarded \$73 million to more than 400 police agencies. Van Ness, *supra* note 10.

<sup>74</sup> The company renamed itself Axon to reflect the fact that body cameras, rather than taser stun guns, were its primary product. Gelles, *supra* note 54.

<sup>75</sup> *Id.*

In just over three years after the killing of Michael Brown, body cameras became a ubiquitous surveillance tool for local police departments. As of 2018, 80% of large police departments have contracted with for-profit corporations to purchase body cameras and associated software.<sup>76</sup>

By late 2022, Axon was valued at \$11.45 billion.<sup>77</sup> As of March 2023, Axon was valued at \$16.35 billion.<sup>78</sup>

### III. ACTUALLY, BEHIND EVERY REFORM THERE ARE LOTS OF PEOPLE WITH BAGS OF CASH

*Capitalists generally act harmoniously and in concert to fleece the people.*

— Abraham Lincoln<sup>79</sup>

*You don't give money to the bums  
On the corner with a sign bleadin' from their gums  
Talkin' bout "won't support a crackhead"  
What you think happens to the money from your taxes?  
The government's an addict  
With a billion-dollar-a-week kill brown people habit.*

— Brother Ali<sup>80</sup>

The business “opportunity” was not just for Taser/Axon, and it was not just for making body cameras. This fact is key to understanding the magnitude of the public relations push that exploded the body camera market in 2014. Here’s how the head of Axon talked about the company to a defense industry publication in 2021:

So what’s next? Smith says AI and robotics will dramatically change how police departments do what they do. They could also reshape the American way of war. Smith’s company, Axon, is already using machine learning on body camera footage. The company has access to huge amounts of body-camera video because

<sup>76</sup> *Research on Body-Worn Cameras and Law Enforcement*, *supra* note 69.

<sup>77</sup> *Axon Enterprise, Inc. (AXON) Valuation Measures & Financial Statistics*, YAHOO! FIN., <https://finance.yahoo.com/quote/AXON/key-statistics/> [<https://perma.cc/P79S-YG2K>] (last visited Jul 19, 2023). In 2018, the Axon CEO received a compensation package worth a potential \$246 million. Henry Fernandez, *Axon Enterprises CEO Could Receive a \$246M Payday*, FOX BUS. (May 22, 2019 1:43 PM), <https://www.foxbusiness.com/business-leaders/axon-enterprises-ceo-could-receive-a-246m-pay-day#>.

<sup>78</sup> *Id.* The global body camera industry ballooned to \$1.2 billion in 2020 and is expected to grow to \$7 billion annually in 2026. See Akela Lacey, *Two Companies Fight to Corner the Police Body Camera Market*, THE INTERCEPT (Dec. 8, 2021 1:26 PM), <https://theintercept.com/2021/12/08/police-reform-body-cameras-axon-motorola/> [<https://perma.cc/5AA4-8MLN>].

<sup>79</sup> Abraham Lincoln, *Speech in the Illinois Legislature Concerning the State Bank*, in *COLLECTED WORKS OF ABRAHAM LINCOLN* 61, 64 (1953), <https://quod.lib.umich.edu/l/lincoln/lincoln1/1:92?rgn=div1;view=fulltext> [<https://perma.cc/WY4D-MCYT>] (last visited Aug. 1, 2023).

<sup>80</sup> Brother Ali, *Uncle Sam Goddamn*, LAST FM, [https://www.last.fm/music/Brother+Ali/\\_/Uncle+Sam+Goddamn/+lyrics](https://www.last.fm/music/Brother+Ali/_/Uncle+Sam+Goddamn/+lyrics) [<https://perma.cc/CB2S-FBZ4>] (last visited Aug. 1, 2023).

police departments pay Axon to host it on Microsoft Azure. “Basically every big department you can think of, NYPD, LA, Chicago, D.C., we host all their data in the cloud for them,” Smith said . . . .<sup>81</sup>

The executives of police technology companies understood something that virtually no one else did: police violence is profitable. They are in the business of *selling* police “reform.” Fascinating new research by economists, led by Bocar Ba, has quantified this idea: “in the three weeks following incidents triggering BLM uprisings, policing firms experienced a stock price increase of seven percentage points relative to the stock prices of non-policing firms in similar industries.”<sup>82</sup> The economists continued:

In particular, firms producing surveillance technology and police accountability tools experienced higher returns following BLM activism-related events. Furthermore, policing firms’ fundamentals, such as sales, improved after the murder of George Floyd, suggesting that policing firms’ future performances bore out investors’ positive expectations following incidents triggering BLM uprisings.<sup>83</sup>

In addition to the various corporate players in the police-focused profiteering world, many global tech giants like Amazon Web Services (which also hosted Taser/Axon’s platform on the AWS cloud),<sup>84</sup> Microsoft (which now also hosts Taser/Axon data<sup>85</sup> and contracts to support wide-ranging surveillance activities of large police departments),<sup>86</sup> and Palantir (a behemoth surveillance company started with the help of a venture capital fund managed by the CIA) stood to profit.<sup>87</sup> A report written by consultants hired by the Major Cities Chiefs and Major County Sheriffs lobbying organization assessed the situation:

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<sup>81</sup> Patrick Tucker, *The Inventor of the Taser and the Body Cam Wants to Put Them on Drones*, DEF. ONE (Oct. 13, 2021), <https://www.defenseone.com/technology/2021/10/inventor-taser-and-body-cam-wants-put-them-drones/186095/> [https://perma.cc/H8PN-5PMB].

<sup>82</sup> Bocar Ba et. al, *Market Response to Racial Uprisings* (2023), available at [https://www.dropbox.com/scl/fi/fmz3oa4tdsq6idfdmvt/marketresponse\\_aug2023.pdf?dl=0&rlkey=7jku89c6degkj04t7mrk94s5k](https://www.dropbox.com/scl/fi/fmz3oa4tdsq6idfdmvt/marketresponse_aug2023.pdf?dl=0&rlkey=7jku89c6degkj04t7mrk94s5k).

<sup>83</sup> *Id.*

<sup>84</sup> Blair Hanley Frank, *Taser Switches to Azure from AWS to Power Cloud*, COMPUT. WORLD (Oct. 25, 2016, 6:00 AM), <https://www.computerworld.com/article/2997103/taser-switches-to-azure-from-aws-to-power-cloud-services.html> [https://perma.cc/WS2P-7LX4].

<sup>85</sup> In 2017, Axon reportedly switched some of its giant data storage contracts to hosting by Microsoft. Larry Dignan, *Axon Moves 20 PB of Data, Evidence.Com to Microsoft Azure*, ZDNET (Feb. 28, 2018), <https://www.zdnet.com/article/axon-moves-20-pb-of-data-evidence-com-to-microsoft-azure/> [https://perma.cc/8DW9-5WW4] (“Axon said that Azure helped it ‘win several major city police agencies in the U.S. and one large international customer.’”).

<sup>86</sup> Kwet, *supra* note 20.

<sup>87</sup> Kim Lyons, *Amazon’s Ring Now Reportedly Partners With More than 2,000 US Police and Fire Departments*, THE VERGE (Jan. 31, 2021, 4:26 PM), <https://www.theverge.com/2021/1/31/22258856/amazon-ring-partners-police-fire-security-privacy-cameras> [https://perma.cc/8PF6-VMWF]; Ali Winston, *Palantir Has Secretly Been Using New Orleans to Test Its Predictive Policing Technology - The Verge*, THE VERGE (Feb. 27, 2018, 3:25 PM), <https://www.theverge.com/2018/2/27/17054740/palantir-predictive-policing-tool-new-orleans-nopd> [https://perma.cc/9TQF-Z8LB].



The President's Task Force on Policing in the 21st Century identified the increased use of Body-Worn Cameras (BWCs) as a national priority. To support this initiative, President Obama proposed a three-year, \$263-million effort that included \$75 million each year for the Body Worn Camera Partnership Program.<sup>88</sup>

Astutely, the police chiefs and sheriffs recognized from a survey of their members that expansion of body cameras would require a major IT overhaul of many related systems. One can almost see the \$\$\$ in the eyes of their corporate IT contractors as they chose to use words like “need” in their assessment of the situation:

Nearly 70% of respondents recognized a *need* to expand and improve their IT infrastructure to fully support BWCs [body cameras]. Specific technology gaps they identified included: a lack of data storage capacity, inadequate network or bandwidth capability, and inadequate wireless capacity.<sup>89</sup>

All of this would then necessitate, in classic tech industry fashion, perpetual contracts for ongoing software maintenance, updating, and training on the updates. It would then require standing armies of tech specialists and government liaisons to synchronize the new software and databases with IT systems used by prosecutors, courts, and other government agencies.

Many of these companies would therefore profit not just from the procurement of their technology and ongoing IT services and maintenance, but from the creation of an enduring public-private technology partnership. For every new Frankenstein these industries create, an entire dependent ecosystem of perpetual government contracts and bureaucratic jobs is created. Because everyone knows that once created, these kinds of arrangements are very difficult to end and usually only expand. Therefore, it is vital to *capitalize on the initial bonanza* to ensure that a system is created that is so full of intertwined procurement contracts benefiting so many different people and institutions that *it would be nearly impossible for a democratic process to reverse course based on rational public policy*. In this way, the strategy is not unlike when large defense contractors spread their production across nearly every Congressional district in the U.S. to ensure that, while any given weapons contract may be a trillion-dollar decades-long boondoggle, no one elected official will have the incentive to eliminate the corresponding jobs in their own district.<sup>90</sup>

The companies were relentless. They got professors, non-profits, and consultants to help generate an ecosystem of punditry and “expertise” to pull the narrative away from surveillance and convictions and towards body cameras as a promising tool of “accountability.” They also proposed a comprehensive sub-industry of consultants and contractors that could write the complex rules that the cameras would require to reach their full potential as a “reform,”<sup>91</sup> including

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<sup>88</sup> LAFAYETTE GROUP, MAJOR CITIES CHIEFS AND MAJOR COUNTY SHERIFFS: TECHNOLOGY NEEDS - BODY WORN CAMERAS 1 (2015), <https://assets.bwbx.io/documents/users/iqjWHBFdfxIU/rvnT.EAJQwK4/v0> [<https://perma.cc/7SAT-PUZC>].

<sup>89</sup> *Id.* Body cameras and associated cloud storage contracts and artificial intelligence software are thus a good reminder that even U.S. police are just part of a far larger punishment bureaucracy. This bureaucracy itself is probably better understood as one part of a set of interlocking corporate, academic, non-profit, military, and civilian government bureaucracies.

<sup>90</sup> See Mandy Smithberger, *Never the Pentagon: How the Military-Industrial Complex Gets Away with Murder in Contract After Contract*, PROJECT ON GOV'T OVERSIGHT (Jan. 21, 2020), <https://www.pogo.org/analysis/2020/01/never-the-pentagon> [<https://perma.cc/DD6R-PAR3>].

<sup>91</sup> See *infra* Part VI.

model policies, rules, and protocols around what the industry called privacy and transparency.<sup>92</sup> What followed was a cascade of panels at law schools, written reports, task forces and conferences, and op-eds by interconnected networks of “experts” who normalized body cameras as a tool of “reform.”<sup>93</sup> Many different people had a finger in the pot.<sup>94</sup>

One principle united these efforts: as the public became angry about police violence, body cameras were increasingly viewed as a tool of “accountability” and not as a tool for increasing police power. Accountability must be the first thing in any ordinary, under-informed person’s mind when they hear the term “body camera.” Everyone in the industry understood this narrative. Only by examining the details of the government and corporate public relations effort, can we start to see the broader picture. It is therefore important to look at the *specifics* of how punishment and corporate bureaucrats discussed body cameras prior to Ferguson (in private and in public) as well as how they changed the way they talked about body cameras afterward.

#### IV. THE ORIGINAL NARRATIVE OF THE BODY CAMERA

*To be ruled is to be kept an eye on, inspected, spied on, regulated, indoctrinated, sermonized, listed and checked off, estimated, appraised, censured, ordered about by creatures without knowledge and without virtues. To be ruled is at every operation, transaction, movement, to be noted, registered, counted, priced, admonished, prevented, reformed, redressed, corrected.*

— Pierre-Joseph Proudhon<sup>95</sup>

In the early years of marketing the new product to police, body camera manufacturers and their surrogates focused on a few arguments about the benefits of body cameras for police.

##### 1. *Protecting Cops*

First, the companies marketed their surveillance product as a way for officers, who would control the cameras, to protect themselves from accusations of police misconduct and to minimize lawsuits. The corporate sales strategy played on the pervasive belief in internal police department culture that officers were unfairly accused of misconduct and needed protection. The following are statements, prior to 2014, about the importance of body cameras for protecting police officers by leading officials, ordinary cops, and corporate spokespeople:

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<sup>92</sup> Stop LAPD Spying, *Statement in Support of NYU Law Students Demanding Accountability from the NYU Policing Project*, MEDIUM (May 12, 2022), <https://stoplapdspying.medium.com/statement-in-support-of-nyu-law-students-demanding-accountability-from-the-nyu-policing-project-465d0e022f4> [https://perma.cc/B3W2-9CKG]; *Policing Project Conference Weighs the Costs and Benefits of Body Cameras*, NYU LAW NEWS (Nov. 21, 2018), <https://www.law.nyu.edu/news/policing-project-cost-benefit-analysis-barry-friedman-chris-magnus-monique-dixon-harlan-yu-wesley-lowery> [https://perma.cc/3RRD-4GN4]; JUST. COLLABORATORY AT YALE L. SCH., PRINCIPLES OF PROCEDURALLY JUST POLICING (2018), [https://law.yale.edu/sites/default/files/area/center/justice/principles\\_of\\_procedurally\\_just\\_policing\\_report.pdf](https://law.yale.edu/sites/default/files/area/center/justice/principles_of_procedurally_just_policing_report.pdf) [https://perma.cc/3YF2-GZUW].

<sup>93</sup> See *infra* Part VI.

<sup>94</sup> See Bocar Ba et al., *supra* note 82.

<sup>95</sup> Pierre Joseph Proudhon, *The General Idea of Revolution in the 19<sup>th</sup> Century*, ANARCHIST LIBRARY (1871), <https://theanarchistlibrary.org/library/pierre-joseph-proudhon-the-general-idea-of-the-revolution-in-the-19th-century> [https://perma.cc/JK8M-ZVEL] (last visited Aug. 2, 2023).

- 2012 Rick Smith [Taser/Axon CEO]: “One big reason to have these is defensive. Police spend \$2 billion to \$2.5 billion a year paying off complaints about brutality.”<sup>96</sup>
- 2013 Taser/Axon Press Release: “We created a camera that is so compelling, at such an aggressive price that every agency can afford to protect their officers. For only \$299, every officer can defend themselves from unfounded complaints while preserving an indisputable record of the events they encounter every day.”<sup>97</sup>
- 2013 Taser/Axon Press Release re: price reduction of their software and body cameras: “Every officer deserves protection and price should not be a barrier, said Jason Droege, President of EVIDENCE.com. . . . Now all officers can afford the protection they deserve.”<sup>98</sup>
- 2013 Axon Taser/CEO Rick Smith: “I do not want to go on patrol without this, particularly officers who have had complaints filed against them where the video has clearly exonerated them.”<sup>99</sup>
- 2013 VIEVU (body camera manufacturer) website: “Is liability hindering your work? Are you compromising your services due to concerns for potential lawsuits or complaints? VIEVU body worn video cameras let you do your best work without fear of future repercussions.”<sup>100</sup>
- 2011 San Francisco Police Chief Greg Suhr: “We give them bulletproof vests to protect them from the lethal force, but when your character is under attack, it's just as damaging and I think these cameras would go a long way”<sup>101</sup>
- 2011 Bainbridge Island (WA) Officer Ben Sias: “In this job, we're frequently accused of things we haven't done, or things were kind of embellished, as far as contact. And the cameras show a pretty unbiased opinion of what actually did happen.”<sup>102</sup>
- 2011 Suquamish (WA) Police Chief Mike Lasnier, discussing a police shooting case: “The investigators, as well as any prosecutor or inquest jury reviewing this matter, will have access to incredibly accurate information and will not have to rely solely on the word, memory or testimony of any individual . . . They will be able to be 'in the room' for themselves.”<sup>103</sup>

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<sup>96</sup> Hardy, *supra* note 52.

<sup>97</sup> Press Release, TASER Int'l, Inc., TASER Disrupts On-Office Video Market With AXON Body (July 31, 2013), <https://investor.axon.com/2013-07-31-TASER-Disrupts-On-Officer-Video-Market-With-AXON-Body> [<https://perma.cc/VCW2-CWW7>].

<sup>98</sup> Press Release, TASER Int'l, Inc., TASER Lowers Prices for EVIDENCE.com and AXON Police Cameras (Oct. 3, 2013), <https://finance.yahoo.com/news/taser-lowers-prices-evidence-com-113000799.html> [<https://perma.cc/A8XH-4E73>].

<sup>99</sup> Audio tape, *supra* note 65.

<sup>100</sup> Jay Hamburger, *Smile: Park City Police Officers Issued Body Cameras*, THE PARK REC. (Dec. 28, 2013), <https://www.parkrecord.com/news/park-city/smile-park-city-police-officers-issued-body-cameras/> [<https://perma.cc/W3N9-A4D2>].

<sup>101</sup> Assoc. Press, *Oakland Police Say Wearing Tiny Video Cameras Protect Them*, EAST BAY TIMES (July 9, 2011, 9:59 AM), <https://www.eastbaytimes.com/2011/07/09/oakland-police-say-wearing-tiny-video-cameras-protect-them/> [<https://perma.cc/7QC9-KKBH>].

<sup>102</sup> Martin Kaste, *As More Police Wear Cameras, Policy Questions Arise*, NPR (Nov. 7, 2011, 12:01 AM), <https://www.npr.org/2011/11/07/142016109/smile-youre-on-cop-camera> [<https://perma.cc/EV9W-GYWZ>] (last visited July 19, 2023).

<sup>103</sup> Josh Farley, *Suquamish Police Chief: “We Have Nothing to Hide,”* KITSAP SUN (Dec. 15, 2011), <http://www.kitsapsun.com/news/code-911/suquamish-police-chief-we-have-nothing-to-hide-ep-417929898-356968591.html> [<https://perma.cc/BZT3-AU7Z>].

- 2012 Janesville (WI) Officer Erin Briggs: “In one instance, a resident complained that an officer did not explain why he had pulled her over and issued a traffic citation. A review of the video showed the officer had indeed explained the problem, why he was issuing a ticket and what the driver needed to do to follow up.... ‘It just kind of takes away the question mark,’ Briggs said.”<sup>104</sup>
- 2012 Windsor (VA) Police Chief Vic Reynolds: “[Body cameras] help prevent frivolous lawsuits.”<sup>105</sup>
- 2013 Pigeon Forge (TN) Police Chief Jack Baldwin (paraphrase): With most police cars equipped with dashboard cameras, Police Chief Jack Baldwin said the officers who ride motorcycles wanted a version they could use because it enhances their testimony in court and protects them against complaints.<sup>106</sup>
- 2013 Paul Figueroa, Oakland (CA) Police Department assistant chief: “It’s definitely not cheap. But over the long term, just from a liability and management perspective, it’s definitely an investment that’s worth it.”<sup>107</sup>

Even after talk of “reform,” “accountability,” and “transparency” came to dominate *public* discussion about body cameras in recent years, the narrative about protection from liability continued in police circles.<sup>108</sup> According to a veteran officer in Portland, OR: “My officers use force down here on a daily basis . . . They do it accurately, they do it professionally, they do it respectfully and according to City Hall, we’re just out thumping everybody and we’re doing it over the top. *These body cameras would show that everything that we’re doing is justified.*”<sup>109</sup> A South Carolina police chief explained in September 2014: “It (the use of body cameras) was a

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<sup>104</sup> Ann Marie Ames, *Janesville Police Officers See Benefit in Body Cameras*, GAZETTEEXTRA (May 5, 2012), [https://www.gazettextra.com/archives/janesville-police-officers-see-benefit-in-body-cameras/article\\_3c68c524-6256-5e9f-894e-8cb9cb30828b.html](https://www.gazettextra.com/archives/janesville-police-officers-see-benefit-in-body-cameras/article_3c68c524-6256-5e9f-894e-8cb9cb30828b.html) [<https://perma.cc/P6DW-LGQU>].

<sup>105</sup> Allison T. Williams, *Windsor Police Officers Patrol With Body Cameras*, DAILY PRESS (May 31, 2012), <https://www.dailypress.com/news/dp-xpm-20120531-2012-05-31-dp-nws-windsor-police-cameera-20120531-story.html/> [<https://perma.cc/242Y-6ULZ>].

<sup>106</sup> Lance Coleman, *Pigeon Forge Motorcycle Police to Get New Cameras*, KNOX NEWS (Feb. 18, 2013), <https://archive.knoxnews.com/news/355522511.html/> [<https://perma.cc/56MT-FVTQ>] (last visited July 19, 2023).

<sup>107</sup> Ian Lovett, *In California, a Champion for Police Cameras*, N.Y. TIMES (Aug. 22, 2013), <https://www.nytimes.com/2013/08/22/us/in-california-a-champion-for-police-cameras.html> [<https://perma.cc/2B6K-GD9U>].

<sup>108</sup> It is no secret that even the videos showing police misconduct do not result in “accountability” because of other profound flaws in the accountability process. It is not as if a police officer is magically held “accountable” the moment a video shows them doing something wrong. Take Philando Castile. Peter Cox, *Five Years After His Death, Philando Castile’s Mother Criticizes Lack of Progress in Police Accountability*, MPR NEWS (July 6, 2021, 9:09 PM), <https://www.mprnews.org/story/2021/07/06/philando-castiles-mother-criticizes-lack-of-progress-in-police-accountability> [<https://perma.cc/3HFH-BE9Q>] (describing Valerie Castile’s frustration at the continued lack of changes in policing after officer Jeronimo Yanez shot and killed her son). Moreover, officers are trained in how to prevent accountability, even when cameras are rolling. See *Considering Police Body Cameras*, *supra* note 22. It is why, in videos across the U.S., you hear officers repeating canned phrases like “stop resisting” when people are not resisting. *Id.* It is no accident that many of the most famous videos of police misconduct were filmed by bystanders from an angle that did not allow for police manipulation, including videos from external observation points that captured the violence committed by police against Rodney King, George Floyd, Walter Scott, Eric Garner, and Tyre Nichols, just to name a few.

<sup>109</sup> Matt Leach & Associated Press, *Outraged Portland Police Demand for Body Cameras Amid Violence, Defund Police Movement*, FOX NEWS: PORTLAND (May 19, 2021, 4:48 PM) (emphasis added), <https://www.foxnews.com/us/portland-police-body-cameras-woke-violence-defund-movement> [<https://perma.cc/9UKC-86DK>].

trend that started a couple of years ago in policing. We felt like, for the protection of the public and the protection of the officers too, it was a [sic] necessary . . . With all the stuff happening now in the world with video, and everybody on the street has a phone (video camera), we might as well protect ourselves.”<sup>110</sup>

Similarly, an Oregon police supervisor explained: “My officers work in a very political environment with a lot of drugs, a lot of activism, and a combination of untruthfulness and maybe distorted perceptions, and complaints still come in. The vast majority are untrue. I am not saying that (a complainant) is being untruthful intentionally, but it’s a matter of perception. The cameras protect the community and hold the officers accountable . . . But they also protect the officers from what I see most often, (which is) false allegations.”<sup>111</sup> According to former federal prosecutor and current law professor Kami Chavis, “A lot of chiefs of police want these body cameras, because a lot of times they can also work in the department’s favor and the officers’ favor in depicting a resident’s behavior.”<sup>112</sup>

## 2. *Better Evidence Against Poor People*

Second, body cameras were originally pitched by police, prosecutors, and companies as a way to collect stronger evidence against people for criminal prosecution. This is especially true for cases based on police patrols in poor neighborhoods, such as drug possession, fleeing from police, trespassing, resisting illegal arrest (it is often a crime to resist an arrest, even if the arrest is illegal—a legal doctrine police routinely exploit to devastating effect with the benefit of body camera video) and traffic violations.

Body cameras mounted on the uniforms of cops are not that useful for surveillance and investigation of crimes like wage theft, tax evasion, corporate pollution, sexual assault, or murder. (And more investment in surveillance was not, for example, proposed as a reform to capture better evidence for the regulatory and criminal investigative failures that contributed to the financial crisis of 2008.) But proponents of body cameras understood that, in contemporary U.S. society, the vast majority of police arrests are of poor people and for things the police call “non-violent.”<sup>113</sup>

According to the marketing pitch from the companies, for the vast bulk of policing—assembly line, daily monitoring of and brutal interference in the lives of the poor—these new surveillance cameras controlled by individual cops could lead to many more convictions, less time spent by cops and prosecutors in the prosecution process, and quicker guilty pleas. This latter part was vital for appealing to police and prosecutors as *customers* because one of the only meaningful constraints on the punishment bureaucracy is that converting arrests into convictions, punishment, and income generated through fines and fees is challenging. The sheer volume of more than 10 million yearly arrests—unlike anything any country’s penal infrastructure has ever attempted in world history—combined with a formal constitutional commitment to procedural rights (like the right to counsel, discovery, trial by jury, and a host of corollary stages including preliminary

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<sup>110</sup> Phil Bucheit, *Greer Police Issue Body Cameras*, THE GREER CITIZEN (Sept. 17, 2014), <https://greercitizen.com/news/greer-police-issue-body-cameras> [https://perma.cc/YMW5-UDEC].

<sup>111</sup> Chelsea Gorow, *Eugene Police Embrace Use of Body Cameras*, THE REG.-GUARD (Sept. 28, 2017), <https://plus.lexis.com/api/document?id=urn:contentItem:5D7X-5BW1-DYNS-338C-00000-00&idtype=PID&context=1530671> [https://perma.cc/99AJ-FZJN].

<sup>112</sup> Norwood, *supra* note 69.

<sup>113</sup> Alice Speri, *Police Make More Than 10 Million Arrests a Year, but That Doesn’t Mean They’re Solving Crimes*, THE INTERCEPT (Jan. 31, 2019, 12:32 PM), <https://theintercept.com/2019/01/31/arrests-policing-vera-institute-of-justice/> [https://perma.cc/HT2R-DP77]; Karakatsanis, *supra* note 3.

hearings, evidentiary hearings, potential for expert witnesses at government expense, and the right to a complex sentencing hearing) pressures bureaucrats to streamline the "efficiency" of the system to procure convictions more quickly and with less work.<sup>114</sup> Body cameras were perfect for this goal.

The Department of Justice summarized the point of view of prosecutors: "Proponents have suggested that video captured by body-worn cameras may help document the occurrence and nature of various types of crime, reduce the overall amount of time required for officers to complete paperwork for case files, corroborate evidence presented by prosecutors, and lead to higher numbers of guilty pleas in court proceedings."<sup>115</sup>

Here are representative public statements by police, corporate spokespeople, and other proponents of body cameras about the benefits of body cameras in streamlining the assembly line from arrest to conviction:

- 2012 Rick Smith (Taser/Axon CEO): "[P]eople plead out when there is video."<sup>116</sup>
- 2013 Topeka Police Captain Scott Conklin: "The evidence we have captured using AXON Flex cameras and downloaded into EVIDENCE.com from car stops and deadly force encounters has been remarkable."<sup>117</sup>
- 2013 Vanderburgh County (IN) Sheriff Eric Williams: "Anytime we can provide video evidence of a crime, (prosecutors) are pretty excited about that because it helps their case."<sup>118</sup>
- 2013 Lt. Bryan Hunter: "With technology today and the way television shows show their version of how things work; juries expect the same from us . . . .The more evidence we have, the better off we are prosecuting cases and defending ourselves from lawsuits."<sup>119</sup>
- 2013 Lakeway (TX) Police Captain Ken Farr: "Investigations used to take a lot of time and man hours, and we have to maximize efficiency . . . .[The cameras] have drastically reduced our investigation time... because we can see exactly what happened. Investigations that used to take hours, weeks or months now take minutes."<sup>120</sup>
- 2013 local paper (UT): "The police say the cameras will be important tools as they gather evidence against a person. If criminal activity is recorded on the camera, the police say, the video will be a key to the case. Police Captain Phil Kirk: "It's invaluable evidence on these cases . . . .It's the old adage, a picture's worth 1,000 words." Local DA Matthew Bates: the cameras can be a "very strong tool" in a prosecution. "We have video evidence of what

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<sup>114</sup> See Karakatsanis, *supra* note 3, at 869.

<sup>115</sup> Brett Chapman, *Body-Worn Cameras: What the Evidence Tells Us*, 280 NAT'L INST. JUST. J. 1, 2 (2018), <https://nij.ojp.gov/topics/articles/body-worn-cameras-what-evidence-tells-us> [<https://perma.cc/6YNA-G6YE>].

<sup>116</sup> Hardy, *supra* note 52.

<sup>117</sup> Press Release, TASER Int'l, Inc., Topeka Police Department Expands AXON Flex Camera Program (Sept. 11, 2013, 7:30 AM), <https://www.bloomberg.com/press-releases/2013-09-11/topeka-police-department-expands-axon-flex-camera-program> [<https://perma.cc/5JE3-ETZA>].

<sup>118</sup> *Body Cams Don't Blink/Public and Police Back Their Use by Law Enforcement*, EVANSVILLE COURIER & PRESS (INDIANA) (Sept. 1, 2013).

<sup>119</sup> Paul Peluso, *New Technology Taking Body Worn Cameras to Next Level*, OFFICER.COM, archived at WAYBACK MACH. (Oct. 17, 2013), <http://web.archive.org/web/20140401074858/https://www.officer.com/article/11192995/new-technology-taking-body-worn-cameras-to-next-level> [<https://perma.cc/2H54-MHVN>].

<sup>120</sup> Rachel Rice, *Lakeway Officers: Cop Cams Curb Complaints*, AUSTIN AM.-STATESMAN (Oct. 9, 2013), <https://www.statesman.com/story/news/local/2013/10/09/lakeway-officers-cop-cams-curb-complaints/9797405007/> [<https://perma.cc/ME38-JEZN>].

happened,” he said. “He said perhaps a quarter of criminal cases he screens could benefit from evidence taken from a body camera.”<sup>121</sup>

- September 2014: Greer Police Department (SC) Captain Matt Hamby: “The Solicitor’s Office, they love video. It helps them close a case without going to trial. They can usually get a guilty plea without even having to take it to trial. I think it’s going to help with those cases.”<sup>122</sup>
- Sep 2014: Waynesfield (OH) police Chief Nathan Motter: “Our prosecutor loves it because it shows a first-person view that a cruiser camera doesn’t always [show] . . . .”<sup>123</sup>

As with the diffusion of policing practices and technology more generally, the story of how cameras improve police efficiency in translating arrests into punishment is an international one.<sup>124</sup> For example, here are some representative comments from police officials in Scotland from 2012:

- “Of the cases with which the Crown Office and Procurator Fiscal Service has proceeded using the video footage as evidence, around 90% have resulted in an early guilty plea, according to Grampian Police.”<sup>125</sup>
- “Superintendent Nick Topping, who has overseen the body-mounted cameras project, said: ‘We have been delighted by the difference the body-worn video cameras have made. As an evidence-gathering tool they have surpassed our initial expectations and the results really do speak for themselves.’ ‘Most significantly, the cameras have helped to bring about earlier guilty pleas, which means officers are able to spend less time in court and more time out and about in communities, making a real difference.’”<sup>126</sup>

While my focus here is on the domestic U.S. manipulation of police reform rhetoric about body cameras, it is impossible to understand policy in this area by thinking only about the U.S. Many of the same companies discussed here, and a host of others, compete for similar lucrative contracts for massive police surveillance systems in the Middle East, Asia, Africa, Europe, and South America.<sup>127</sup> These business opportunities help shape what products are available and how they are integrated and used. Moreover, policing tactics, training, procedures, and technology that we may think of as highly localized are increasingly standardized across the world, especially in the world’s most unequal countries.<sup>128</sup> For more than 75 years, the U.S. government spearheaded a

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<sup>121</sup> Hamburger, *supra* note 100.

<sup>122</sup> Bucheit, *supra* note 110.

<sup>123</sup> Thomas Gnau, *Seeing Is Believing in Police-Citizen Encounters*, DAYTON DAILY NEWS (Sept. 20, 2014), <https://www.daytondailynews.com/news/seeing-believing-police-citizen-encounters/3IPbIX7D82rwatEQLqGxxO/> [<https://perma.cc/7L9Z-BFFP>].

<sup>124</sup> As I will discuss later, it is increasingly difficult to understand policing without understanding the global context because the industry producing police technology eventually sold in the U.S. is now a global business with lucrative contracts with some of the most authoritarian governments in the world.

<sup>125</sup> *Police Hail Body Camera Success*, THE HERALD SCOT. (July 25, 2012), <https://www.heraldscotland.com/news/13066764.police-hail-body-camera-success/> [<https://perma.cc/9TPB-PUJ3>].

<sup>126</sup> *Id.*

<sup>127</sup> See, e.g., Steven Feldman, *The Global Expansion of AI Surveillance* 8 (Carnegie Endowment for Int’l Peace, Working Paper, Sept. 2019), [https://carnegieendowment.org/files/WP-Feldstein-AISurveillance\\_final1.pdf](https://carnegieendowment.org/files/WP-Feldstein-AISurveillance_final1.pdf) [<https://perma.cc/V4Z7-7UGY>].

<sup>128</sup> See generally STUART SCHRADER, *BADGES WITHOUT BORDER: HOW GLOBAL COUNTERINSURGENCY TRANSFORMED AMERICAN POLICING* (2019) (providing a comprehensive history of the symbiotic growth of the U.S. and global policing industrial complex).

sophisticated effort to spread U.S. policing across the globe and, also to incorporate into U.S. policing the lessons and innovations from colonial counterinsurgency campaigns.<sup>129</sup> And in recent years, the rise of a truly global multi-national surveillance industry means that, while policy decisions about surveillance are often *framed* in terms of specific local threats and responses, the actual course of domestic policy decisions are *determined* by trends occurring at the global level.<sup>130</sup>

Thus, while the body camera is being marketed as “reform” in the U.S., much of the same technology produced for profit by the same global industry is being implemented in authoritarian countries, for example the United Arab Emirates, who have no domestic political need to dress up video surveillance as a liberal reform.<sup>131</sup>

### 3. *Controlling People*

Third, police and industry officials have always been focused on another benefit of the cameras: managing civilian behavior. Prior to Ferguson, proponents of body cameras highlighted their ability to regulate civilian behavior in police interactions as a central value of the technology. The tracking of people who attend protests and the use of facial recognition to identify organizers and leaders of political events are some of the more controversial uses of police surveillance technology.<sup>132</sup> Although for these obvious reasons it is difficult to find public statements acknowledging what I have learned privately from police sources about the usefulness of cameras in tracking and controlling behavior of protestors during social justice demonstrations, here are some representative examples of public statements prior to 2014 discussing the usefulness to police of controlling civilian behavior generally:

- 2012 Axon board member Hadi Partovi: “When people know they are on camera, they act like better citizens . . . .”<sup>133</sup>
- 2011: Seattle City Councilman Bruce Harrell (discussing “better behavior across the board” in police-civilian interactions): “People behave differently when they are on camera . . . .”<sup>134</sup>
- 2013 Chief William Farrar (Rialto, CA): “[f] a citizen knows the officer is wearing a camera, chances are the citizen will behave a little better.”<sup>135</sup>

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

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

<sup>131</sup> Paul Mozur & Adam Satariano, *A.I., Brain Scans and Cameras: The Spread of Police Surveillance Tech*, N.Y. TIMES (Mar. 30, 2023), <https://www.nytimes.com/2023/03/30/technology/police-surveillance-tech-dubai.html> [<https://perma.cc/B4X9-U5F4>]; Yasmine Bahrani, *Opinion: What Is It like to Live in a Modern Surveillance State? Look to Dubai.*, WASH. POST (Sept. 10, 2019, 1:19 PM), <https://www.washingtonpost.com/opinions/2019/09/10/what-is-it-like-live-modern-surveillance-state-look-dubai/> [<https://perma.cc/YN5D-LVXD>]; Joe Odell, *Inside the Dark Web of the UAE’s Surveillance State*, MIDDLE E. EYE (Mar. 1, 2018), <http://www.middleeasteye.net/opinion/inside-dark-web-uaes-surveillance-state> [<https://perma.cc/F2NH-SV9C>].

<sup>132</sup> *The Fight to Stop Face Recognition Technology*, ACLU, <https://www.aclu.org/news/topic/stopping-face-recognition-surveillance> [<https://perma.cc/6RY4-Y5A7>] (last updated June 7, 2023) (noting the ACLU is suing the FBI, DEA, ICE, and CBP to gain information about their facial recognition usage).

<sup>133</sup> Hardy, *supra* note 52.

<sup>134</sup> Kaste, *supra* note 102.

<sup>135</sup> Lovett, *supra* note 107.



- 2013 Vanderburgh County Sheriff Eric Williams (IN): “When people know they're being recorded, they act a little better . . . .”<sup>136</sup>

Given the widespread use of police surveillance technology for these purposes, when police leaders and company executives talk about “people knowing they are on camera,” people in the police bureaucracy have a full understanding of which people in which circumstances these marketing statements are referring to, and how these statements are meant to refer to central police functions like maintaining “order” among the very poor, crowd control during protests, and “intelligence” units that track organizing by political groups.

#### 4. *Total Information Awareness*

Finally, and perhaps most consequentially, enhanced general surveillance capacity was a key factor motivating police interest in body cameras. Many police loved their patrol car cameras and were excited to replicate that technology for all police interactions, including those that did not involve their cars.<sup>137</sup> Never before were police departments offered a technology that would enable them to have hundreds of thousands of mobile surveillance cameras, theoretically capable of going anywhere police wanted at any time (including inside people’s homes), recording what police wanted to record, and then linking all of those recordings to databases with the power to search them for patterns in voices, faces, license plate numbers and so on.

As a general rule, government bureaucracies want technologies and practices that increase the amount of information they can get about the public. The more information they can collect and analyze, the more power they can exert over political and institutional processes. It is difficult to find public statements about the connection between body cameras and mass surveillance. But this goal is evident from the attempts of police departments to put body cameras on every police officer for every shift, from procurement contracts with the corporate vendors that stipulate the specifications of the products, from promotional materials at police surveillance conferences,<sup>138</sup> from how the technology is openly discussed in other more authoritarian countries, and by reading between the lines of the public statements designed to let *police* know about the technical capabilities of these new tools:

- 2011 WatchGuard Video Manager Steve Teese: “Probably 10, 15 feet away you can still make out the individual’s characteristics, in terms of facial features, hands, very small details like that.”<sup>139</sup>

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<sup>136</sup> Zach Evans, *Vanderburgh County Sheriff’s Deputies Will Use Body Cameras*, THE HERALD-TIMES (Sept. 3, 2013, 12:15 AM), <https://www.heraldtimesonline.com/story/news/2013/09/03/anderburgh-county-sheriffs-deputies-will-use-body-cameras/47449585/> [<https://perma.cc/V5MB-LBTF>].

<sup>137</sup> See, e.g., Joseph P. Smith, *Millville Police Start Using Body-Worn Cameras; All Patrol Officers Wearing Them*, DAILY J. (July 28, 2020, 6:02 PM), <https://www.thedailyjournal.com/story/news/2020/07/28/nj-millville-body-cameras-police-patrols-july-chief-jody-farabella-likes-transparency-evidence/5528781002/> [<https://perma.cc/WV6T-G4YG>] (quoting Police Chief Jody Farabella stating “[w]e’re very excited to have them”).

<sup>138</sup> *Find Exhibitors and Sessions: The International Association of Chiefs of Police Technology Conference 2023*, MAPYOURSHOW.COM, [https://tech2023.mapyourshow.com/8\\_0/index.cfm](https://tech2023.mapyourshow.com/8_0/index.cfm) [<https://perma.cc/F6SN-5WLB>] (last visited July 19, 2023).

<sup>139</sup> ‘*Cop Vu*’ Cameras Give Police Better View, KDAF-TV, DALLAS (July 20, 2011).

- 2013 Lakeway (TX) Police Captain Ken Farr: “The problem with the in-car camera is that it's limited to what happens in front of the car, so it's really only good for traffic encounters, and it gets audio, but only up to about 200 feet in the best conditions . . . .”<sup>140</sup>
- 2013 Philadelphia Police Commissioner Charles Ramsey: “Everybody’s filming everybody . . . . It’s the reality of the world we’re in; we can’t ignore it.”<sup>141</sup>
- 2013 Fort Worth (TX) Police Sergeant Scott Sikes: “They’re designed to be the eyes and ears when serving warrants, or during traffic stops when officers may be out of view of a squad car dash cam . . . .”<sup>142</sup>
- 2013 Law Enforcement Technology summary: “During the arrest, which was made by both of the officers, Ferris’ license plate scanner flagged a vehicle for expired registration. He made the stop, Fauquier arrived to provide backup and the female driver was ultimately arrested . . . . The emotion showed by the woman on the video was real, and was shown at eye level, with much better resolution than it would normally be captured in. Both officers said that the depth of non-verbal information conveyed by those pulled over that day was apparent upon reviewing the footage.”<sup>143</sup>
- 2022: Video surveillance company marketing: “Although these cameras offer a security bonus due to their portability, Artificial Intelligence applied to these devices will allow them to go further, supporting the surveillance work, helping the camera holder together with the monitoring center to detect and record of events in an optimal way, in operations where the human eye does not see easily.”<sup>144</sup>
- 2023: United Kingdom police officials: “A camera on an officer walking down the street could check the faces against a watchlist of suspects. They could check hundreds if not thousands of people while on duty. The technology will be capable of doing many things . . . . In China the algorithm can pick up ethnicity. It will be able to estimate age; some manufacturers claim it can estimate someone’s mood or state of anxiety.” And: “Facial recognition plays a crucial role in helping the police tackle serious offences including murder, knife crime, rape, child sexual exploitation and terrorism.”<sup>145</sup>

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<sup>140</sup> Rice, *supra* note 120.

<sup>141</sup> Rachel Weiner, *Police Body Cameras Spur Privacy Debate*, WASH. POST (Nov. 10, 2013, 4:54 PM), [https://www.washingtonpost.com/local/crime/police-body-cameras-spur-privacy-debate/2013/11/10/7e9ee504-2549-11e3-b75d-5b7f66349852\\_story.html](https://www.washingtonpost.com/local/crime/police-body-cameras-spur-privacy-debate/2013/11/10/7e9ee504-2549-11e3-b75d-5b7f66349852_story.html) [<https://perma.cc/5ZB7-XRCA>].

<sup>142</sup> *Fort Worth Police Arming Officers With Security Cameras*, CBS TEX. (Aug. 14, 2013), <https://www.cbsnews.com/texas/news/fort-worth-police-arming-officers-with-security-cameras/> [<https://perma.cc/8N4G-3J76>].

<sup>143</sup> Peluso, *supra* note 119.

<sup>144</sup> Hernan Cafiél, *Artificial Intelligence and Face Recognition for Body Cams*, EBENEZER TECH. (Dec. 9, 2022), <https://ebenezer.techs.com/face-recognition-body-cams/> [<https://perma.cc/6CLY-38SS>].

<sup>145</sup> Vikram Dodd, *Ministers Looking at Body-Worn Facial Recognition Technology for Police*, THE GUARDIAN, (May 16, 2023, 1:28 PM), <https://www.theguardian.com/uk-news/2023/may/16/ministers-calling-for-facial-recognition-technology-in-police-bodycams> [<https://perma.cc/2UYV-4HPU>]. The first quote comes from a former police officer and current police oversight official warning about why the current policing bureaucracy in the UK wants the cameras, and the second quote comes from a high-ranking policing official in the conservative government.

In summary, the available evidence establishes that police and prosecutors covet the body camera because they were persuaded that it would be beneficial for them.<sup>146</sup> As a federal government analysis from the Department of Justice concluded:

The main reasons (about 80% each) that local police and sheriffs' offices had acquired body-worn cameras were to improve officer safety, increase evidence quality, reduce civilian complaints, and reduce agency liability.<sup>147</sup>

## V. POST-FERGUSON: "ACCOUNTABILITY" AND "TRANSPARENCY"

*One should recall that the movement for reforming the prisons, for controlling their functioning is not a recent phenomenon. It does not even seem to have originated in a recognition of failure. Prison 'reform' is virtually contemporary with the prison itself: it constitutes, as it were, its programme.*

— Michel Foucault<sup>148</sup>

After Darren Wilson shot and killed Michael Brown in Ferguson, the public story about body cameras bears almost no relationship to what came before it.

Punishment bureaucrats and industry profiteers were smart. They recognized that the billions of dollars in funding that local governments had not been willing or able to provide to outfit every cop in the U.S. with a mobile surveillance camera and corresponding big data analytics had not been forthcoming by portraying their product as helpful to police and prosecutors for more quickly moving an assembly line of minor criminal cases against poor people. What was missing? Support from liberals, progressives, and others who wanted urgently to do something—or to be seen as doing something—about police violence.

In the following sections, I collect a few representative examples from politicians, police leaders, ever-ubiquitous “expert” consultants, and the news media after 2014.

### *a. Political and Bureaucratic Leaders Embrace Body Cameras as “Reform”*

First and most importantly, police and the surveillance technology companies had a new, important ally in their quest for money: the Obama administration.<sup>149</sup> The administration was staffed by and partnering with a growing constellation of consultants, academics, think tanks, and non-profit employees, some of whom had been funded by the for-profit police surveillance and police training industries or who otherwise depended on grants from police agencies. Many of these people are deeply committed, a number of them I count as my friends, and some of them I believe to be nefarious profiteers.

<sup>146</sup> *Research on Body-Worn Cameras and Law Enforcement*, *supra* note 69.

<sup>147</sup> HYLAND, *supra* note 69, at 1.

<sup>148</sup> MICHAEL FOUCAULT, *DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON* 234 (Vintage ed., 1979).

<sup>149</sup> My colleagues and I spent years working with, arguing against, and otherwise observing the Administration as part of our broader civil rights work to fight for a wide range of changes to policing, courts, and the punishment bureaucracy. See Patrick Darrington, *Alec Karakatsanis on Copaganda, Punishment, and Policing in the United States* (May 9, 2023) TEEN VOGUE, <https://www.teenvogue.com/story/alec-karakatsanis-copaganda-policing> [https://perma.cc/BK6E-6GE7]; *Our Work*, CIVIL RIGHTS CORPS, <https://civilrightscorps.org/our-work/> [https://perma.cc/Y5GT-223H].

One of the defining principles of Obama-era “criminal justice reforms” in the eyes of the people implementing them was that the administration’s new policies should *increase the size and power of the punishment bureaucracy by giving it more resources*. A theme uniting the work of most of these reformers was this: with more resources, the punishment bureaucracy could make itself better.<sup>150</sup>

In the hands of astute politicians and police leaders, body cameras became an easy sell to a public desperate to believe that *something* was being done. Democratic party political leaders crafted an appealing narrative: body cameras were what they called a “win-win.”<sup>151</sup> The cameras provided the public with “accountability” and “transparency,” *and* police= wanted them because they were “good cops” who had “nothing to hide.”<sup>152</sup> The mantra of the Obama administration was that *everyone* agreed that body cameras were the solution. When making his public pitch for body cameras in the news media, Eric Holder explained that “people on both sides want the same things.”<sup>153</sup>

Over the last several years, as police killed more people in 2021 than they had killed in 2020, and as police killed even more people in 2022 than they had in 2021, and as police killed even more people in 2023 than in 2022,<sup>154</sup> the Democratic Party doubled down on body cameras at critical moments of public scrutiny. Following the Obama administration playbook, Democratic politicians worked closely with police leaders to bolster the narrative that body cameras were a necessary solution to police violence. The increase in killings simply meant that we *hadn’t yet spent enough money on body camera contracts*. Each new act of police violence became further evidence of the need for “accountability” through video surveillance. Each uncovered police lie became further evidence of the need for “transparency” through video surveillance. All of it was used to further the urgency with which to secure prodigious sums of money for procurement.

Following the high-profile police murder of Freddie Gray in Baltimore, for example, all police officers in the city were outfitted with body cameras at enormous public expense.<sup>155</sup> “The day after video surfaced of a North Charleston, South Carolina, police officer shooting Walter Scott in the back, the town’s mayor announced plans to outfit all its police officers with body cameras.”<sup>156</sup> The process continued in a number of major cities after public outcry over one incident of police violence after another. One of the principles most dear to bureaucratic profiteers

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<sup>150</sup> Karakatsanis, *supra* note 3.

<sup>151</sup> See, e.g., Jay Stanley, *Police Body-Mounted Cameras: With Right Policies in Place, a Win For All*, (Oct. 2013), <https://urbanillinois.us/sites/default/files/attachments/police-body-mounted-cameras-stanley.pdf> [https://perma.cc/V6A9-B6B6] [hereinafter Stanley ACLU Report]; Jay Stanley, *Police Body-Mounted Cameras: With Right Policies in Place, a Win For All: Version 2.0* (Mar. 2015), <http://www.aclu.org/documents/police-body-mounted-cameras-right-policies-place-win-all> [https://perma.cc/A8TK-BQWX] [hereinafter Stanley ACLU Report 2.0].

<sup>152</sup> See, e.g., Staff, *Good Cops Need Not Fear Cameras*, THE NASHUA TEL. (Apr. 12, 2015), <https://www.nashuatelegraph.com/opinion/editorials/2015/04/12/good-cops-need-not-fear-cameras/> [https://perma.cc/PU8Z-SAS8].

<sup>153</sup> Doug Oakley, *In Oakland Meeting, Attorney General Eric Holder Calls for Body Cameras*, THE MERCURY NEWS (Feb. 5, 2015, 8:44 AM), <https://www.mercurynews.com/2015/02/05/in-oakland-meeting-attorney-general-eric-holder-calls-for-body-cameras/> [https://perma.cc/Y7J3-HC2G].

<sup>154</sup> *Fatal Force*, *supra* note 13.

<sup>155</sup> Associated Press, *Freddie Gray Trial Prosecutors Drop Remaining Charges Against Officers*, CBC: WORLD (July 27, 2016, 10:18 AM), <https://www.cbc.ca/news/world/freddie-gray-baltimore-police-charges-dropped-1.3696892> [https://perma.cc/2LNR-TAMP].

<sup>156</sup> Shakeer Rahman, Opinion, *Body Cameras Could Transform Policing – For the Worse*, AL JAZEERA AM. (Apr. 17, 2015, 2:00 AM), <http://america.aljazeera.com/opinions/2015/4/body-cameras-could-transform-policing--for-the-worse1.html> [https://perma.cc/6V8X-NXWY].

is that a good crisis should never be wasted if it can further policies about which the public might be more skeptical under other circumstances.

Following these and other high profile police murders, each time with political fanfare about a new era of “accountability” and “transparency,” ten states passed laws recommending or creating a study group or pilot program for body cameras in 2015 (AZ, CA, CO, DE, LA, MD, MA, OH, SC, VA). Three other states followed in 2016 (NE, VT, WA).<sup>157</sup> After the murder of George Floyd, between 2020 and 2021, five additional states mandated body cameras statewide (bringing the total states who required all cops to wear cameras to seven).<sup>158</sup>

The same political and media narrative kept playing out locally as well. Shortly after the murder of George Floyd, mayors across the U.S. made body cameras a centerpiece of their response strategy. To take one of hundreds of examples, Bill de Blasio, Mayor of New York City, announced a new policy to make more of the previously withheld body camera videos available to the public.<sup>159</sup> (At the time, New York City had already spent a staggering sum of public money to equip 24,000 police officers with the surveillance technology but had not chosen to accompany those expenditures with even the most obvious transparency regulations.)<sup>160</sup>

Republicans (albeit more quietly and with less rhetoric about “reform”) and Democrats alike flocked to the body camera bandwagon, each supporting lucrative grant programs to purchase more cameras, software, and perpetual services contracts for maintenance, updates, and training. Body cameras had become so synonymous with police “accountability” that proposals requiring cameras for all federal officers and to award huge grants for state and local police became the centerpiece of the supposedly progressive proposal by Democrats called the George Floyd Justice in Policing Act in 2020.<sup>161</sup> Leading Democrats reflexively demanded more body cameras, even after police killings that had been caught on video did not lead to any accountability.<sup>162</sup> Indeed, when negotiations collapsed in the Senate because of the inclusion of other changes like removing qualified immunity from civil damages liability for individual officers, it was not because Republicans opposed more money for body cameras. *That* lucrative bonanza was still a “win-win.”

Officials repeated this narrative in their public declarations in hundreds of cities and dozens of states. Noting the need for “reform” through “accountability” and “transparency,” public officials across the U.S. began touting the “win-win” nature of body cameras. Massachusetts, for example, announced a 5-year, \$20 million program and will be sending \$2.5 million to 32 local police departments to expand body camera coverage across the state in fiscal year 2023.<sup>163</sup> In keeping with post-Ferguson marketing, the buzz-words “accountability” and “transparency” were

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<sup>157</sup> *Police Body-Worn Camera Legislation Tracker*, *supra* note 72.

<sup>158</sup> Van Ness, *supra* note 10; Alexandra Ulmer & Julia Harte, *Explainer: How Police Body-Worn Cameras Are Used in the United States*, REUTERS: GOV. (Apr. 30, 2021, 6:00 AM), <https://www.reuters.com/world/us/how-police-body-worn-cameras-are-used-united-states-2021-04-30/> [<https://perma.cc/THL6-MFGZ>].

<sup>159</sup> Ben Chapman & Katie Honan, *New York City to Release Body-Camera Footage of Police Shootings*, WALL ST. J. (June 16, 2020, 6:21 PM), <https://www.wsj.com/articles/new-york-city-to-release-body-camera-footage-of-police-shootings-11592346075> [<https://perma.cc/HFL5-4S7V>].

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

<sup>161</sup> Norwood, *supra* note 69; Justice in Policing Act of 2020, H.R. 7120, 116th Cong. (2020); Van Ness, *supra* note 10.

<sup>162</sup> @OLAASM, TWITTER (Feb. 2, 2018, 5:44 PM), <https://twitter.com/OLAASM/status/959558276533891073> [<https://perma.cc/ZF35-GVQL>].

<sup>163</sup> James Bartlett, *Police Departments Across Massachusetts Are Rolling Out Body Cameras This Year*, WGBH (Apr. 13, 2023), <https://www.wgbh.org/news/local-news/2023/04/13/police-departments-across-massachusetts-are-rolling-out-body-cameras-this-year> [<https://perma.cc/9L5R-U5DL>].

added to the Massachusetts press release to supplant the original pre-2014 pro-police justifications for the technology.<sup>164</sup>

Look at the language in a press release issued by Los Angeles County weeks after the death of George Floyd, announcing an astonishing \$35 million contract between Taser/Axon and the Los Angeles County Sheriff's Department (one of dozens of policing agencies in Los Angeles with body camera aspirations):

The contract for the body-worn camera program that will ensure greater accountability of the Los Angeles County Sheriff's Department has been finalized, enabling the Department to now order cameras and equipment at its discretion starting today. Following months of collaborative efforts with the County, the Sheriff's Department and Axon Enterprise, Inc. entered a fully executed agreement for a Body-Worn Camera and Digital Evidence Management System. The rollout of the camera program will be able to equip 5,200 deputies and security officers with devices over the next two years utilizing the nearly \$35 million that the Board of Supervisors set aside last year specifically dedicated for this program.<sup>165</sup>

The Los Angeles Sheriff Department had been plagued by secretly tattooed criminal gangs of deputies with names like "Los Banditos" and "The Compton Executioners," and had decided to use its own violence as an excuse to get funding for body cameras.<sup>166</sup> In order to justify this extraordinary expenditure given to a department that had just shot and killed Andres Guardado (under shocking circumstances in which a Sheriff whistleblower claimed that the officers executed the teenager in an attempt to enter the "Executioners" gang), local officials framed the Taser/Axon contract as essential for "transparency and accountability":<sup>167</sup>

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<sup>164</sup> Press Release, East Bridgewater Police Dep't, East Bridgewater Police Department Awarded More Than \$221,000 as Part of Baker-Polito Administration's Body-Worn Camera Grant Program (Nov. 29, 2022), <https://ebpd.org/2022/11/29/east-bridgewater-police-department-awarded-more-than-221000-as-part-of-baker-polito-administrations-body-worn-camera-grant-program/> [<https://perma.cc/3B8R-93LV>].

<sup>165</sup> Press Release, L.A. Cnty. Exec. Off. Bd. of Supervisors, Contract for Body-Worn Cameras for the LA County Sheriff's Department Finalized: Board Anticipates Greater Accountability and Transparency (Aug. 12, 2020), [https://assets-us-01.kc-usercontent.com/0234f496-d2b7-00b6-17a4-b43e949b70a2/919fc43d-70ff-4515-936c-d3d4a24bf77a/6323TA\\_EOPressRls081220\\_4PRS1.pdf](https://assets-us-01.kc-usercontent.com/0234f496-d2b7-00b6-17a4-b43e949b70a2/919fc43d-70ff-4515-936c-d3d4a24bf77a/6323TA_EOPressRls081220_4PRS1.pdf) [<https://perma.cc/C668-GD8N>].

<sup>166</sup> See Cerise Castle, *The Pink Hand, Big Listo, and Crook*, KNOCK LA (Apr. 2, 2021), <https://knock-la.com/banditos-kennedy-hall-brawl-lasd-shot-caller/> [<https://perma.cc/YFZ5-AQSV>]; Cerise Castle, *The Compton Executioners*, KNOCK LA (Apr. 6, 2021) [hereinafter Castle, *The Compton Executioners*] <https://knock-la.com/the-compton-executioners-andres-guardado/> [<https://perma.cc/E7A6-AAEZ>] (describing the Executioners as a violent, anti-Black, gang within the LA County Sheriff's Office inked with Nazi tattoos); @OLAASM, TWITTER (June 21, 2020, 2:31 PM), <https://twitter.com/OLAASM/status/1274771976092037121> [<https://perma.cc/9ZDE-TY7A>]; see also Cerise Castle, *A Tradition of Violence: The History of Deputy Gangs in the Los Angeles County Sheriff's Office*, KNOCK LA, <https://knock-la.com/tradition-of-violence-lasd-gang-history/> [<https://perma.cc/LT2B-5DKQ>] (a 15-part investigative series "into more than five decades of abuse, terror, and murder carried out by gangs within the Los Angeles County Sheriff's Department") (last visited Aug. 3, 2023).

<sup>167</sup> Castle, *The Compton Executioners*, *supra* note 166; Kate Cagle, *Whistleblower Testifies Deputy Who Shot Gardena Teen Was "Chasing Ink,"* SPECTRUM NEWS 1 (Aug. 30, 2020, 9:03 AM), <https://spectrumnews1.com/ca/la-west/public-safety/2020/08/30/whistleblower-testifies-deputy-who-shot-gardena-teen-was--chasing-ink-> [<https://perma.cc/PTZ4-X7CB>].

“George Floyd and Andres Guardado are sobering reminders of the critical need for transparency and accountability in law enforcement,” said Supervisor Mark Ridley-Thomas. “Along with robust and independent oversight of the Sheriff’s Department, body-worn cameras are essential for ensuring constitutional policing and for building trust in the communities that our deputies are sworn to protect and serve.” “Body-worn cameras are an important tool for transparency and I have been advocating to get them to our Sheriff’s deputies since Sheriff Jim McDonnell was in office,” said Supervisor Janice Hahn. “The videos these cameras capture will give us a clearer understanding of what actually happens in the interactions between our deputies and members of the public.”<sup>168</sup>

Small cities and counties across the U.S. followed suit, sometimes raising taxes to do so. To take one of many hundreds of examples, after a small county in Washington passed a new sales tax (a regressive tax borne more significantly by poor people) to fund body cameras for its cops in 2022, the local newspaper celebrated the expenditure of millions of dollars by multiple police departments as part of “needed reforms.”<sup>169</sup> In June 2023, as I was preparing to finalize this article, a small town in North Carolina announced—seeking “accountability” after an “in-custody death”—a new contract for body cameras that would be the town’s single largest purchase of equipment across all of its municipal departments.<sup>170</sup>

Soon, these costs started to balloon for another reason. Across the U.S., police unions used body cameras as an excuse to successfully negotiate *pay increases* of thousands of dollars per officer, supposedly because of the extra work, training, and “loss of privacy” that body cameras as an “accountability” tool required of police officers.<sup>171</sup>

The framing of body cameras has been a successful product marketing campaign by almost any measure. Several months after the shooting of Michael Brown and the subsequent marketing onslaught, 90% of Democrats supported “more body cameras on police,” and they were joined by 79% of Republicans.<sup>172</sup> In the wake of the 2023 murder of Tyre Nichols, New York City Mayor Eric Adams went on national television to explain his own decision to resurrect a violent police unit similar to the Scorpion Unit that killed Nichols in Memphis. He pointed to that fact that the NYC unit was trained to “keep your body cameras on,”<sup>173</sup> and he used Nichols’ murder to celebrate body cameras because “it was the body cameras . . . that allowed us to get the transparency that

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<sup>168</sup> Press Release, L.A. Cnty. Exec. Off. Bd., *supra* note 165.

<sup>169</sup> *In Our View: Police Body Cameras Part of Needed Reforms*, THE COLUMBIAN (Feb. 3, 2023, 6:03 AM), <https://www.columbian.com/news/2023/feb/03/in-our-view-police-body-cameras-part-of-needed-reforms/> [<https://perma.cc/2F3P-R5H3>].

<sup>170</sup> Joel Burgess, *A Year After This WNC Man’s in-Custody Death, a Town Makes Its Biggest Purchase for Police*, ASHEVILLE CITIZEN TIMES (June 12, 2023, 5:05 AM), <https://www.citizen-times.com/story/news/2023/06/12/1-yr-after-wnc-mans-in-custody-death-town-makes-biggest-purchase/70307540007/> [<https://perma.cc/Z8VV-L75L>].

<sup>171</sup> Shaila Dewan, *Think the Police Should Wear Body Cameras? That Will Cost Taxpayers Extra*, N.Y. TIMES (Aug. 20, 2023), <https://www.nytimes.com/2023/08/20/us/police-body-cameras-pay.html> [<https://perma.cc/66JV-EK5X>].

<sup>172</sup> PEW RSCH. CTR., SHARP RACIAL DIVISIONS IN REACTIONS TO BROWN, GARNER DECISIONS 4 (2014), <https://www.pewresearch.org/politics/2014/12/08/sharp-racial-divisions-in-reactions-to-brown-garner-decisions/> [<https://perma.cc/T8XT-9U58>].

<sup>173</sup> *Transcript: Mayor Eric Adams Appears Live on CNN’s “CNN This Morning,”* NYC.GOV (Jan. 30, 2023), <http://www.nyc.gov/office-of-the-mayor/news/078-23/transcript-mayor-eric-adams-appears-live-cnn-s-cnn-this-morning-> [<https://perma.cc/3UXT-MWMD>].

we needed.”<sup>174</sup> In this way, the mere *existence* of the body camera technology was now used by politicians as an excuse to continue engaging in violent, discriminatory policies that had previously been protested. Not only had body cameras distracted the public from conversations about actual solutions to police violence, but body cameras had now *themselves become the excuse for resurrecting more of the brutal policies that led to the public outcry in the first place, and for paying police officers more to enforce them.* The dots had all been connected, the circle completed.

***b. State Violence Is Enabled by “Experts” with Fancy Degrees***

*Of course, these liberals were not, as I was, forever being found by the police in the “wrong” neighborhood, and so could not have had first-hand knowledge of how gleefully a policeman translates his orders from above. But they had no right not to know that; if they did not know that, they knew nothing and had no right to speak as though they were responsible actors in their society; for their complicity with the patriots of that hour meant that the policeman was acting on their orders, too.*

— James Baldwin<sup>175</sup>

*The white conservatives aren't friends of the Negro either, but they at least don't try to hide it. They are like wolves; they show their teeth in a snarl that keeps the Negro always aware of where he stands with them. But the white liberals are foxes, who also show their teeth to the Negro but pretend that they are smiling. The white liberals are more dangerous than the conservatives; they lure the Negro, and as the Negro runs from the growling wolf, he flees into the open jaws of the “smiling” fox.*

— Malcolm X<sup>176</sup>

*If you were walking down the street and a man had a gun on another man – let’s say both of them were white – and you had to help somebody, whom would you help? It’s obvious to me that if I were walking down the street, and a man had a gun on another man, and I was going to help, I’d help the man who didn’t have the gun, if the man who had the gun was just pulling the gun on the other man for no apparent reason – if he was just going to rob him or shoot him because he didn’t like him. The only way I could help is either to get a gun and shoot the man with the gun, or take the gun away from him – join the fellow who doesn’t have a gun and both of us gang up on the man with the gun. But white liberals never do that. When the man has the gun, they walk around him and they come to the victim, and they say “Let me help you,” and what they mean is “help you adjust to the situation with the man who has the gun on you.”*

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<sup>174</sup> *Id.* Contrary to Adams’ assertions, it was not the body cameras that provided the most revealing angles of the Nichols murder. See Rick Rojas & Jesus Jiménez, *As Officers Beat Tyre Nichols, A Crime-Fighting Camera Watched Over Them*, N.Y. TIMES (Feb. 1, 2023), <https://www.nytimes.com/2023/02/01/us/skycop-camera-tyre-nichols-memphis.html> [https://perma.cc/HV9G-BYEL] (explaining how a Memphis SkyCop surveillance camera installed on a nearby utility pole captured “an unobstructed bird’s-eye view” of officers beating Tyre Nichols while the officer’s body cameras “were often jostled, pointed away, or dark.”).

<sup>175</sup> James Baldwin, *No Name in the Street*, in JAMES BALWDIN: COLLECTED ESSAYS 373 (Toni Morrison ed., 1998).

<sup>176</sup> Malcolm X, *God’s Judgement of White America* (Dec. 4, 1963), [https://www.malcolm-x.org/speeches/spc\\_120463.htm](https://www.malcolm-x.org/speeches/spc_120463.htm) [https://perma.cc/T4T3-FS7Y].



- Kwame Ture (formerly known as Stokely Carmichael)<sup>177</sup>

*[O]ver the past few years I have been gravely disappointed with the white moderate. I have almost reached the regrettable conclusion that the Negro's great stumbling block in his stride toward freedom is not the White Citizen's Council-er or the Ku Klux Klanner, but the white moderate . . . . Shallow understanding from people of good will is more frustrating than absolute misunderstanding from people of ill will. Lukewarm acceptance is much more bewildering than outright rejection.*

— Martin Luther King, Jr.<sup>178</sup>

*I'll believe in Liberals' aid for us  
When I see a white man load a Black man's gun.*

— Maya Angelou<sup>179</sup>

*[I]f you believed something different, you wouldn't be sitting where you're sitting.*

— Noam Chomsky<sup>180</sup>

The success of this political strategy was aided by academic “experts” and “reform advocates.” A key component to getting public buy-in for expansion of the punishment bureaucracy is creating the sense that the system is seeking to make itself better by<sup>181</sup> getting so-called academic “experts” to vouch for and validate reforms.<sup>182</sup> In this way, the expansion of the punishment bureaucracy is not dissimilar to the metastasizing of what President Eisenhower labeled the “military industrial complex.”<sup>183</sup> In that “foreign policy” context, with trillions of dollars at stake, there is a vast network of think tanks, revolving doors, academic institutions, conferences, panels, pundits, editorial boards, contractors, and consultants who created an ideological ecosystem for the proliferation of perpetual armament. A couple of examples in the body camera context will illustrate the point.

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<sup>177</sup> Kwame Ture, *Black Power*, in THE DIALECTICS OF LIBERATION (David Cooper ed., Verso 1995).

<sup>178</sup> Martin Luther King Jr., Letter From Birmingham Jail (Apr. 16, 1963), [https://www.africa.upenn.edu/Articles\\_Gen/Letter\\_Birmingham.html](https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html) [https://perma.cc/FZZ7-CHCC].

<sup>179</sup> Maya Angelou, *On Working White Liberals*, in JUST GIVE ME A COOL DRINK OF WATER ‘FORE I DIE (1971).

<sup>180</sup> Bypass Mainstream Media, *Noam Chomsky Stumps Andrew Marr*, YOUTUBE (Aug. 30, 2016), <https://www.youtube.com/watch?v=ILcpcytUnWU> [https://perma.cc/VF4J-KED7].

<sup>181</sup> Alec Karakatsanis, *How the Media Enables Violent Bureaucracy: Part 3*, ALEC’S COPAGANDA NEWSL. (Feb. 6, 2023), <https://equalityalec.substack.com/p/how-the-media-enables-violent-bureaucracy-bc9> [https://perma.cc/DM8S-HE76].

<sup>182</sup> Alec Karakatsanis, *A Warning to Journalists About Elite Academia*, ALEC’S COPAGANDA NEWSL. (Nov. 3, 2022), <https://equalityalec.substack.com/p/a-warning-to-journalists-about-elite> [https://perma.cc/W6B7-JS7H].

<sup>183</sup> Dwight D. Eisenhower, Farewell Address 15 (Jan. 17, 1961), <https://www.eisenhowerlibrary.gov/sites/default/files/research/online-documents/farewell-address/reading-copy.pdf> [https://perma.cc/SS65-6KMN].

One representative, if egregious, example is the Policing Project, a non-profit organization based at NYU Law School.<sup>184</sup> The Policing Project claims to tackle the issue of “policing accountability.” Indeed, as of May 2024, the word “accountability” appeared 8 times in its five-paragraph mission statement.<sup>185</sup> As local organizers in Los Angeles uncovered, the organization’s leader, Professor Barry Friedman, was hired by the LAPD in 2017 to help the department roll out its body camera program and justify the program to a skeptical local community.<sup>186</sup> People like Friedman, who come with the veneer of expertise inherent in being a self-styled progressive law professor who cares about police violence,<sup>187</sup> are vital to selling corporate and government surveillance practices that might otherwise generate alarm. Friedman became prominent in his field by working with police departments to help implement various bureaucracy-increasing “reforms,” and through his academic writing that laid the intellectual foundations for many of these lucrative endeavors.<sup>188</sup> Four years after Friedman’s validation of the project, LAPD paid Taser/Axon \$36 million.<sup>189</sup>

But unbeknownst to many people in the Los Angeles community and students at NYU, numerous for-profit police surveillance companies had *also been funding Friedman’s Policing Project*.<sup>190</sup> One such company, ShotSpotter, had been touting questionable research from the Policing Project to inoculate itself from criticism by community members after its technology led to the police shooting of 13-year-old Adam Toledo in Chicago.<sup>191</sup> To make matters worse, Friedman was even placed on an Axon Ethics Board, and the NYU-based non-profit agreed to provide staff and in-kind resources to Axon’s Ethics Board.<sup>192</sup> When these facts were publicized, instead of engaging in an accountability process transparently, the Policing Project quietly

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<sup>184</sup> *Home*, POLICING PROJECT, <https://www.policingproject.org/> [<https://perma.cc/X7VQ-WGFK>] (last visited Aug. 2, 2023).

<sup>185</sup> *Our Mission*, POLICING PROJECT, <https://www.policingproject.org/our-mission> [<https://perma.cc/575E-ZMD6>] (last visited May 30, 2024).

<sup>186</sup> Stop LAPD Spying, *supra* note 92.

<sup>187</sup> See, e.g., Barry Friedman, NYU LAW: FACULTY, <https://its.law.nyu.edu/facultyprofiles/index.cfm?fuseaction=profile.overview&personid=19931> [<https://perma.cc/N2WY-BTQP>] (last visited Aug. 2, 2023) (“Friedman . . . has had a long involvement with social change issues.”).

<sup>188</sup> Brandon del Pozo, Burlington Vermont’s Chief of Police and former NYPD commander, provided a blurb for Friedman’s book *Unwarranted: Policing Without Permission*, calling it “reform-minded” and stating it should be a companion “for any citizen who wants to move beyond tabloid news and the protest line and join the nation’s police leaders in the evolution of the public profession most present in people’s everyday lives.” *Unwarranted: Policing Without Permission Hardcover*, AMAZON, <https://www.amazon.com/Unwarranted-Policing-Permission-Barry-Friedman/dp/0374280452> [<https://perma.cc/Z4CV-G3QF>] (last visited Aug. 2, 2023).

<sup>189</sup> Stop LAPD Spying, *supra* note 92.

<sup>190</sup> *Id.* Funders included ShotSpotter, Axon, Mark43, and more. Ruqaiyah Zarook, *The NYU Policing Project’s Dirty Money Dilemma*, THE NATION (June 27, 2022), <https://www.thenation.com/article/politics/nyu-policing-project-funding/> [<https://perma.cc/MZ37-VWSY>].

<sup>191</sup> Stop LAPD Spying, *supra* note 92; Todd Feathers, *Police Are Telling ShotSpotter to Alter Evidence from Gunshot-Detecting AI*, VICE: MOTHERBOARD (July 26, 2021, 9:00 AM), <https://www.vice.com/en/article/qj8xbq/police-are-telling-shotspotter-to-alter-evidence-from-gunshot-detecting-ai> [<https://perma.cc/DM3K-CC7R>]. Like Taser’s rebrand to Axon, ShotSpotter changed its name to SoundThinking. Press Release, SoundThinking, ShotSpotter Changes Corporate Name to SoundThinking and Launches SafetySmart Platform for Safer Neighborhoods (Apr. 10, 2023), <https://www.soundthinking.com/press-releases/shotspotter-changes-corporate-name-to-soundthinking-and-launches-safetysmart-platform-for-safer-neighborhoods/> [<https://perma.cc/7Q9K-Y8UT>].

<sup>192</sup> Stop LAPD Spying, *supra* note 92; *Axon AI Ethics Board*, POLICING PROJECT, <https://www.policingproject.org/axon-ethics-board> [<https://perma.cc/C249-DGNP>] (last visited Aug. 3, 2023).

removed the public acknowledgment of some of the companies as donors on its website, and Friedman left his board role without fanfare.<sup>193</sup> NYU School of Law ignored the scandal.

A group of people who sounded the alarm about Taser/Axon's work with the Policing Project released a statement after they were targeted by the Los Angeles Police Department.<sup>194</sup> After discussing Taser/Axon's relationship with Friedman and prior to alleging a particularly egregious instance of ethical misconduct by Friedman's NYU-based organization, the group contextualized the symbiotic relationship between NYU and the broader police surveillance industry:

Friedman's response to the student demands is even more misleading when it comes to ShotSpotter, a Policing Project funder that sells gunshot-detection microphones responsible for police killings of numerous people, including 13-year-old Adam Toledo in 2021. In the years that ShotSpotter has funded Policing Project, the company also vied to become a centralized platform for data-driven policing, supplementing its microphones with predictive analytics, forensic services, and the newest reform tactic: "patrol management." This is what Axon, ShotSpotter, Palantir, Motorola, Cisco, Geolitica, Accenture, Microsoft, Amazon, Mark 43, and others are today all competing to do: lock themselves in as the centralized data platform for police agencies, linking cameras to microphones to predictive algorithms and beyond. And market dominance is what association with NYU's prestige can help these companies secure.<sup>195</sup>

A second example relates to non-profit advocacy organizations. Their imprimatur as people who fight for civil rights, racial justice, and privacy is important for the mythology of the body camera in ways similar to the sign-off by academic "experts" like Friedman.

Few deserve more credit for cementing the idea that body cameras are a "win-win" for both the public and police than Jay Stanley, a prominent spokesperson from ACLU on body camera issues. Stanley, likely because of his positive views about body cameras and job at a civil liberties organization, frequently appeared in mainstream media articles about body cameras. He wrote his own essays and blog posts calling body cameras a "win-win,"<sup>196</sup> including on an official ACLU blog, where Stanley asserted that body cameras are "a win for all" because of their "strong benefit in promoting police accountability."<sup>197</sup> As with Friedman's work laying the "expert" foundation for why well-meaning members of the public should trust that body cameras are a good reform, having a civil liberties advocate in support of body cameras was important for the police and surveillance technology industries.

I do not impute any corrupt motives or ill intent to Stanley. In fact, I also had vaguely positive views about body cameras and other similar policies early in my career before I had much experience with them. When confronted with an injustice, it is tempting to want to support *anything* that *might* help. Moreover, a lot of people are realistically cynical about the chances of more significant change in the role of police under current political conditions and therefore conclude that they should support any realistic, even if minor, reforms. It was only after many

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<sup>193</sup> See *Axon AI Ethics Board*, *supra* note 192.

<sup>194</sup> Stop LAPD Spying, *supra* note 92.

<sup>195</sup> *Id.*

<sup>196</sup> See Stanley ACLU Report, *supra* note 151.

<sup>197</sup> See Stanley ACLU Report 2.0, *supra* note 151.

years of seeing exactly how many supposed “reforms” were co-opted to increase the size of the punishment bureaucracy—and doing the historical research to understand how this has been happening for generations—that I developed an analysis that helped me determine which changes to support and which to oppose.<sup>198</sup> But regardless of Stanley’s intentions, we must reckon with the *institutional* role that such individuals can play when they speak in public.

The key point here, as Noam Chomsky has explained so forcefully,<sup>199</sup> is that Stanley’s voice was elevated in the corporate-owned news media *precisely because of his utility to the lucrative reform narrative* as a civil liberties advocate. It is worth thinking deeply about the processes by which Stanley became so prominently featured in the mainstream news media. Here is Stanley in the New York Times:

“Mr. Stanley says that all parties stand to benefit — the public is protected from police misconduct, and officers are protected from bogus complaints. ‘There are many police officers who’ve had a cloud fall over them because of an unfounded accusation of abuse,’ he said. ‘Now police officers won’t have to worry so much about that kind of thing.’”<sup>200</sup>

Here he is again in the New York Times:

“Jay Stanley, a policy analyst with the speech, privacy and technology project at the American Civil Liberties Union, was enthusiastic about the prospect of body cameras on law officers. ‘We don’t want the government watching the people when there is no reason, but we do support the people watching the government,’ he said. ‘There are concerns about police editing or deleting files, but overall the cost and benefits make it worthwhile.’”<sup>201</sup>

Here he is in Vox:

“The cameras ‘have the potential to be a win-win situation,’ said Jay Stanley, a senior policy analyst at the American Civil Liberties Union (ACLU). ‘A lot of departments are finding that for every time they’re used to record an abusive officer, there are other times where they save an officer from a false accusation of abuse or unprofessional behavior.’ Stanley argued the devices could pay for themselves. For one, the recordings could be used to fight off false charges that could lead to costly

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<sup>198</sup> Certainly among the people who support various police reforms, there are a wide range of motivations, ranging from good faith desire to see less police violence to professional ambition and financial self-interest. Sometimes examining those motivations can be helpful in predicting the behavior of certain actors and in understanding how to approach them. For example, different advocacy strategies may need to be adopted for well-intentioned people who simply need more exposure to how these bureaucracies function as opposed to self-interested people whose career prospects or financial livelihood depends on taking certain positions in support of certain reforms.

<sup>199</sup> Bypass Mainstream Media, *supra* note 180 (“I’m sure you believe everything you’re saying. But what I’m saying is if you believed something different, you wouldn’t be sitting where you’re sitting”).

<sup>200</sup> Randall Stross, *Wearing a Badge, and a Video Camera*, N.Y. TIMES (Apr. 6, 2013), <https://www.nytimes.com/2013/04/07/business/wearable-video-cameras-for-police-officers.html> [<https://perma.cc/H4LA-JK4E>].

<sup>201</sup> Hardy, *supra* note 52.

lawsuits or court settlements. The cameras could also encourage police, who would know their actions are being recorded, to behave better.”<sup>202</sup>

After quoting Stanley as a civil rights and civil liberties advocate, most news organizations found it unnecessary to look for a critical perspective. Stanley’s voice was often the avatar for what every civil liberties “expert” who genuinely cares about police violence and state power thinks, and with the promise that the body camera would protect from police violence without overly damaging civil liberties, it is no wonder that such huge percentages of the public supported body cameras despite knowing very little about them.

This is an extraordinary turn of events. What had started as a billion-dollar “opportunity” for industry and a massive power grab by police and prosecutors beyond what even their allies in government could provide them for years, turned into a reform supported by civil liberties advocates from the most famous civil liberties organization in the U.S. saying that, with the technology, “the public is protected from police misconduct”; overall the “costs and benefits” make it worthwhile; and that the technology is a “win-win.”<sup>203</sup>

So, we are left with uncomfortable questions: How did it come to be that systemic critique of body cameras—and deeper questions about the functions of U.S. policing more generally as a tool to preserve inequality—came to be almost completely ignored in public policy discourse? How was the public imagination so co-opted that the very thing police and the surveillance industry had wanted to increase their own power came to be seen as one of the only conceivable responses to their abuse of that power? How did this profound distortion in public narrative happen? This turn of events was not any one person’s diabolical master plan. It is the organic result of the careful cultivation of the conditions under which *many different kinds of influential people and institutions* have an incentive to grow government bureaucracy and corporate profit. The expansion of body cameras could not have happened without a symbiotic partnership between ostensible “progressive reformers” and punishment bureaucrats. Together they frame police violence against disproportionately Black, immigrant, and poor communities as *the very excuse to give police more money, technology, and power* that would be used, in turn, to increase the repression of those same communities.

### ***c. The News Media and the Copaganda of Body Cameras as “Reform”***

*For some reason they were nicknamed memory holes. . . . As soon as Winston had dealt with each of the messages, he clipped his . . . corrections to the appropriate copy of “The Times” and pushed them into the pneumatic tube. Then, with a movement which was as nearly as possible unconscious, he crumpled up the original message and any notes that he himself had made, and dropped them into the memory hole to be devoured by the flames.*

*What happened in the unseen labyrinth . . . he did not know in detail, but he did know in general terms. As soon as all the corrections which happened to be necessary in any particular number of “The Times” had been assembled and collated, that number would be reprinted, the original copy destroyed, and the corrected copy placed on the files in its stead. This process of continuous alteration was applied not only to newspapers, but to books, periodicals, pamphlets,*

<sup>202</sup> German Lopez, *Police Body Cameras, Explained*, VOX (Aug. 22, 2016, 3:05 PM), <https://www.vox.com/2014/9/17/6113045/police-worn-body-cameras-explained> [https://perma.cc/N4YY-AV75].

<sup>203</sup> Stross, *supra* note 200; *Policing Project Conference Weighs the Costs and Benefits of Body Camera*, *supra* note 92; sources cited *supra* note 151.

*posters, leaflets, films, sound-tracks, cartoons, photographs—to every kind of literature or documentation which might conceivably hold any political or ideological significance. Day by day and almost minute by minute the past was brought up to date.*

— George Orwell<sup>204</sup>

It is remarkable the extent to which the idea that body cameras are a “police reform” pervades years of public statements by officials about body cameras in the mainstream U.S. media since 2014.<sup>205</sup> So powerful is this story that the original reality—that *the police and large corporations were actually the ones who wanted body cameras for their own benefit*—was essentially erased from mainstream public discourse. Body cameras became almost exclusively associated with “accountability” and “transparency” as a no-brainer reform, especially among self-identified progressives concerned with police violence.

To this day, the news media typically portrays body cameras as driven by a good-faith desire for “accountability” and “transparency” as part of the push for “police reform.”<sup>206</sup> So entrenched is this narrative shift that many journalists I spoke to about the issue before writing this article and many students I’ve taught in the last few years have stated the assumption that body cameras were primarily *invented as a tool to hold police accountable*.

Take a look at how the issue is framed in this investigation from PBS shortly after the murder of George Floyd.<sup>207</sup> I chose this example from dozens I reviewed because it is one of the reports *most skeptical* of body cameras. It is not just one of the hundreds of media pieces one can read by searching news databases that mention body cameras as an accountability reform in passing. The PBS investigation is meant to be an in-depth *critical* examination of body cameras. After misleadingly suggesting that the push for body cameras came as part of what the article uncritically referred to as “police reform,” the article noted that the push was bipartisan, widespread, and led by “both advocates and lawmakers.”<sup>208</sup> The news story framed the issue as follows:

“For nearly two decades, law enforcement agencies have explored and implemented the use of body cameras *as a tool to help hold officers accountable and make departments more transparent* — a way to help rebuild trust with their communities and reduce citizen complaints. Video footage can also enable departments to collect evidence during investigations or better defend their actions during a particular encounter.

And reform advocates have long called for all officers to be equipped with the technology *that could help document excessive use of force and its disproportionate effect on communities of color.*”<sup>209</sup>

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<sup>204</sup> GEORGE ORWELL, 1984 190 (Clarendon Press ed., 1984).

<sup>205</sup> See *supra* Part VI(a-b).

<sup>206</sup> See *supra* Part VI(a-b).

<sup>207</sup> Norwood, *supra* note 69.

<sup>208</sup> *Id.*

<sup>209</sup> *Id.* (emphasis added).

The PBS report further quoted an expert who claimed: “Early interest in body cameras stemmed from concern about excessive use of force and how race factored into police encounters . . . .”<sup>210</sup>

Notice a few things. First, the expert is wrong about the origins of the “early interest” in body cameras. We have already seen that “early interest” in cameras was driven by the companies convincing police and prosecutors of the benefits of the cameras to them, not out of concern for police violence and racial justice.

More importantly, the PBS article shows that even the most careful news media has followed the lead of punishment bureaucrats in suggesting to the public that the push for cameras is primarily about, and *has always been about*, “accountability” and “transparency.”<sup>211</sup> PBS frames the issue as a no-brainer, telling readers that cameras emerged historically “as a tool to help hold officers accountable and make departments more transparent.”<sup>212</sup> As far as PBS is concerned, people who are worried about police violence are entirely covered by the perspective of “reform advocates” who *want* body cameras. Reading this article, one would have no idea that there are advocates for reducing police violence who *oppose* body cameras, let alone that those people have strong arguments for why they oppose them.<sup>213</sup>

The focus on “accountability” and “transparency” is representative of how even the most rigorous discussions in mainstream news at the height of 2020’s civil rights reckoning scrubbed the narrative of body cameras to exclude the most trenchant critiques of the technology while at the same time erasing the voices of people who were opposed to body cameras from the beginning. Instead, “reform advocates” are all said to be calling for cameras *because of their supposed reform benefits*, even if the research shows that those benefits have not materialized.<sup>214</sup> This is a remarkable inversion of reality, and yet it has become conventional wisdom.

It wasn’t just PBS. Here’s a key explainer put out by Reuters: “Civil rights advocates say the timely release of body-worn camera footage, balanced with privacy considerations, is key to holding law enforcement officers accountable.”<sup>215</sup> The universe of “advocates” who care about police violence are presented to the public as believing that body cameras are *essential* to holding cops “accountable.”

Vox journalists (especially a pro-police reporter who now writes for the New York Times whose unethical work I have critiqued elsewhere)<sup>216</sup> wrote multiple articles about why body cameras were a vital tool of “police reform” after Michael Brown’s death.<sup>217</sup> These articles made confident pronouncements like “Body cameras are *meant to hold police accountable*” and “The

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<sup>210</sup> *Id.* (quoting Andrea Headley, assistant professor of public affairs with The Ohio State University).

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> Despite the lack of coverage from mainstream media, critics of body cameras have existed since the beginning. See, e.g., *Statement: on Cops and Cameras, WE CHARGE GENOCIDE* (Dec. 5, 2014), <http://wechargegenocide.org/tag/eric-garner/> [<https://perma.cc/2SG3-NYYE>] (stating “we are concerned that turning the cops into walking cameras is nothing but an expansion of the surveillance state – the fruit of a poisonous tree” and “[a]ll reforms that strengthen the prison industrial complex must be strongly opposed. Body cameras will not halt extrajudicial executions by police officers, only providing us more horrific footage to view. The only solution to oppressive policing is to abolish the institution.”).

<sup>214</sup> See *supra* Part VI(a-b).

<sup>215</sup> Ulmer & Harte, *supra* note 158.

<sup>216</sup> Alec Karakatsanis, *How the New York Times Uses “Experts,”* ALEC’S COPAGANDA NEWSL. (July 13, 2022), <https://equalityalec.substack.com/p/how-the-new-york-times-uses-experts> [<https://perma.cc/7PV9-6SBW>].

<sup>217</sup> German Lopez, *Michael Brown’s Family Said Police Should Adopt Body Cameras. They’re Right.*, VOX (Nov. 24, 2014, 10:50 PM), <https://www.vox.com/2014/8/16/6023481/michael-mike-brown-ferguson-body-cameras> [<https://perma.cc/3C6Y-3DML>].

*main argument for body cameras* is that they could hold police accountable for their actions.”<sup>218</sup> These assertions about the intent behind body cameras and their “main” purpose are remarkable for the lack of resemblance they bear to what any of the people involved in developing body cameras—or any of the people originally opposed to them—said about them for years.

Across the country, the post-Ferguson narrative has been uniform across the most prominent news outlets. When Rahm Emanuel announced that all 7,000 patrol officers in Chicago would now have body cameras as a response to the police lies about the murder of Laquan MacDonald, the Associated Press story sent to newsrooms across the country framed the technology as a reform *made in response* to the child’s murder.<sup>219</sup> The Associated Press—one of the most prestigious and far-reaching news organizations in the world—simply repeated the Mayor’s claims about accountability, trust, and transparency, quoting the Mayor without any additional reporting or context: “the cameras are ‘an essential tool’ in the city’s efforts to rebuild trust between police and the community. He says they improve transparency and help in investigations and resolving disputes.”<sup>220</sup> This is astonishing because the same mayor had conspired to hide the video footage of the teenager’s murder until after his re-election.<sup>221</sup>

By 2023, it was standard in mainstream news stories to have completely re-written the history of body cameras. Remember the old days when police needed to turn to private sources of funding like Steven Spielberg and conservative billionaires to get the cash they needed for body cameras?<sup>222</sup> Well, by January 2023, the Los Angeles Times referred to *another* past secretive effort among wealthy people in Los Angeles to donate \$2 million to the LAPD Foundation to privately fund body cameras as a “progressive cause.”<sup>223</sup> The only explanation offered by the Los Angeles Times was that the body camera program “provides greater transparency around police actions, including shootings.”<sup>224</sup> The public conversation about an intrusive tool of state power had been run through the memory hole.

One of the most effective forms of manufacturing public conformity of opinion about a particular government policy that increases bureaucratic power is to make it seem like even the “advocates” who care about things like government overreach don’t see a problem with it. This is an industry-wide adoption of the same general principle that any politician passing even the most regressive policy understands: it helps to surround yourself at the signing of the bill with members of marginalized groups or whichever members of the respected non-profit world who can be co-opted into attending the ceremony or providing a quote to the media. This is how the post-2014 media treated the body camera.

Similarly, it is nearly impossible to find a corporate-owned media story about body cameras after 2014 in which the journalist gives space to actual opponents of body cameras. Given how the range of public opinions is reported in these articles, a consumer of these stories may thus

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<sup>218</sup> Lopez, *supra* note 202 (emphasis added).

<sup>219</sup> Mayor: All Chicago Patrol Officers Now Have Body Cameras, ASSOC. PRESS (Dec. 11, 2017, 7:26 AM), <https://apnews.com/article/588d11bf06fb43f29b75f7a5d96d88a2> [<https://perma.cc/7NCD-EFGL>].

<sup>220</sup> *Id.*

<sup>221</sup> See Ed Pilkington, *Laquan McDonald Shooting Puts Rahm Emanuel in Battle Over the Truth*, THE GUARDIAN (Dec. 3, 2015, 8:29 AM), <https://www.theguardian.com/us-news/2015/dec/03/laquan-mcdonald-shooting-rahm-emanuel-chicago-political-battle> [<https://perma.cc/JE8B-R7YD>].

<sup>222</sup> See Rubin, *supra* note 60.

<sup>223</sup> Kevin Rector & Jany Libor, *The Foundation: Inside the LAPD’s Secretive, Multimillion-Dollar Private Funding Arm*, L.A. TIMES (Jan. 4, 2023), <https://www.latimes.com/california/story/2023-01-04/lapd-police-foundation-private-funding-arm> [<https://perma.cc/84S4-A9S9>].

<sup>224</sup> *Id.*



have difficulty even conceiving of any objections to body cameras. Even “advocates” for “civil liberties” and racial justice are said to support body cameras because they hold police “accountable” and make them “transparent.”<sup>225</sup> And if a more fundamental critique ever reached the ears of these news consumers, despite the virtual major media blackout, a news consumer previously bombarded with these messages would be more likely to dismiss such critique as a radical, fringe view not even held by “reform advocates” themselves.

In this way, the well-meaning public’s imagination to conceive of a different world becomes duller. Like a rock on the shore, the shared capacity to imagine something much different becomes more and more dull with each passing wave. After a while, people who care about something like police violence and government overreach can only imagine solutions to those problems that make them worse.

**VI. THE EVIDENCE ABOUT BODY CAMERAS DOES NOT SUPPORT THE “ACCOUNTABILITY” AND “TRANSPARENCY” NARRATIVE, BUT THAT DOESN’T MATTER: AN ALLEGORY FOR OUR TIME**

*The facts, if not true, were well invented; the arguments, if not logical, were seductive.*

— Anthony Trollope<sup>226</sup>

As with the war on drugs,<sup>227</sup> long prison sentences,<sup>228</sup> the expansion of probation and parole,<sup>229</sup> electronic monitoring,<sup>230</sup> pretrial detention,<sup>231</sup> and virtually any other aspect of the punishment bureaucracy recently the subject of “reform,” the empirical evidence supporting body cameras as a “reform” does not match the prevailing public narrative. It’s worth quoting directly from the Department of Justice’s seminal report on body cameras in 2022:

Research does not necessarily support the effectiveness of body-worn cameras in achieving those desired outcomes. A comprehensive review of 70 studies of body-worn cameras use found that the larger body of research on body-worn cameras showed no consistent or no statistically significant effects. This meta-analysis was rated by CrimeSolutions and resulted in a No Effects rating for the impact of body-

<sup>225</sup> See *supra* Part VI(a-b).

<sup>226</sup> ANTHONY TROLLOPE, *THE WAY WE LIVE NOW* 12 (Oxford Univ. Press 2016) (1875).

<sup>227</sup> See Karakatsanis, *supra* note 3, at 905.

<sup>228</sup> Nicholas Turner, *Long Prison Sentences Are Cruel and Ineffective: Here’s the Proof*, BOS. GLOBE (Feb. 13, 2023, 9:23 AM), <https://www.bostonglobe.com/2023/02/13/opinion/long-prison-sentences-are-cruel-ineffective-heres-proof/> [<https://perma.cc/AY9D-C9YJ>].

<sup>229</sup> See generally ACLU & HUM. RTS. WATCH, *REVOKED: HOW PROBATION AND PAROLE FEED MASS INCARCERATION IN THE UNITED STATES* (2020), <https://www.hrw.org/report/2020/07/31/revoked/how-probation-and-parole-feed-mass-incarceration-united-states> [<https://perma.cc/5TTB-KHVV>] (finding probation and parole drive people who have committed crimes back to jail rather than connect them with services and resources).

<sup>230</sup> See generally JAMES KILGORE, *UNDERSTANDING E-CARCERATION: ELECTRONIC MONITORING, THE SURVEILLANCE STATE, AND THE FUTURE OF MASS INCARCERATION* (2022) (finding technological e-carceration reforms like ankle monitors and facial recognition software deprive people of their liberty while leading to both further punishment and sale of data to Big Tech).

<sup>231</sup> Laura Bennett et al., *Bail Reform: What to Know and Where to Go for More*, CTR. FOR JUST JOURNALISM, <https://justjournalism.org/page/bail-reform> [<https://perma.cc/9ARD-U8VE>] (last visited July 31, 2023).

worn cameras on use of force, assaults on officers, officer-initiated calls for service, arrests, traffic stops and tickets, and field interviews (i.e., stop and frisk).<sup>232</sup>

But to say that some of the touted benefits have no consistent evidence to support them—for example, reduction in police murders, racial disparities, overall violence, prosecution of violent cops, use of force, civil liability, public oversight over police, etc.—does not mean that power of the technology is *insignificant to police*. The promises most important to the policing bureaucracy have been well kept by the body camera.<sup>233</sup>

No one disputes that body cameras have been extraordinarily effective in making the mass arrest and prosecution of poor people for low-level offenses more efficient. In 2016, a study of prosecutors across the U.S. was released by George Mason University. The study found that 8.3% of offices in jurisdictions with body cameras had used the footage to prosecute a police officer, while 92.6% had used it to prosecute private individuals.<sup>234</sup> As the post-2014 quotes discussed earlier reveal, the same is true with surveillance and the role the cameras play in helping police procure access to powerful artificial intelligence software.<sup>235</sup> That business is booming, and it has given police greater technological capacity than ever.

This is particularly important with the enhanced capacity mobile cameras and facial recognition has given police to surveil and control protests for social change.<sup>236</sup> While domestic policing reform has been marketed as focused on racial justice and greater accountability, the

<sup>232</sup> *Research on Body-Worn Cameras*, *supra* note 69.

<sup>233</sup> This article is not meant to deal with technical policy controversies about who wears cameras and when, what policies surround who controls what is recorded and when, who has access to the footage, when and how footage is edited. Norwood, *supra* note 69. Nor does it discuss the many practical controversies with cameras as “accountability” mechanisms, such as that the technology routinely fails, *see* Gelles, *supra* note 54, and that police often do not turn the cameras on. Wesley Lowery, *Charlotte Officer Did Not Activate Body Camera Until After Keith Scott Had Been Shot*, WASH. POST (Sept. 26, 2016, 2:00 PM), <https://www.washingtonpost.com/news/post-nation/wp/2016/09/26/charlotte-officer-did-not-activate-body-camera-until-after-keith-scott-had-been-shot-2/> [<https://perma.cc/UH5M-EPKX>]; Matthew Feeney, *When Cops Who Kill Leave Their Body Cameras Turned Off*, NEWSWEEK (Aug. 6, 2016, 7:00 AM), <https://www.newsweek.com/when-cops-who-kill-leave-their-body-cameras-turned-486978> [<https://perma.cc/MCC4-UW7X>]; *Body Camera Not Turned On During Georgia Ave. Police-Involved Shooting*, FOX 5: DC (Sept. 26, 2016, 7:25 PM), <https://www.fox5dc.com/news/body-camera-not-turned-on-during-georgia-ave-police-involved-shooting> [<https://perma.cc/HXG2-YZ6P>]; *No Tape, No Testimony: How Courts Can Ensure the Responsible Use of Body Cameras*, ACLU MASS., <https://www.aclum.org/en/no-tape-no-testimony-how-courts-can-ensure-responsible-use-body-cameras#appendix> [<https://perma.cc/7NM4-9AZS>] (last visited Aug. 3, 2023); Matthew Segal, *If Cops Don’t Turn on Their Body Cameras, Courts Should Instruct Juries to Think Twice About Their Testimony*, ACLU NEWS & COMMENT. (Dec. 1, 2016), <https://www.aclu.org/news/criminal-law-reform/if-cops-dont-turn-their-body-cameras-court> [<https://perma.cc/S98H-QQJ4>]. Many places have no rules dictating where, when, and how body-worn cameras have to be used. Ulmer & Harte, *supra* note 158. Access of the public to video footage is highly constrained. *Id.*; Josh Siegel, *Why Police Say Body Cameras Can Help Heal Divide With Public*, THE DAILY SIGNAL (July 18, 2016), <https://www.dailysignal.com/2016/07/18/why-police-say-body-cameras-can-help-heal-divide-with-public/> [<https://perma.cc/TMX4-J2E7>] (“These laws give local law enforcement broad powers to restrict the access to content it controls, including body camera footage, but less freedom to release it.”); *Police Body-Worn Camera Legislation Tracker*, *supra* note 72. Police can review footage before crafting their own statements about what happened. Kaste, *supra* note 102. Finally, police can edit and manipulate the footage and choose which kinds of footage is given to the media in order to push certain stories and suppress others more effectively. *See* La, *supra* note 25; Debolt, *supra* note 28.

<sup>234</sup> LINDA MEROLA ET AL., GEO. MASON UNIV. CTR. FOR EVIDENCE-BASED CRIM. POL’Y, BODY WORN CAMERAS AND THE COURTS: A NATIONAL SURVEY OF STATE PROSECUTORS 5 (2016), <https://bwctta.com/sites/default/files/Files/Resources/BWCPProsecutors.pdf> [<https://perma.cc/2YYH-TV8D>].

<sup>235</sup> *See supra* Part VI (a-c).

<sup>236</sup> *See The Fight to Stop Face Recognition Technology*, *supra* note 132.

policing bureaucracy has been much more overt about the true aims of expanding police technology<sup>237</sup> and the rhetoric of “reform” in the international context.<sup>238</sup> In his seminal history on how the U.S. spearheaded police “reform” across the globe as a tool to buttress state power against socialist, anti-colonial, anti-war, and anti-racist social movements, Stuart Schrader concluded: “If police reformers have understood their task to be refining policing so as to disarm revolutionary exhortations and neutralize radical movements all over the globe, then the purpose of reformism at home becomes clearer.”<sup>239</sup>

Given the almost complete absence of news reporting on the anti-democratic, authoritarian effects of body cameras from news stories that mainly focus on body cameras as a progressive tool of “accountability” and “transparency,” the public debate about the technology in the U.S. has been distorted.

The point here is instead to demonstrate the shift in rhetoric about the technology and to examine what this shift tells us about the concept of “reform” in the context of entrenched bureaucracy and private profiteering that is parasitic on the growth of that bureaucracy. Given the proliferation of evidence that body cameras do not make police less violent or more democratically accountable, the ubiquity of body cameras in political platforms, in non-profit reform discourse, and in the news media as one of the primary “essential” solutions to supposedly address one of the most entrenched social problems in our society represents a stunning achievement in propaganda.<sup>240</sup>

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<sup>237</sup> See, e.g., Mozur & Satariano, *supra* note 131.

<sup>238</sup> SCHRADER, *supra* note 128, at 4-5.

<sup>239</sup> *Id.* at 14.

<sup>240</sup> Chapman, *supra* note 115. A 2019 comprehensive meta-analysis of the research on body cameras demonstrated that the technology had no statistically significant effects on “use of force, assaults on officers, officer-initiated calls for service, arrests, traffic stops and tickets, and field interviews (i.e., stop and frisk).” *Research on Body-Worn Cameras*, *supra* note 69; see also Cynthia Lum et al., *Research on Body-Worn Cameras: What We Know, What We Need to Know*, 18 CRIMINOLOGY & PUB. POL’Y 93, 93 (2019) (“most likely BWCs will not be an easy panacea for improving police performance, accountability, and relationships with citizens.”). A 2017 randomized controlled trial studying 2,200 officers in Washington, DC considered the possibility that body cameras had no effect on officer behavior across any of the variables measured, including use of force. David Yokum et al., *Evaluating the Effects of Police Body-Worn Cameras: A Randomized Control Trial* 18 (Working Paper, Oct. 20, 2017), [https://discover.pbcbgov.org/criminaljustice/BodyWorn%20Camera%20Clearinghouse/TheLabDC\\_MPD\\_BWC\\_Working\\_Paper\\_10.20.17.pdf](https://discover.pbcbgov.org/criminaljustice/BodyWorn%20Camera%20Clearinghouse/TheLabDC_MPD_BWC_Working_Paper_10.20.17.pdf) [<https://perma.cc/KV8T-NXQ5>]. 2016 randomized controlled trials in the US and UK found no consistent effect on use of force. Barak Ariel et al., *Contagious Accountability: A Global Multisite Randomized Controlled Trial on the Effect of Police Body-Worn Cameras on Citizens’ Complaints Against Police*, 44 CRIM. JUST. & BEHAV. 293-316 (2016). There are no published research on the effects of body cameras on racial disparities in policies. Norwood, *supra* note 69. Nor does video evidence of police violence even outperform other forms of evidence. In fact, research shows that people view videos of police violence through the prism of their prior beliefs and that responses to videos of police violence fail to provide the “objective” answers and “definitive proof” for which they are marketed. See generally Roseanna Sommers, *Will Putting Cameras on Police Reduce Polarization?*, 128 YALE L. J. 1150, 1150 (2015) (arguing that “despite the seeming objectivity of the camera, video footage remains susceptible to biased interpretation by observers such as grand jurors.”).

## VII. “REFORM” CAN BE USED TO DISTRACT AND DECEIVE

*For a century and a half the prison had always been offered as its own remedy: the reactivation of the penitentiary techniques as the only means of overcoming their perpetual failure; the realization of the corrective project as the only method of overcoming the impossibility of implementing it.*

— Michel Foucault<sup>241</sup>

*By uncompromisingly reducing poverty to a technical problem, and by promising technical solutions to the sufferings of powerless and oppressed people, the hegemonic problematic of “development” is the principal means through which the question of poverty is de-politicized in the world today. At the same time, by making the intentional blueprints for “development” so highly visible, a “development” project can end up performing extremely sensitive political operations involving the entrenchment and expansion of institutional state power almost invisibly, under cover of a neutral, technical mission to which no one can object.*

— James Ferguson<sup>242</sup>

*Are the proposed reforms primarily technology-focused? If yes, then you should oppose them because:*

- a. It means more money to the police.*
- b. Said technology is more likely to be turned against the public than it is to be used against cops.*
- c. Police violence won’t end through technological advances (no matter what someone is selling you).*

— Mariame Kaba<sup>243</sup>

The public discussion about body cameras was manipulated in a way that shielded how technologies of government control proliferate in our society without genuine public understanding of how and why it happens. This manipulation obfuscates how bureaucracies and private industry profits metastasize, regardless of whether good policy is made through well-informed democratic attempts to match shared values with evidence.

Because the punishment bureaucrats, politicians, and the news media framed body cameras as a “reform” to provide police with the technology to fix their own violence, police were able to avoid the public from asking deeper questions during moments of urgent, intense scrutiny:

- Why are the police patrolling *this* neighborhood for crimes and not *that* one?
- Does our society need armed government agents to deal with a wide range of public health, economic, and social issues?

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<sup>241</sup> FOUCAULT, *supra* note 148, at 268.

<sup>242</sup> JAMES FERGUSON, *THE ANTI-POLITICS MACHINE* 256 (1994).

<sup>243</sup> Mariame Kaba, *Police “Reforms” You Should Always Oppose...*, PRISON CULTURE (Dec. 1, 2014), <https://www.usprisonculture.com/blog/2014/12/01/police-reforms-you-should-always-oppose/> [https://perma.cc/AU33-VYXC].

- Why are police enforcing some crimes against some people and not other crimes against other people? What patterns exist among the crimes that police and prosecutors choose to enforce and the crimes that police and prosecutors choose to ignore?
- How does our society decide which things to make a crime and which harmful things are not treated as crimes?
- Why does every major U.S. police force have a history of illegal violence and corruption for which there has been little accountability even when discovered by authorities?
- Why is police violence in every U.S. city disproportionately targeted at the poorest people, racial minorities, immigrants, and other vulnerable people?
- Why does every U.S. police department have expensive divisions of undercover cops who infiltrate poor neighborhoods looking for drug possession crimes but not university frat houses or board rooms for sexual assault, drugs, or financial crime?
- Why is state surveillance and violence, filmed or not, consistently for over 100 years targeted at progressive social movements seeking greater equality and rarely targeted at larger amounts of right-wing white nationalist violence?
- Why has every police reform attempted in every decade since the 1890s and across every U.S. state failed to make the police a democratically accountable institution?
- Who benefits, and who is most harmed, from the expansion of surveillance technology in the hands of police, prosecutors, and corporate consultants?
- Is spending more on the police bureaucracy the best use of public money when the scientific evidence shows other investments in systems of care are actually what determines safety?
- Is the police bureaucracy genuinely interested in reducing its own violence, or does police violence actually serve certain interests?
- And so on.

Understanding the story of the body camera can help us see how at least some kinds of reform can be trojan horses that distract well-meaning people from pushing for more meaningful changes to the problems they care about. My hope is that by understanding some of the characteristics of these kinds of reforms, as well as how they come to be presented and persuasive to the public, people who care about reducing state violence may learn to better distinguish between things that will result in change and things that will not.<sup>244</sup>

### ***1. Reform Can Be Used to Distract People from Critical Insights and Solutions***

The public discussion of body cameras fits a pattern in the history of U.S. policing. In the wake of historical police violence against marginalized groups, followed by historical police violence against people protesting the original police violence, there are always calls by people who care about violence to address the underlying root causes. Addressing root causes—such as reducing inequality or making specific investments in housing, health care, education, transportation, toxic cleanup, nutritious food, sustainable ecological practices, the arts, and

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<sup>244</sup> What follows is not meant to be a complete analysis of whether it is ever advisable to make institutions that are fundamentally based on inequality and violence less bad. Nor is it an attempt to criticize what can be important efforts to make incremental improvements to the many unjust things in our society. Indeed, my own career can only, when viewed through even the rosier glasses, be seen as focused on such incremental improvements to reduce the power of the punishment bureaucracy.

building strong networks of community members helping themselves through mutual aid and self-empowerment—are mostly ignored by politicians, even though evidence suggests that these strategies lead to short, medium, and long-term violence reduction.<sup>245</sup>

Instead, the segment of the public who cares about improving the lives of marginalized people is distracted and ultimately appeased with the promise of a “reform” like the body camera. At virtually every key moment in U.S. history, those “reforms” have made the government’s punishment bureaucracy bigger, more profitable to private profiteers, more politically powerful, and thus *less* accountable to local democracy.

Stuart Schrader has documented that this phenomenon occurred on a broad scale in the wake of the Kerner Commission in the 1960s after widespread uprisings by the urban poor and the brutal police repression that followed them:

President Lyndon B. Johnson appointed the [Kerner Commission] in July 1967 to investigate the causes of unrest in twenty-three U.S. cities—and to devise prophylaxis against future unrest. In its bestselling *Report*...the commission offered recommendations to alleviate racial and economic inequality, urging a vast federal spending program on jobs, education, and housing to address the socioeconomic conditions underlying the political unrest.

President Johnson spurned this proposal, but most of the subsidiary recommendations the Kerner *report* delivered on how to transform policing were adopted... And the way to assure security was to reform its technical apparatus. Police chiefs, national security officials, and social scientists concurred. This coalition helped produce some federal legislation in 1965 and a huge bill in 1968 that put federal money in cops’ hands. Elected officials offered this “war against crime” to concerned voters as a way to control political unrest. What it actually did was offer resources to police and prisons to enhance their capacities and repertoires  
...<sup>246</sup>

Instead of adopting the Commission’s recommendations on housing and inequality, politicians from both parties poured federal money into police, prisons, and courts to modernize and “professionalize” the southern policing bureaucracies.<sup>247</sup> One popular idea in the progressive 1960s zeitgeist was that the problem of southern police forces was a technical one that could be fixed with more training and better resources.<sup>248</sup> Sound familiar?

As Naomi Murakawa has shown, outrage at police brutality and the sight of fire hoses and police dogs used by southern police against protestors led progressive reformers and politicians to propose exactly the kind of punishment expansion and police investment (e.g. more police, standardized training, professionalization, riot control policies, tanks, body armor, police “intelligence” divisions to infiltrate protest groups, chemical weapons, standardized sentencing, better technology, etc.) that later became the source of public outrage during, say, the 2014 and

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<sup>245</sup> See *Evidence on Non-Carceral Safety Investments*, CIVIL RIGHTS CORPS, [https://civilrightscorps.org/wp-content/uploads/2021/10/Evidence-on-Noncarceral-Safety-DOJ\\_V4.docx.pdf](https://civilrightscorps.org/wp-content/uploads/2021/10/Evidence-on-Noncarceral-Safety-DOJ_V4.docx.pdf) [<https://perma.cc/58M9-YU44>].

<sup>246</sup> SCHRADER, *supra* note 128, at 4.

<sup>247</sup> A useful documentary film on this subject is *Riotville, U.S.A.* (Magnolia Pictures, 2022).

<sup>248</sup> SCHRADER, *supra* note 128, at 4.

2020 uprisings.<sup>249</sup> On the whole, to put it crudely, people in power chose to invest in infrastructure that could much more broadly *manage* people enduring inequality rather than passing policies to *reduce* inequality. A 500% rise in overall U.S. imprisonment followed—along with new forms of legalized racial discrimination that Michelle Alexander famously has called “The New Jim Crow.”<sup>250</sup> In this way, the federal government’s reformers actually helped local southern governments build police bureaucracies to professionalize and make their repression more efficient, and the news media repeatedly and continuously portrayed it as progressive reform to the consumers of liberal coastal newspapers.

The results of those “reforms” have been breathtaking. Several decades later, by the time Michael Brown was killed, the professionally trained, fully equipped Ferguson Police Department averaged 3.6 arrest warrants per every household, most of which were related to unpaid debts arising from the city police, court, and jail.<sup>251</sup> Texas confined more than 500,000 people a year in jail cells to “sit out” debts from unparalleled numbers of arrests by highly trained professionalized police forces, the largest of which were using algorithmic analytics attached to license plate camera readers to help track and arrest people.<sup>252</sup> A professional punishment bureaucracy, complete with contracts for training and technology and armed with publicly funded public relations teams,<sup>253</sup> was now the largest of its kind and was jailing higher rates of Black people and poor people across the South than in the segregation era.<sup>254</sup> To top it all off, the professionalized legal system was extracting far greater amounts of Black wealth for profit through a variety of bureaucratic collection schemes run through police, courts, jails, and private companies.<sup>255</sup>

How is this process working today with body cameras? Not only does a conversation about body cameras as a solution to police violence take attention away from the more foundational questions I listed above, but it also distracts from the *lawful but entirely unnecessary police violence* that now constitutes the vast bulk of professional police behavior.<sup>256</sup>

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<sup>249</sup> NAOMI MURAKAWA, *THE FIRST CIVIL RIGHT: HOW LIBERALS BUILT PRISON AMERICA* 57, 73-90 (2014).

<sup>250</sup> *Growth in Mass Incarceration: Prison Population Over Time*, SENT’G PROJECT, <https://www.sentencingproject.org/research/> [<https://perma.cc/XP3K-Y4J5>]. See generally MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2012) (explaining how the U.S. legal system functions as a modern means of racial control analogous to Jim Crow).

<sup>251</sup> Paul Hampel, *Lawsuits Call Ferguson, Jennings Jails Debtor’s Prisons*, ST. LOUIS POST-DISPATCH (Feb. 9, 2015), [https://www.stltoday.com/news/local/metro/lawsuits-call-ferguson-jennings-jails-debtors-prisons/article\\_a4360994-f557-5ae9-8080-8840e2724891.html](https://www.stltoday.com/news/local/metro/lawsuits-call-ferguson-jennings-jails-debtors-prisons/article_a4360994-f557-5ae9-8080-8840e2724891.html) [<https://perma.cc/C4C6-EGZA>]; *Fant v. The City of Ferguson*, No. 15-0253, at 3 (E.D. Mo. April 13, 2016), (<https://civilrightscorps.org/wp-content/uploads/2021/06/9ef2gju5RhmGTNfJp7w3.pdf>) [<https://perma.cc/GC5S-P8XQ>].

<sup>252</sup> *Texans Incarcerated Thousands of Years Over Traffic-Ticket Debt*, GRITS FOR BREAKFAST (Jan. 23, 2019), <https://gritsforbreakfast.blogspot.com/2019/01/texans-incarcerated-thousands-of-years.html> [<https://perma.cc/7NHP-G389>].

<sup>253</sup> Alec Karakatsanis, *Public Relations Spending by Police*, ALEC’S COPAGANDA NEWSL. (Feb. 19, 2023), <https://equalityalec.substack.com/p/public-relations-spending-by-police> [<https://perma.cc/2NQW-WJUL>].

<sup>254</sup> See Ruth Delaney et al., *American History, Race, and Prison*, in REIMAGINING PRISON WEB REPORT (Vera Inst. of Just.), <https://www.vera.org/reimagining-prison-web-report/american-history-race-and-prison> [<https://perma.cc/ZGK5-JVH3>] (last visited Aug. 3, 2023).

<sup>255</sup> *Profiting from Probation: America’s “Offender-Funded” Probation Industry*, HUM. RTS. WATCH (Feb. 5, 2014), <https://www.hrw.org/report/2014/02/05/profitting-probation/americas-offender-funded-probation-industry> [<https://perma.cc/XZC9-VZRQ>].

<sup>256</sup> Alec Karakatsanis, *What Does It Mean to Be a “Good Cop”?*, SLATE (June 8, 2020, 12:59 PM), <https://slate.com/news-and-politics/2020/06/good-police-bad-apples.html> [<https://perma.cc/QD6V-3ENB>].

For example, it would be seen as “violent” if police sent SWAT teams to arrest anyone who picked a wild blueberry.<sup>257</sup> Or anyone accused of sexual harassment at the workplace. Or any woman who seeks an abortion. Or to arrest students at a mostly white boarding school where children illegally drink alcohol or smoke marijuana. We see each of these examples of government violence as unthinkable in a free society even though we live in a society that has made tens of millions of forcible arrests of individuals for marijuana possession. Each of these situations demonstrates the role of settled cultural and legal norms in shaping what we see as violent and what we see as a normal part of functioning government.<sup>258</sup> But think, for example, about the daily police arrests and corresponding family separation for unpaid debts, technical probation violations, trespassing, and the other low-level offenses that constitute the vast majority of police arrests.<sup>259</sup> Only 5% of all police arrests and 4% of police time are devoted to conduct the police themselves categorize as “violent.”<sup>260</sup> This is the vast bulk of police activity which, incidentally, is captured on the body camera and used against the poorest people in our society in courtrooms every day.

The body camera framed as “reform,” however, helps punishment bureaucrats focus our attention away from this *systemic* issue of the sheer level of legalized government violence that our contemporary society has been socialized to accept. Crucially, body cameras also tend to focus debate on single incidents of (mis)conduct. Was *this* cop right or wrong? Should prosecutors charge *this* bad actor with a crime or not? Not, why was this cop there in that neighborhood, and what does the evidence show about how the particular social problem to which the cop was responding could have been avoided through other social investments instead of through policing?

In city after city, the everyday violence committed by “good cops”—what we now might refer to as “mass incarceration”—is deprioritized in the public and political consciousness because the very purpose of an “accountability” measure like body cameras is to focus attention on only a small subset of police activities that *deviate* from the larger atmosphere of “legitimate” police violence. Each time a bad act occurs, the public demand become to increase the amount of bodycam footage available so we can understand that *particular incident* and whether the officer’s actions in that incident meet a certain standard of criminal or civil liability.<sup>261</sup> In almost every case, there will be people on each side arguing over whether the police were justified in what they did.<sup>262</sup> In rare cases in which police cameras captured something beyond the pale, and in the even rarer situations in which that video evidence eventually became public and there was no other bystander video, people would demand that an officer be fired and prosecuted based on a body camera

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<sup>257</sup> ME. REV. STAT. ANN. tit. Tax’n, § Special Taxes: Blueberry Tax (2023).

<sup>258</sup> See, e.g., Alec Karakatsanis, *A Guide for Reading and Writing About Crime*, ALEC’S COPAGANDA NEWSL. (June 21, 2022), <https://equalityalec.substack.com/p/a-guide-for-reading-and-writing-about> [<https://perma.cc/3QCV-54J4>].

<sup>259</sup> See *Emerging Findings, in EVERY THREE SECONDS* (Vera Inst. Of Just.), <https://www.vera.org/publications/arrest-trends-every-three-seconds-landing/arrest-trends-every-three-seconds/findings#:~:text=The%20data%20shows%20that%20non,serious%20offenses%20as%20Part%20II> [<https://perma.cc/YR5W-U3BR>] (last visited Aug. 3, 2023).

<sup>260</sup> *Id.*

<sup>261</sup> See, e.g., Brandon Soderberg, *Rally for Man Shot by Police Stopped for Medical Emergency, Baby Dies*, THE BALT. SUN (Nov. 26, 2016, 6:46 PM), <https://www.baltimoresun.com/citypaper/bcpnews-rally-for-man-shot-by-police-stopped-for-medical-emergency-baby-dies-20161126-story.html> [<https://perma.cc/X8KM-VHEY>].

<sup>262</sup> See, e.g., Melanie Johnson, *Activists Demand Release of Police Video Following Use of Deadly Force*, KMOV4 (Sept. 14, 2022, 11:24 PM), <https://www.kmov.com/2022/09/15/activists-demand-release-police-video-following-use-deadly-force/> [<https://perma.cc/NU8J-3XJC>].



recording.<sup>263</sup> In this way, even in the ideal case, body cameras fit perfectly into the narrative of police bureaucrats: what matters is that we identify and isolate the “bad cops.”

The same can be said for every major contemporary response to police violence supported by mainstream politicians: their narrative highlights criminal prosecution of bad apples, more money for different training consultants, tweaks to written policies, implicit bias awareness, better surveillance technology, bigger data platforms, hiring more police from racial minority groups, etc... All of them have at their core one theme: they distract people from asking questions about the primary role that armed agents employed by the government play in an unequal society.

To see more concretely the way discussion about particular incidents captured by body cameras distracts the well-meaning public, it is helpful to see that the police bureaucracy has a hierarchy of narratives it prefers, and it goes something like this:

1. Blame any problems on individual “bad apple” cops;
2. Blame any problems on bad units, squads, precincts, or particular police leaders;
3. Blame any problems on particularly bad police forces.

In conversations about police accountability, police will attempt to push their narrative up this hierarchy. If they have their way, we’ll talk only about “bad apple” cops.<sup>264</sup> But it often becomes necessary for police bureaucrats to engage and even encourage conversations within the other categories, applying the same “bad apple” reasoning to each slightly larger group of officers.

Under no circumstances, however, do police want the public to entertain conversations outside of this hierarchy about problems with *policing itself* as a method of social, economic, and racial control. In fact, conversations about each of these three categories are *designed to avoid the deeper conversations*. Most easily, “bad apples” like Derek Chauvin can be thrown under the bus, fired, and sent to prison. Bad squads and units like the Scorpion Squad following the murder of Tyre Nichols or the corrupt gun squad in Baltimore can be scapegoated and (temporarily) disbanded.<sup>265</sup> Bad police forces can also be scapegoated—indeed, I have observed over fifteen years that my clients across the country simply assume their local police force is generally recognized as one of the worst nationally. People in City A are always surprised to hear that people in City B do not recognize City A as having the worst police. People assume that police must be

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<sup>263</sup> For instance, Circleville, Ohio officer Ryan Speakman was fired after body camera revealed him siccing a police dog on a Black man with his hands raised while another trooper yelled “do not release the dog with his hands up!”. Chantal Da Silva, *‘Am I Wrong?’: Ohio Police Officer Who Released Police Dog on Black Man Defends Himself on Bodycam Video*, NBC: U.S. News (Aug. 1, 2023, 11:09 AM), <https://www.nbcnews.com/news/us-news/body-cam-video-shows-ohio-officer-sicced-police-dog-black-man-defendin-rcna97469> [<https://perma.cc/2642-EH7T>].

<sup>264</sup> See, e.g., Jonathan Blanks, *New Federal Police Database Looks to Keep ‘Bad Apples’ Off the Street*, FOUND. FOR RSCH. ON EQUAL OPPORTUNITY: BLOG (June 2, 2022), <https://blog.freopp.org/new-federal-database-shows-promise-to-root-out-bad-apples/> [<https://perma.cc/2MX7-BNFU>].

<sup>265</sup> Baltimore’s Gun Trace Task Force was a brutal and corrupt team of officers indicted for racketeering due to their routine practices of theft, lying, paperwork falsification, illegal stop and searches, and planting evidence. See generally BAYNARD WOODS & BRANDON SODERBERG, *I GOT A MONSTER: THE RISE AND FALL OF AMERICA’S MOST CORRUPT POLICE SQUAD* (2020); JUSTIN FENTON, *WE OWN THIS CITY: A TRUE STORY OF CRIME, COPS, AND CORRUPTION* (2021). Memphis operated the similarly violent Street Crimes Operation to Restore Peace in Our Neighborhoods (SCORPION) unit who beat Tyre Jones to death. Jessica Corbett, *Memphis Police Shutter SCORPION Unit, Activists Say That’s Not Enough*, TRUTHOUT (Jan. 9, 2023), <https://truthout.org/articles/memphis-police-shutter-scorpion-unit-activists-say-thats-not-enough/> [<https://perma.cc/9NFS-QHKE>]; Martin Kaste, *How Special Police Units Like SCORPION Work*, NPR (Jan. 30, 2023, 5:19 PM), <https://www.npr.org/2023/01/30/1152627747/how-special-police-units-like-scorpion-work> [<https://perma.cc/C5XK-RJ59>].

better elsewhere. When traveling for cases, I routinely hear things like the following about many dozens of cities: “Yes, but cops are worse here in [X].” All of my clients can point to embarrassing scandals and histories of rampant, unaccountable, and pervasively violent police in their area.

When necessary, such as with the LAPD after the Rampart scandal or Ferguson after the 2014 uprisings, police themselves will support this narrative that entire departments are in need of “reform.”<sup>266</sup> After the 2020 uprisings, many liberal politicians pointed to Camden, New Jersey as a model because the town had “disbanded” its police force after repeated police violence. (What is often left out of this story is that the city simply rehired far more officers on lower salaries, expanded lucrative surveillance contracts, and made even *more* arrests of almost exclusively poor people in the subsequent years for low-level crimes.)<sup>267</sup> Similarly, it is common for powerful local or state officials to ask the Department of Justice to investigate an entire troubled police force in their area.<sup>268</sup> Dozens of mayors, governors, and even police chiefs have done this in recent years, not out of a belief that federal intervention will make their police force behave differently in fundamental ways, but to distract from local attempts at more radical solutions. Cooptation like this routinely happens through federal intervention because of the well-understood, well-trodden periods of delay, expert consulting, rationalization of more resources which often becomes court-ordered additional spending, and pacification of liberal residents who are only passively interested in knowing that something is being done.

In this political and narrative act, the state and local officials who request federal intervention are asserting that the police force in question is somehow *deviating from standards acceptable to federal prosecutors* and not acting in the same way as U.S. police forces have always acted.<sup>269</sup> It is an attempt to cast a police force as an outlier from the norm—a “bad apple” in an otherwise legitimate, good-faith system. But this very act itself is one of propaganda; it reinforces that there are democratic standards of U.S. policing as we know it and that the department in question is a deviation. After years of studying the history and present of U.S. policing, I have

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<sup>266</sup> *Rampart Scandal Timeline*, PBS, <https://www.pbs.org/wgbh/pages/frontline/shows/lapd/scandal/cron.html> [https://perma.cc/8DFR-6H6P].

<sup>267</sup> Brendan McQuade, *The “Camden Model” Is Not a Model. It’s an Obstacle to Real Change*, JACOBIN (July 4, 2020), <https://jacobin.com/2020/07/camden-new-jersey-police-reform-surveillance> [https://perma.cc/EN9L-VZUY]; Sidney Fussell, *What Disbanding the Police Really Meant in Camden, New Jersey*, WIRED (July 1, 2020, 3:03 PM) <https://www.wired.com/story/disbanding-police-really-meant-camden/>. It is useful to compare the reality of what happened in Camden with how it was portrayed as a model of police reform by mainstream news outlets, replete with stories of friendly police playing basketball with adoring children. See, e.g., Joseph Goldstein & Kevin Armstrong, *Could This City Hold the Key to the Future of Policing in America?*, (July 12, 2020), <https://www.nytimes.com/2020/07/12/nyregion/camden-police.html> [https://perma.cc/PX6T-3RE2].

<sup>268</sup> See, e.g., JoBeth Davis, *Groups Gather Friday Asking for Investigation into KCPD ‘Patterns and Practices,’* KMBC (June 23, 2023, 6:43 PM), <https://www.kmbc.com/article/kansas-city-missouri-groups-request-federal-investigation-kcpd/44317360#> [https://perma.cc/KEB9-S8RP] (calling for DOJ to investigate Kansas City police); Joey Fox, *Activist Coalition Wants Justice Department to Investigate Paterson PD After Police Shooting*, N.J. GLOBE (Mar. 13, 2023, 4:07 PM), <https://newjerseyglobe.com/local/activist-coalition-wants-justice-department-to-investigate-paterson-pd-after-police-shooting/> [https://perma.cc/59XK-VJY4] (calling for DOJ to investigate Paterson, New Jersey police); Sarah Nelson, *DOJ Asked to Investigate Indy Police. That’s Unlikely to Happen, Says Ex-Fed Prosecutor*, INDY STAR (Apr. 13, 2023, 4:17 AM), <https://www.indystar.com/story/news/local/indianapolis/2023/04/13/community-groups-call-for-doj-to-investigate-indy-police-will-it/70107048007/> [https://perma.cc/V9HV-XA6P]; April Helms, *Congresswoman Asks Department of Justice to Investigate Jayland Walker’s Death*, AKRON BEACON J. (Apr. 24, 2023, 12:44 PM), <https://www.beaconjournal.com/story/news/local/2023/04/24/jayland-walker-emilia-sykes-department-of-justice-investigation/70146376007/> [https://perma.cc/3UTP-3MPJ].

<sup>269</sup> See @OLAASM, TWITTER (June 11, 2020, 4:52 PM), <https://twitter.com/OLAASM/status/1271123089804464131> [https://perma.cc/46X3-EBUF].

found no evidence that any particular major department is somehow a significant outlier. Everyone that I have investigated—and that I have seen anyone else investigate—is substantially similar to the others in terms of what they do and do not do. Just as with bad apple individual cops, the very creation of this category implies that there is a meaningful category of good cops or good police forces such that *the harms mass incarceration causes are attributable only to the bad ones*.

This kind of scapegoating of particular police forces is often welcomed by police, not just because it tends to mean more investment in more resources for those “bad” officers, squads, precincts, and departments for “training” and technology, but because it also distracts people from asking too many fundamental questions about the enterprise of mass processing of punishment as a way to make our society less violent. This framing discourages people from asking the core, unorthodox question: “is there something about this bureaucracy, and the social and economic arrangements it protects, that simply is not amenable to reform (because its primary function is not to promote holistic human equality and flourishing)?”

What might it suggest that each local police bureaucracy in each of thousands of cities and counties has similar policies, technology, demographic disparities, statistics on their activity and arrest patterns, infiltration by right-wing groups, and recurring scandals of illegal corruption and violence? A national conversation flares up every few years about how U.S. police are violent and unaccountable, but the public discourse does not connect it to the prior conversations that society just had several years before.<sup>270</sup> What might it suggest that every generation of people in the United States for 125 years has had the same conversation on newspaper editorial pages about pervasive police corruption, violence against marginalized people, and surveillance of progressive social movements?

At this point in U.S. history, there is a virtually unlimited reservoir of videos capturing illegal police violence. And before cell phone videos became pervasive, there was already an unlimited catalog of undisputed crimes committed by police. None of these videos of horrific crimes have made police less violent or more accountable to the populations they patrol. If more overt evidence of police brutality was going to spur less police violence, it would have already happened.<sup>271</sup>

I ask a modest question: if a primary function of people who control government bureaucracy in an unequal society is to control poor and marginalized people and to prevent social movements from achieving more serious change that weakens bureaucratic power and reduces the wealth of the wealthiest people in that society, might government bureaucracies use surveillance technology to further those ends rather than to make themselves less violent? This question helps us see an enormous opportunity cost that we suffer when we promote “reforms” that do not alter the size and power of the systems that cause us harm.

In the final analysis, the contemporary push for body cameras is based on a strange notion of “accountability.” The cameras mean (rare) consequences for individual “bad apple” police officers, but a *bolstering* of the power of police generally. A “reform” like the body camera is therefore the exact opposite of accountability because, from the perspective of the interests behind the policing bureaucracy, body cameras are a *reward*.

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<sup>270</sup> Alec Karakatsanis, *How the Media Enables Violent Bureaucracy: Part 2*, ALEC’S COPAGANDA NEWSL. (Jan. 31, 2023), <https://equalityalec.substack.com/p/how-the-media-enables-violent-bureaucracy-4e0> [https://perma.cc/Z42F-MFTF].

<sup>271</sup> Indeed, polls show that when white Americans learn of racial disparities of the system, they become *more* likely to support it.

## 2. *Reform Can be Used to Deceive People About the Primary Functions of Police*

*No offense is so heinous as unorthodoxy of behavior. Murder kills only the individual—and, after all, what is an individual . . . We can make a new one with the greatest ease—as many as we like. Unorthodoxy threatens more than the life of a mere individual; it strikes at society itself.*

— Aldous Huxley<sup>272</sup>

*The presence of a group of African sell-outs is part of the definition of underdevelopment. Any diagnosis of underdevelopment in Africa will reveal not just low per capita income and protein deficiencies, but also the gentlemen who dance in Abidjan, Accra, and Kinshasa when music is played in Paris, London, and New York.*

— Walter Rodney<sup>273</sup>

The conversation about body cameras in the news media since 2014 fabricates a police bureaucracy interested in becoming less violent and less secretive. This is not just distraction, it is deception. What makes it deceptive? It misleads people about the true causes of most police violence and the true goals of the punishment bureaucracy while convincing people of good will to support the *wrong* solutions presented to the *wrong* problems. A statement by a politician calling for body cameras is perceived as a laudable call for change rather than a cynical attempt to increase profit and control.

This deception requires that politicians and bureaucrats frame any proposed solution as “progressive” and supported by independent-seeming “experts” and other validators with ostensible credibility, and not simply as coming from the bad actors themselves. And it is for this reason that the family members of a victim of police homicide will be asked by politicians and media producers to speak in any and every public forum if they demand more expenditures for police body cameras or training as a response to their loved one’s killing. The same applies to other people with marginalized identities who are so often featured in campaign stump speeches or cherry-picked for news reports. On the contrary, a victim’s family who calls for disarming police or reducing the police budget to fund local libraries where kids like their loved one can gather for afterschool programs and health screenings will be largely ignored.

The selective curation of true facts in service of misleading assertions is the essence of the best propaganda.<sup>274</sup> *Few would have trusted that body cameras were the solution to police violence if the only groups advocating for them were the people who sold them and the police who wanted them.*

In his seminal study of propaganda, Jacques Ellul explained that some element of truth is a crucial component of successful domestic propaganda in both liberal democracies and authoritarian societies. Propaganda relies on at least some true facts or on facts that are difficult for a population to disprove through their own observations. In most circumstances, propaganda that denies easily verifiable facts will not be successful. But effective propaganda focuses on

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<sup>272</sup> ALDOUS HUXLEY, *BRAVE NEW WORLD* 168 (HarperCollins Pub., 1998).

<sup>273</sup> WALTER RODNEY, *HOW EUROPE UNDERDEVELOPED AFRICA* 33 (2018).

<sup>274</sup> See generally JACQUES ELLUL, *PROPAGANDA: THE FORMATION OF MEN’S ATTITUDES* (1973) (studying the features of the most effective government and corporate propaganda and concluding that the most effective propaganda will be based on true facts).

*interpretations* of facts—for example, describing the *intentions* of leaders. One of the key elements of the discourse on body cameras is the pervasive theme that they are being *genuinely offered to fix police violence*.

Government officials who portray their calls for body cameras as arising from a genuine desire for change exploit two common propaganda strategies. First, they peddle a core deception about the intentions of our institutions: that the punishment bureaucracy’s main goals are safety, equality, democratic control, and overall human flourishing. Second, they evade questions regarding who created and promoted body cameras, how selling the technology benefits those interested, and the real reasons why the cameras were developed.

Basing calls for reform on a deception about the function of the institution in need of reform is a propaganda tactic used to address a wide range of systemic injustices. It is actually a counterinsurgency tactic borrowed from colonial pacification techniques. A key strategy used by colonial invaders and profiteers was to secure the endorsement of a small group of local, native allies or to trade on the reputation of international missionaries and non-profit groups to assure well-meaning people that they had the best intentions, and that the things that were happening that were inconsistent with their ostensible intentions were being observed, regulated, and reformed by people who cared.<sup>275</sup> Peter Gelderloos has explained this feedback loop between colonial violence and the way that local and international validators with credibility determine for the public which forms of reform or resistance seem acceptable or out of bounds:

Not so many people would trust Stratfor, Shell Oil, or the US military’s Africa Command telling us that Ijaw and Ogoni people fighting for their homelands are evil terrorists who deserve to be shot down. It is the very NGOs who evince a concern for human rights that are crucial to this counterinsurgency operation . . .<sup>276</sup>

These concepts, therefore, are not unique to the U.S. punishment bureaucracy. As James Ferguson has shown in one of the seminal academic studies of the issue, decades of discourse about “reforming” the bureaucracy of international development follows a similar pattern.<sup>277</sup> Observers acknowledge the continuous failures of international government and non-profit aid to end poverty, make the world meaningfully more equal, or prevent ecological catastrophe. But it is essential to the interests who benefit from the global system of extraction—and concomitant militarization of borders to protect the beneficiaries of that extraction (i.e., the upper classes in Western countries and a small coterie of their local agents in the Third World)—that people engaged in “development” be seen as *meaningfully and even rigorously working to fix the problems of poor countries at all times*.<sup>278</sup>

Through this process, the complex and inevitable pursuit of global profit extraction becomes depoliticized. Such a problem becomes merely “technical,” one that can be overcome with smarter bureaucratic reforms, more data analysts, more organizational consultants, and more conferences with more panels in more (Western owned) hotels as opposed to basic problems with global power relationships. As Ferguson explains through analogy to the punishment bureaucracy:

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<sup>275</sup> PETER GELDERLOOS, *THE SOLUTIONS ARE ALREADY HERE* 38-87 (2022).

<sup>276</sup> *Id.* at 86.

<sup>277</sup> FERGUSON, *supra* note 242, at 279-88.

<sup>278</sup> *See generally id.*

In “development,” as in criminology, the “problems” and calls for reform are necessary to the functioning of the machine. Pointing out errors and suggesting improvements is an integral part of the process of justifying and legitimating “Development” interventions. Such an activity may indeed have some beneficial or mitigating effects, but it does not change the fundamental character of those interventions.<sup>279</sup>

As Ferguson suggests, all of these operations are at their most effective when any particular “reform” could have *some* “beneficial or mitigating effects.”<sup>280</sup> For example, throughout the 20<sup>th</sup> century, many well-meaning people have been seduced by promises of better educational programs, more nutritious food, and more expensive medical care in prisons. To borrow Professor Ferguson’s phrase, who could object to these reforms? In the same way, it is undeniable that body cameras do, at least in rare circumstances, offer the public a potential way of documenting police violence. We would know *something* more about what happened to Michael Brown if the police officer who shot him was wearing a camera. The truth of this observation makes body cameras as a proposed reform seductive, and it provides a way for well-meaning experts to promote them in good conscience without violating their own professional norms and private morality.

This is the seduction of “reforms” that increase the power of bureaucracy. But it is only by realizing that we are being deliberately asked to provide the wrong answers to the wrong questions that we can escape its cycle. Who could object to better medical care in prison? Perhaps someone who understands that this medical care could be provided outside prison at lower cost with better results—and that there would be less need for it given that prison is so unhealthy that it reduces the life expectancy of a person by two years for every year they are confined.<sup>281</sup> There are more people dying more deaths and more people per capita exposed to more horrific conditions in U.S. prisons than when Eugene Debs and many others urgently sounded the alarm about prison conditions 100 years ago.<sup>282</sup> Who could object to better food in prisons? Perhaps someone who understands that a confined person may prefer to eat virtually any meal while sitting around their mother’s dining room table with everyone who loves them in the world. Who could object to Darren Wilson wearing a body camera? Perhaps someone who would prefer a world in which an armed government bureaucrat whose department is funded on ticket revenue from Black people is not patrolling Canfield Drive at noon on August 9, 2014, to a world in which we have a video showing the moment when that government bureaucrat shot and killed an 18-year-old Black child.

### 3. *How Do Distraction and Deception Work?*

The use of “reforms” for distraction and deception happens in a wide variety of historical contexts in different areas like education, healthcare, labor, ecology, and foreign policy.

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<sup>279</sup> *Id.* at 285.

<sup>280</sup> *Id.*

<sup>281</sup> Emily Widra, *Incarceration Shortens Life Expectancy*, PRISON POL’Y INITIATIVE (June 26, 2017, 2:48 PM), [https://www.prisonpolicy.org/blog/2017/06/26/life\\_expectancy/](https://www.prisonpolicy.org/blog/2017/06/26/life_expectancy/) [<https://perma.cc/L9LD-2P8P>].

<sup>282</sup> See generally EUGENE DEBS, WALLS AND BARS (1927) (describing the author’s experience in prison and arguing for prison abolition rather than reformation).

There are intelligence firms that specialize in destroying progressive social movements, often in collaboration with authoritarian governments and police.<sup>283</sup> One of the most prominent corporate intelligence and crisis management firms developed a typology of activists in the 1990s as part of its work to destroy challenges to corporate power from environmentalists, labor unions, and other progressive groups.<sup>284</sup> Their analysis is useful in understanding what happened with body cameras because it demonstrates how much time and energy elite interests spend thinking about how to cultivate what most normal people experience as organic public discourse.

According to the typology, powerful interests can classify the rest of the politically engaged population into different groups along a spectrum. There are what strategic crisis consultants call “radicals,” “idealists,” “realists,” and “opportunists.”<sup>285</sup> These groups can be defined as follows:

1. *The radicals.* These want to change the system, they have underlying socio-economic/political motives, are hostile to enterprise as such, and may be extremist or violent. With them, there is nothing to be done.
2. *The opportunists.* These offer visibility, power, followers and, perhaps, even employment. The key to dealing with opportunists is to provide them with at least the perception of a partial victory.
3. *The idealists.* These people are usually naive and altruistic. They apply an ethical and moral standard. The problem with them is that they are sincere, and, as a result, very credible. Except they are also very credulous...
4. *The realists.* These are a godsend. They can live with trade-offs; they are willing to work within the system and want to work within the system. They are not interested in radical change, but are pragmatic.<sup>286</sup>

The corporate intelligence firms described their strategy as follows:

First, isolate the radicals. Second, “cultivate” the idealists and “educate” them into becoming “realists.” And finally, co-opt the realists into agreeing with industry. If your industry can successfully bring about these relationships, the credibility of the radicals will be lost and opportunists can be counted on to share in the final policy solution.<sup>287</sup>

Gregoire Chamayou explained this strategy in more detail:

Faced with protest, the way forward is always the same: to negotiate with the realists, knowing that in most issues, it is the solution agreed upon by the realists which is accepted, especially when business participates in the decision-making process. Also, the idealists need to be re-educated into realists ..... If you can manage to work with the realists and re-educate the idealists, they will switch over

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<sup>283</sup> Steve Horn, *Here’s How the Corporations Defeat Political Movements*, POPULAR RESISTANCE (July 29, 2013), <https://popularresistance.org/heres-how-the-corporations-defeat-political-movements/> [https://perma.cc/7L6K-N6CE].

<sup>284</sup> *Id.*

<sup>285</sup> *Id.*

<sup>286</sup> Grégoire Chamayou, *The Product of the Dominant Dialog*, ILL WILL (Mar. 10, 2021), <https://illwill.com/the-production-of-the-dominant-dialog> [https://perma.cc/24FP-R4KB].

<sup>287</sup> Horn, *supra* note 283.

to your position. Once these critics of conscience have been turned, the radicals will lose the broad credibility that the support of these moral authorities had conferred on them..... At this point you will always be able to count on the opportunists to accept the final compromise..... Radicals isolated in their niche of radicalism are harmless, and pose no threat: a bit of minority folklore without any impact. Such, then, is the general strategy: to cooperate with the realists, to converse with the idealists so as to convert them into realists, to isolate the radicals and to gobble up the opportunists.<sup>288</sup>

This corporate intelligence strategy is similar to the theoretical underpinnings of the counterinsurgency tactics developed by the colonial French military in Algeria and Vietnam. It was later incorporated into U.S. military counterinsurgency doctrine in Afghanistan and Iraq and then brought back to the U.S. under the Orwellian branding of “community policing.”<sup>289</sup>

Seen in this way, the strategy of industry and police body camera promoters was to work with the realists to constrain the imagination and expectations of the idealists, convince both groups that the body camera was a genuine improvement for police violence and racial justice, convert as many idealists as possible into realists, and all the while work with the opportunists to sell the deal to the remaining idealists so that they could gain the support of the far larger non-activist population.

### VIII. IF YOU BUILD IT, THEY WILL COME

*The greater the bureaucratization of public life, the greater will be the attraction of violence. In a fully developed bureaucracy there is nobody left with whom one could argue, to whom one could present grievances, on whom the pressures of power could be exerted. Bureaucracy is the form of government in which everybody is deprived of political freedom, of the power to act; for the rule by Nobody is not no-rule, and where all are equally powerless we have a tyranny without a tyrant.*

— Hannah Arendt<sup>290</sup>

*No snowflake in an avalanche feels responsible.*

— Sy Stokes

Many of what are now widely recognized in progressive circles to be serious injustices in the punishment bureaucracy have been exacerbated by reforms that elite legal and political circles treated as consensus ways to make the system more just. It is helpful to situate the body camera in this pantheon with a few examples so that we can draw some valuable lessons.

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<sup>288</sup> Chamayou, *supra* note 286.

<sup>289</sup> Stuart Schrader, *Against the Romance of Community Policing*, A WORLD WITHOUT POLICE (Sept. 7, 2016), <http://aworldwithoutpolice.org/2016/09/07/against-the-romance-of-community-policing/> [https://perma.cc/SP3J-8U8J].

<sup>290</sup> Hannah Arendt, *Reflections on Violence*, N.Y. REV. (July 11, 2013) (1969), <https://www.nybooks.com/articles/2013/07/11/hannah-arendt-reflections-violence/> [https://perma.cc/9J46-2LKV].



## 1. Bail

When the much-heralded federal Bail Reform Act went into effect in 1984, about 24% of people charged with federal crimes were too poor to afford cash bail and were thus detained in jail even though presumed innocent.<sup>291</sup> Liberal reformers from politicians to judges to prosecutors to law professors championed the Act because it largely eliminated money-based detention in federal court by containing language designed to prohibit the cash requirements that resulted in pretrial detention.<sup>292</sup> The liberal “reformers” pushed courts to make transparent decisions about whether a person truly needed to be detained and to stop detaining people just because they were poor.<sup>293</sup> This reform gave more discretion to prosecutors and judges to make decisions about whether to detain people for being a risk of flight or “dangerous.”<sup>294</sup>

By 2018, over three decades into the “reform,” nearly 75% of people charged with federal crimes were detained before conviction.<sup>295</sup> The “reform” to cease jailing people just because they were poor, when left in the hands of punishment bureaucrats, *tripled* the rate of pretrial detention in federal courts. The people detained were even more disproportionately poor, more disproportionately Black, and more disproportionately immigrant.<sup>296</sup>

At the same time, whole new industries—like the multi-billion dollar carceral telecom industry—worked to get in-person visits and the ability to hug one’s child or spouse eliminated on the theory that depriving people of human contact would result in more cash spent by desperate families.<sup>297</sup> In their contracts with jails, they agreed to pay jailers a cut of the increased revenue.<sup>298</sup> In this way, larger numbers of people—presumptively innocent and waiting for trial—were separated from their families, cut off from human touch, and cut off from human contact altogether if they could not afford increased call rates.<sup>299</sup> This family separation policy was not the result of rigorous public debate about overall public good; it was a direct result of the creation and

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<sup>291</sup> STEPHEN KENNED & KENNETH CARLSON, U.S. DEP’T OF JUST., PRETRIAL RELEASE AND DETENTION: BAIL REFORM ACT OF 1984 (Frank D. Balog, ed., Bureau of Just. Stat., No. NCJ-109929, 1998).

<sup>292</sup> Dirk Johnson, *Pretrial Detention: 2 Sides of an Issue*, N.Y. TIMES (July 13, 1987), <https://www.nytimes.com/1987/07/13/us/pretrial-detention-2-sides-of-an-issue.html> [<https://perma.cc/DB76-LBWJ>] (describing support from both liberals and conservatives).

<sup>293</sup> *Id.*

<sup>294</sup> Daryl J. Olszewski, *The Bail Reform Act of 1984: A Cause of and Solution to the Federal Pretrial Detention Crisis*, 52 UNIV. BALT. L. REV. 77, 144-45 (2022).

<sup>295</sup> Matthew G. Rowland, *The Rising Federal Pretrial Detention Rate, in Context*, 82 FED. PROBATION 13 (Sept. 2018).

<sup>296</sup> *Id.* at 15 fig.5.

<sup>297</sup> Shannon Sims, *The End of American Prison Visits: Jails End Face-to-Face Contact - and Families Suffer*, THE GUARDIAN (Dec. 9, 2017), <https://www.theguardian.com/us-news/2017/dec/09/skype-for-jailed-video-calls-prisons-replace-in-person-visits#:~:text=Indeed%2C%20according%20to%20the%20Prison,visits%2C%20or%20eliminating%20them%20alt together> [<https://perma.cc/Q4BL-T6XN>]; Ben Perelmutter & Elizabeth Rossi, *Care Not Cages: Honor a Child’s Right to Hug Their Jailed Parent*, MATTER NEWS (May 8, 2023, 8:26 AM), <https://www.matternews.org/voices/care-not-cages-honor-a-childs-right-to-hug-their-jailed-parent-2> [<https://perma.cc/7AP5-GPEM>]; Sarah Stillman, *Do Children Have a “Right To Hug” Their Parents*, THE NEW YORKER (May 13, 2024), <https://www.newyorker.com/magazine/2024/05/20/the-jails-that-forbid-children-from-visiting-their-parents> [<https://perma.cc/L5S8-NFPG>].

<sup>298</sup> Peter Wagner & Alexi Jones, *On Kickbacks and Commissions in the Prison and Jail Phone Market*, PRISON POL’Y INITIATIVE (Feb. 11, 2019), <https://www.prisonpolicy.org/blog/2019/02/11/kickbacks-and-commissions/> [<https://perma.cc/F7KM-8VJB>].

<sup>299</sup> See sources cited *supra* note 297.

expansion of a new corporate and government business that profited from increased pretrial jailing. That's quite a "reform."

## 2. Probation and Parole

These innovations were pitched as modern "reforms" that would be alternatives to incarceration. It sounded great in the media and to well-meaning people who would prefer a society with fewer human beings in cages: instead of confining people in concrete cells away from their families for as long, we can give them a chance to be in the community subject to strict conditions.<sup>300</sup> However, probation and parole have now become a leading cause of incarceration: 25% of all people in state prisons are there because of a technical violation of probation or parole—i.e. not even the commission of a new offense.<sup>301</sup> And another 20% (so, a total of about 45%) are there on supervision violations of parole or probation.<sup>302</sup>

Decades of research shows that probation and parole supervision do not increase public safety.<sup>303</sup> But, they have led to a massive, union-backed bureaucracy of hundreds of thousands of employees who regulate people's lives in onerous and increasingly bizarre ways, including: watching people pee into cups, requiring people to skip work to report in person, requiring people to submit to unannounced searches of their homes, tracking people's movements with GPS, forcing people to answer questions about their family lives or sexual interest under penalty of jailing them, forcing people to attend a wide range of for-profit lifestyle classes with no empirical basis, excluding people from large geographic zones, requiring billions of dollars in fee payments, regulating how and with whom people can socialize, and even requiring people to behave according to particular Progressive Era moral standards.<sup>304</sup>

To top it all off, probation and parole officer unions have become a powerful political force that pushes policies to increase government surveillance and control. During the long and heated fights over the money bail system in California over the last five years, the union representing

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<sup>300</sup> David J. Harding et al., *From Supervision to Opportunity: Reimagining Probation and Parole*, 701 AM. ACAD. POL. & SOC. SCI. 8, 9 (2022).

<sup>301</sup> Andrea Fenster, *Technical Difficulties: D.C. Data Shows How Minor Supervision Violations Contribute to Excessive Jailing*, PRISON POL'Y INITIATIVE (Oct. 28, 2020), [https://www.prisonpolicy.org/blog/2020/10/28/dc\\_technical\\_violations/](https://www.prisonpolicy.org/blog/2020/10/28/dc_technical_violations/) [<https://perma.cc/C9KW-AJUC>].

<sup>302</sup> *Id.*

<sup>303</sup> ACLU & HUM. RTS. WATCH, *supra* note 229 ("supervision as it works in the United States is not necessary to prevent crime. Numerous experts agree that supervision terms of more than a few months or a couple of years have little safety or rehabilitative value."); Jennifer L. Doleac, *Study After Study Shows Ex-Prisoners Would Be Better Off Without Intense Supervision*, BROOKINGS INST. (July 2, 2018), <https://www.brookings.edu/articles/study-after-study-shows-ex-prisoners-would-be-better-off-without-intense-supervision/> [<https://perma.cc/Z7WN-8KFR>] (summarizing, "Several studies of excellent quality and using a variety of interventions and methods all found that we could maintain public safety and possibly even improve it with *less* supervision—that is, fewer rules about how individuals must spend their time and less enforcement of those rules."); Harding, *supra* note 300 ("With over four million people on community supervision, we might expect empirical evidence to show that probation and parole significantly reduces crime. But this is not the case. Indeed, our review of the research finds little evidence that community supervision improves public safety.").

<sup>304</sup> See, e.g., Fiona Doherty, *Obey All Laws and Be Good: Probation and the Meaning of Recidivism*, 104 GEO. L. J. 291 (2016); Abd'Allah Lateef, *Parole is Better Than Prison. But That Doesn't Mean I'm Free.*, THE MARSHALL PROJECT (May 13, 2021, 10:00 PM), <https://www.themarshallproject.org/2021/05/13/parole-is-better-than-prison-but-that-doesn-t-mean-i-m-free> [<https://perma.cc/LJ4G-HTGB>]; Peggy McGarry, *Probation and Parole as Punishment*, BRENNAN CTR. FOR JUST. (June 28, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/probation-and-parole-punishment> [<https://perma.cc/5DWB-SA9V>].

probation officers has used their political power to attempt to increase pretrial supervision and associated conditions such as electronic monitoring, drug testing, intensive monitoring by probation officers, and mandatory programming. Each of these areas is profitable to the industries with whom the probation offices contract and to the unions themselves, which have successfully lobbied to essentially recreate the post-conviction probation bureaucracy to the millions of people who have been accused of crimes each year and awaiting trial.

### 3. Sentencing

Back in the 1980s, the U.S. public was told that federal sentencing had become unfair.<sup>305</sup> Cheered on by self-proclaimed liberals complaining about racial disparities in sentencing, a group of reformers led by Justice Stephen Breyer engaged in the biggest “reform” to federal sentencing in modern history.<sup>306</sup> The effort was bipartisan and widely applauded in the legal community. The result was one of the most serious frauds in American legal history; the greatest increase in human caging in federal history began with the passage of the new Federal Sentencing Guidelines that came out of this “reform” effort.<sup>307</sup>

With the supposed goal of tackling discrimination and the unfairness of sentences varying widely by different judges, the new Guidelines created a rigid structure that dramatically increased sentences, particularly surrounding drug charges.<sup>308</sup> The Guidelines were pitched as some sort of apolitical exercise of scientifically determining appropriate sentences even though at every turn they involved naked political and values decisions. Because of the opaque and technocratic nature of the Sentencing Commission’s bureaucracy, it took several decades to uncover that many of the empirical foundations for the longer sentences were nonexistent, fraudulent, or simple but grievous math errors.<sup>309</sup> Hundreds of thousands of people lost millions of years of their lives because of it.

### CONCLUSION: IF YOU SHRINK IT, THEY WILL GO AWAY

In previous work, I argued that the punishment bureaucracy serves the interests of people who own things.<sup>310</sup> It makes decisions about what kinds of harmful behavior are criminalized and what kinds of harmful behavior are tolerated and even celebrated.<sup>311</sup> It thrives on decisions made

<sup>305</sup> See MURAKAWA, *supra* note 249, at 90-112.

<sup>306</sup> Jack Queen, *Why Breyer Is to Thank (or Blame) For Sentencing Guidelines*, LAW360: DC PULSE (Jan. 27, 2022, 7:01 PM), <https://www.law360.com/pulse/articles/1459079/why-breyer-is-to-thank-or-blame-for-sentencing-guidelines> [<https://perma.cc/N72D-FMLD>]; Amy Baron-Evans, *Sentencing by the Statute*, FED. DEF. SERV., [https://www.fd.org/sites/default/files/criminal\\_defense\\_topics/essential\\_topics/sentencing\\_resources/sentencing-by-the-statute.pdf](https://www.fd.org/sites/default/files/criminal_defense_topics/essential_topics/sentencing_resources/sentencing-by-the-statute.pdf) [<https://perma.cc/8DSF-4F2P>] (last updated Dec. 21, 2010).

<sup>307</sup> The federal prison population increased from 24,640 in 1980 to 155,562 in 2020, peaking at 219,298 in 2013. *Population Statistics*, FED. BUREAU OF PRISONS, [https://www.bop.gov/mobile/about/population\\_statistics.jsp](https://www.bop.gov/mobile/about/population_statistics.jsp) [<https://perma.cc/RGG6-LGKP>] (last updated Aug. 3, 2023).

<sup>308</sup> Frank O. Bowman, *The Failure of the Federal Sentencing Guidelines: A Structural Analysis*, 105 COLUM. L. REV. 1315, 1315 (2005); Mark W. Bennett, *A Slow Motion Lynching? The War on Drugs, Mass Incarceration, Doing Kimbrough Justice, and a Response to Two Third Circuit Judges*, 66 RUTGERS L. REV. 873, 909 (2014) (reviewing “the drug trafficking guidelines, which incarcerate more individuals for longer sentences that [sic] any other area of federal law.”).

<sup>309</sup> See *in passim* Bennett, *supra* note 308, referring to the guidelines’ lack of empirical basis.

<sup>310</sup> Karakatsanis, *supra* note 3, at 857 (“Elites need not worry about creating crimes with harsh punishments if they know that the laws will not be enforced against them.”).

<sup>311</sup> *Id.* at 853-62.

by people in power who, having decided what is a crime, then decide which of those crimes will be enforced against which people, and which crimes by which people will be ignored.<sup>312</sup> This process of selective enforcement is then marketed as a neutral “rule of law” even though nearly every major decision that occurs within it is shaped by power.<sup>313</sup>

This essay on body cameras demonstrates that I left out something important from that analysis: much of what happens in the punishment bureaucracy is determined by the inevitable internal logic of bureaucratic expansion. The punishment bureaucracy is a constellation of government and private institutions that is complex and contested, and it can cause terrible results in the aggregate without any one person or group within it possessing the specific intent that it produces those results. But such a beast, once created, rarely gets smaller, no matter whether anyone who works in it understands it in full. Everyone plays their role, and everyone tells themselves why their role is vital, and no one thinks that everything will be better if only their job could be eliminated or their income or power reduced. Very few people have the incentive, capacity, and courage to go against the current of expansion when the punishment bureaucracy’s engine is humming on the fuel of a new “reform.”

And so many of the most prominent scholars and advocates who study these issues from a critical perspective have arrived at a consistent, simple rule of thumb: To the extent any proposed change reduces the size, power, and profit of the punishment bureaucracy, we should probably support it if we want a world of greater equality, human freedom, and overall well-being.<sup>314</sup> To the extent any proposed change *increases* the size, power, and profit of the punishment bureaucracy, we should probably oppose it if we want a world of greater equality, human freedom, and overall well-being.<sup>315</sup>

Any change that reduces the size of the punishment bureaucracy will likely: 1) benefit the most marginalized groups in our society targeted by the bureaucracy; 2) weaken the ability of people in power to use repression to block progressive social change; 3) reduce the future financial resources and political power of the government and corporate institutions who benefit from the punishment bureaucracy metastasizing; and 4) interrupt the one-way ratchet of corporate influence and bureaucratic growth.

For example, a better reform than the Bail Reform Act discussed above would be to reduce the power and discretion of prosecutors and judges to detain presumptively innocent people prior to trial. As we saw with changes resulting from our lawsuit in Houston or in New York’s new bail law, simply removing the power of the bureaucracy to detain people in the lowest level cases can dramatically reduce incarceration, save hundreds of millions of dollars, lower future crime, keep families together, and reduce the political power of punishment bureaucrats and profiteers.<sup>316</sup>

Several natural, modest, immediately plausible discrete policy responses to the police killings of Michael Brown, Sandra Bland, Walter Scott, George Floyd, Tamir Rice, Philando Castille, Breonna Taylor and thousands of others would be to disarm most police officers; to reduce the number and frequency of police patrols; to remove traffic enforcement from armed police; to

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<sup>312</sup> *Id.* at 899-905.

<sup>313</sup> *Id.* at 905-06.

<sup>314</sup> See Critical Resistance, *Reformist Reforms vs. Abolitionist Steps to End IMPRISONMENT*, [https://criticalresistance.org/wp-content/uploads/2021/08/CR\\_abolitioniststeps\\_antiexpansion\\_2021\\_eng.pdf](https://criticalresistance.org/wp-content/uploads/2021/08/CR_abolitioniststeps_antiexpansion_2021_eng.pdf) [https://perma.cc/SQ4S-QMVT] (last visited Aug. 3, 2023).

<sup>315</sup> *Id.*

<sup>316</sup> *Latest Houston Bail Monitor Report Shows Overall Decline in Misdemeanor Arrests With No Negative Effect on Public Safety*, WILSON CTR. FOR SCI. & JUST., (<https://wscj.law.duke.edu/news/seventh-houston-bail-monitor-report/>) [https://perma.cc/DM4F-YSUT] (last visited May 30, 2024).

ban *Terry* stops; to ban arrests for non-violent drug possession; to ban nighttime home raids; to ban home raids based on drug offenses; to forbid police from arresting people for warrants for unpaid debt; to ban abusive consent searches; to prohibit police from using proprietary artificial intelligence algorithms that the public cannot audit; to prohibit police from exceeding predetermined overtime budgets; to use mental health and social worker first responders instead of police for the large percentage of service calls that deal with mental health; to create mandatory termination of any officer found lying in any capacity on the job; and to take modest portions of police budgets used for many of the above tasks and use the money instead for interventions in public health, housing, early childhood education, parks, lead abatement, and other proven social services. None of these are radical or systemic responses that would significantly and immediately alter the balance of power in our society. None of them would be uncommon practices in much of the world, or for much of U.S. history. And I could have listed fifty more reforms that communities and legal scholars have workshopped and suggested across the country.

Even though these reforms are less harmful and costly than the body camera on any conceivable metric or theory of police violence, all of them would, if adopted, threaten the size, budget, and level of control possessed by police departments, police unions, and companies who contract with police. Because of this simple fact, each of these reforms is dangerous to the system and cannot be tolerated. Accordingly, they are often completely excluded from mainstream discussions on how to respond to police violence. At bottom, “reform” is a strategy for making the police state more durable, more resourced, and more politically defensible.

The story of body cameras shows us that, in this environment of perpetual growth, what comes to be seen as a “reform” can just be whatever powerful interests had already deeply invested in. The actual content of these policy proposals is determined by the nature of these previous investments rather than some objective assessment of overall well-being.

Improvements that shrink the size of the system are like water trying to flow against gravity. Because there is so much money to be made, so many people and institutions dependent on business as usual, and so many layers of ideology that have been constructed to make it all look like thoughtful justice, merely passing simple policies to shrink the punishment bureaucracy is the most difficult thing I have encountered in my career.

One theme runs through this essay and, indeed, my observations over the last 15 years of working in the punishment bureaucracy since I graduated from law school: the bigger we let this system get, the more people who have an incentive to keep it going and to expand it. The more such individuals we foster, the more narratives they weave about their indispensability. But such a relentless beastful blob, once formed, seldom gets smaller, regardless of whether everyone who works within it understands it in full. We cannot know precisely what their next invention will be, but we can be sure that, left to their own devices, they will not choose something that puts them all out of a job. Left to its own devices, the blob will not shrink itself.<sup>317</sup>

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<sup>317</sup> I want to thank Craig Toennies for his insights, his thoughtful public analysis of body cameras for many years, his archival curation of policing and body cameras, and his research contributions to this essay—no one understands the issue of police body cameras better than Craig. I also want to thank Shakeer Rahman—from whom I have learned so much over the years about the policing bureaucracy, surveillance, the complicity of legal academia, “reform,” and principled resistance—and Nika Soon-Shiong, from whom I have learned so much about the anthropology of bureaucracy, procurement, the corporate consulting industry, and so many other things large and small. I also want to thank the law students who did research on body cameras with me over the years, including Lily Bou, Sarah Rosenkrantz, and Natalie Murphy for their amazing help. Finally, I want to give huge thanks to the editors of the Yale Journal of Law and Liberation who helped me with this piece, including Grace Engelman, Noah Humphrey, and Berto Sicard.