

Police Body Cameras and Liability Insurance: The Deterrent to Police Misconduct?

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Abstract: The Justice in Policing Act of 2020 propose mandatory body cameras for all uniformed federal officers in the United State. Advocates of this policy insist the practice will enhance police accountability and has the potential to also reduce police misconduct. In the same vein, advocates of mandatory liability insurance for police officers argue the policy will likely deter police officers from engaging in misconduct. How effective these policies are in enhancing police accountability and reducing police misconduct remains debatable. This paper examined the arguments for whether or not police body cameras have positively influenced police officers' behavior based on an extensive literature analysis of the issue and some informal interviews with police officers. We make a case in this paper however, that body cameras alone will not deter police officers from engaging in misconduct. In line with the Rational Choice theories, police officers are more likely to restrain their actions if they know they will be held personally liable for their actions, and that is why we concur with the advocates of mandatory police liability insurance. Other provided arguments for the increase in police misconduct and that need to be addressed, include lapses in screening out psychologically unstable police applicants must be undertaken. Further contributing to police misconduct according to some critics is the unintended consequences of recent court pronouncements that seem to have watered down the exclusionary rule.

Keywords: Body Camera, Liability Insurance, Police Misconduct, Transparency, Accountability.

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Introduction

The use of police body cameras (PBC) is arguably one of the most far-reaching policing policies in the United States (U.S.) in recent times. Following weeks of demonstrations,

rallies, riots and marches across the United States protesting the death of George Floyd on May 25, 2020 at the hands of police in Minnesota, petitions, and websites were created calling for police to wear body cameras. A Police body-mounted camera is a video recording device used by police officers to record police citizen interactions (Otu, 2016). Citing information from the National Institute of Justice, the websites and petitions points out the use of cameras has been shown to drastically decrease police brutality, promote transparency and accountability in the department, assess accuracy of the nature of events articulated by community members and officers and improve community relationships with law enforcement, (Coyle 2020). The first testing of body-mounted cameras was in England in 2005, was conducted by Devon and Cornwall police officers (Associated Press, July 13, 2007). The United States under President Obama proposed a three-year, \$263 million spending package to increase the use of body-worn cameras, to expand training for law enforcement, and to add more resources for police department reform. The package includes \$75 million to help pay for 50,000 small, lapel-mounted cameras to record police on the job, with state and local governments paying half the cost (Pickler, 2014). The idea behind the use of PBCs is that video evidence provides a truthful account of what happens in violent encounters between police and citizens. Another rationale for this policy is the notion that the presence of cameras is likely to deter violence (Feige, 2015).

On the other hand, critics charge that body cameras are no solution for police violence (Otu, 2016; Buttar, 2015). PBCs might be an intrusion into a citizen's privacy and constitute another form of public surveillance. They question the timing of allowing officers to record activities and whether detectives and/or tactical team members would wear body cameras. Will footage from body camera be shown on television? (James, 2014) Also, will suspects be notified prior to being recorded? Finally, how many police agencies are/or will be using body cameras?

Although controversial, the use of body cameras by the police is currently under consideration by many police departments. However, there is no strong evidential data on how many agencies that are currently using body cameras. The police executive research forum (PERF) surveyed 50, websites0 law enforcement departments on the use of body cameras and found that 25% of respondents reported the use of body cameras, although only about 50% of those surveyed responded (James, 2014). Not everyone (police department) is happy about the possibility of requiring all officers to wear body cameras (Spratt, 2020). When a federal judge ordered that the New York City Police Department issue body cameras to officers in some districts, the Patrolmen's Benevolent Association declared that the cameras would be an "encumbrance." (Meims, 2014).

In theory, although body cameras may enhance police accountability, their effectiveness will depend on whether cameras are the only tools that operate independently or if the cameras work in association with other deterrent mechanisms. According to Sanchez-Moreno (2014), the U.S. government and local officials should (not treat body cameras as a one-size-fits-all solution to police misconduct. For example, in July 2014, Eric Garner's

death was ruled a homicide by the New York Medical Examiner. His death was the result of a forbidden tactic (chokehold) that was administered by a police officer even though the officer was aware of the use of cell phone cameras by witnesses to record his action, and this did not deter him (Sanchez-Moreno, 2014). Although the beating of Rodney King in 1991 by police officers was videotaped, some of the participating officers were acquitted. As a result, it can be argued that transparency does not always translate to accountability (Derby, 2015).

This paper makes the case that there is a new and additional tool that will likely influence police officers' behavior and deter police officers from misbehaving. Common knowledge as well as the Rodney King and Eric Garner cases tell us that if deterrence is measured as the extent to which a police officer expects to be held accountable for misbehaving, a body camera alone is not enough of a deterrence mechanism. Lessons from the Rational Choice theories show that the high rate of police misconduct stems in large part from a lack of monetary liability/accountability on the part of the individual police officer (Otu, 2006). When the employer/government uses taxpayer money directly or indirectly to settle police misconduct lawsuits, there is reason to believe that police officers will continue to apply excessive force. Mandating police officers purchase and maintain occupational liability insurance in addition to body cameras is likely to act more as a restraint against police abuse of their power.

An Overview of the Problem

Police misconduct in the U.S. is as old as the country itself. Racial discrimination, excessive use of force, unjustified killing of citizens, and a lack of accountability have been major problems since the introduction of the police force in the early nineteenth century (Walker, 2005). Police misconduct is a serious problem worldwide, and it seems to be on the rise. The problem can be said to be a local, national, and international issue. Allegations of police misconduct by U.S. police officers continue to generate headlines more than 20 years after the deadly Los Angeles riots of 1992, which brought the problem to the attention of the general public and generated police reforms (Wihbey and Kille, 2015). In the last several months, a number of citizens have been killed or injured by the police. For example, on July 2014, a 43-year-old Eric Garner died from an apparent chokehold applied by a police officer in New York. A month later, 25-year-old Ezell Ford was killed by a police officer in Los Angeles; in July 2014, a California Highway Patrol officer brutally beat 51-year-old Marlene Pinnock; 12-year-old Tamir Rice was shot and killed by police in Cleveland, Ohio; Walter L. Scott was shot by a police officer in North Charleston, S.C. in April, 2015, and in the same month, Freddie Gray died in police custody in Baltimore (Wihbey and Kille, 2015). In addition, 39-year-old Frank Alvarado was killed by a Salinas police officer in California, Michael Brown 18 was killed on August 9, 2015 by a police officer in Ferguson Missouri, and the list goes on.

Since these incidents, there has been much talk about the need for making officers accountable for their actions. A South Carolina police officer, Michael T. Slager, was charged with murder for the killing of Walter Scott, and Baltimore police officer Caesar Goodson and other five officers were charged with second-degree murder and lesser charges respectively for the death of Freddie Gray. On April 2014, the U.S. Department of Justice (DOJ) after a review of the policies and practices of New Mexico, (N.M.). Police department declared that the Albuquerque, N.M., police department “engages in a pattern or practice of use of excessive force, including deadly force,” and in December 2014, the DOJ released a damaging report against the Cleveland Police Department (Wihbey and Kille, 2015).

Again, in March 2015, the DOJ released another report from their findings that show “clear racial disparities” and “discriminatory intent” against the Ferguson Police Department resulting from Michael Brown’s death investigation (Wihbey and Kille, 2015). According to Dokoupil (2014), police in Charlotte, N.C. killed five people in 2013, the most in a decade, but less, according to City Manager Ron Carlee, than were killed by police in Washington D.C (49), Memphis (42), Fort Worth (32), and Austin (17), all of which have seen their own numbers of police use of deadly force increase. In addition, Boston police have fired more bullets in each of the last five years, hitting at least 23 people last year, and killing 11. Philadelphia police shot 52 people in 2012, prompting the commissioner to request a review by the DOJ. All big cities have had police misconduct scandals in recent years, including Dallas, Miami, Baltimore, Chicago, Houston, Los Angeles, and New York, among others (Dokoupil 2014: 2). Recent police misconduct cases and the riots of 2014–2015 have prompted new calls by politicians, scholars, citizens, and even police officials for another serious round of national police reform in order to better train and educate police officers on democratic ideals. Police misconduct and mistrust of police have been around much longer than wearable cameras, and thus we should not pretend that cameras would entirely solve the problem (Kayyali, 2015).

Methodology

In this study of the influence of body-worn cameras and liability insurance on police behavior, qualitative research methods were employed because such methods are the most appropriate for gathering exploratory data. The data collection technique used is called triangulation, which is a combination of different methods used to explore research hypotheses.

The methodology was tailored to gain as much detailed and multilayered information as possible about deterrent influences on police behavior when officers are required to wear body cameras and to purchase and maintain liability insurance. This approach follows Kopinak’s definition of method triangulation as entailing “gathering information pertaining to the same phenomenon through more than one method, primarily in order to determine

if there is a convergence and hence, increased validity in research findings” (Kopinak, 1999, p. 171).

This study was conducted in the U.S. and it was designed to make a case that requiring police officers to wear body cameras and maintain occupational liability insurance is likely to reduce police misconduct. We also utilize both the rational choice and the punishment/deterrent theories in explaining police misconduct and its control in requiring officers to wear body cameras and maintain professional liability insurance, (Otu, 1999).

The research was carried out between June 2014 and December 2015. One of the researchers talked to 30 police officers from different police departments across the United States (U.S.) about police misconduct and the usefulness of body cameras in holding the police accountable. The respondents to the questionnaire were informed that talking to the researcher was voluntary, informal, and confidential, and that the officers’ names and departments would not be disclosed in the research or elsewhere. All participants were patrol officers and had worked for more than five years in that capacity.

It is important to note that the researcher who conducted the informal interviews has lived in the U.S. for more than 30 years and has been involved with police departments and policing for more than 25 years in different capacities. In addition, the researcher’s knowledge of the U.S. police and policing systems in general has been reinforced by his academic study.

The researchers used their judgement and expert knowledge of policing in identifying those respondents that would be useful for the study, (purposive or judgmental sampling), (Babbie & Mouton , 2001 p. 166-168, 288). Although the researchers had a general plan of inquiry, no set questions that would be asked in a specific order existed. In general, the interview was much like a conversation or oral history of their work experiences where the respondents’ did most of the talking. The conversation ended with transcribing, analyzing, verifying the material (its reliability and validity) and reporting the findings (Babbie & Mouton, 2001 p. 290). Several issues were of importance in the use of triangulation in this study, including the sampling of research materials, talking/interviewing the participants, and a thorough analysis of the relevant data. Triangulation enhances study validity because it enhances a better understanding of the social phenomena under study. Thus, triangulation was beneficial to this study as it allowed us to employ several research methods in studying this phenomenon (Mason, 2010).

Data Analysis

The data employed in this study consist of transcripts of the informal interviews, field and personal notes, observations, and notes taken from analyses of manuscripts, books, and microfilms. According to Kellehear (1993), the three general forms of analysis in qualitative research are (a) semiotic, discourse, and reflective analysis; (b) thematic and narrative analysis; and (c) content analysis.

The data analysis of this research was completed both inductively and deductively (Fook, Ryan, & Hawkins, 2000; Kellehear, 1993). The inductive aspects were comprised of a thematic analysis, which involves analyzing the data to ascertain if liability insurance and body cameras separately and in combination, with an emphasis on how these tools are capable of influencing positively the behavior of police officers.

The deductive analysis is comprised of a content analysis, in which patterns in the data (police behavior) are compared to universally known police behavior. The deductive analysis was interesting to compare with that conducted by Otu (2006), which declared “police officers will be deterred from brutalizing citizens; and those not deterred would leave the service when their insurance premium are too high for them to handle” (p 310).

Finally, the deductive analysis was used as one part of a broader inductive analysis that developed a more complete, complex, and clear picture of how body cameras and liability insurance influence police behavior. The process of collecting, coding, and analyzing the triangulated data, generated by the analyses of books and manuscripts, observations, talks, and informal interviews yielded major findings. These findings focus on the impact of body cameras and liability insurance in positively changing police behavior. To interpret the findings, we will first provide a short definition of the variables.

Defining Police Misconduct, Body Cameras, and Liability Insurance

Police officers are law-abiding citizens who happen to wear a uniform to enforce the law (Otu 2006). The Police are the only government agency with the authority to use force, including deadly force to control citizens through a governmental right invested in federal, state, and local governing bodies (Dunham and Alpert, 1997). Society needs the police to maintain law and order and to ensure that citizens have the freedom to contribute to the public good.

Police misconduct is any action performed by a law enforcement officer that is unethical, against established employment guidelines, unconstitutional, or criminal in nature, (Packmen, 2009). Police misconduct includes deliberately obtaining false confessions; false arrest; the creation and use of falsified evidence, including false testimony; false imprisonment; intimidation; police brutality; police corruption; political repression; racial profiling; sexual abuse; and surveillance abuse. Police drug use is also an emerging form of police misconduct. In the U.S., police misconduct is controlled by the exclusionary rule that states that evidence gathered through misconduct is sometimes inadmissible in court. Although the United States Supreme Court has watered down the exclusionary rule—from good faith to the inevitable discovery exceptions, among others, (Human Rights Watch, 1998a). Police misconduct also occurs when officers abuse their discretionary power either by using their occupational power for personal gain or by disregarding a lawful obligation with the pretense of acting under the color of law (Champion, 2001; Luna, 2000). Police misconduct remains a widespread, regular, and prevalent problem around the world and

particularly in the U.S., and it does not show any sign of abating. When discussing the definition of police misconduct it is important to identify whether we are speaking from a public or police point of view, since each group has a different view on the definition of police misconduct (Otu, 2006). It is also important to study each view in relation to the control of police misconduct.

Most citizens see police misconduct as an individual judgment call. When a citizen feels that he/she is not treated in accordance with the Constitution, police misconduct then has occurred (Reiss 1968).

According to Buttar (2015) Americans of color have long known that police can do anything—even murder someone in broad daylight on videotape, without provocation—using methods of force already proscribed by law and get away with it, which is a major reason why body cameras alone will not deter police misconduct. According to Hacker (1991:189), “most African Americans can recall encounters (with the police) in which they were treated with discourtesy, hostility, or worse...”. Kayyali (2015) states that racism allows police to brutalize and even kill unarmed civilians. Also, a Human Rights Watch Report (1998) confirms from an organizational point of view that race plays a central role in police misconduct. Although gains in many areas have been made since the Civil Rights Movement of the 1950s and 1960s, one area that has stubbornly been resistant to change has been the treatment afforded minorities by police (Otu, 2006). The American Heritage Dictionary defines “misconduct as behavior that do not conform to prevailing standards or law, impropriety, and/or deliberate wrongdoing”, especially by government or law enforcement officials. According to some police officers that we spoke with, there are times when misconduct/brutality is necessary, or at least to be expected and overlooked (Personal Conversation, 2015). While some officers state this position openly, others are of the opinion that, “If you’re going to have to pick up society’s garbage, you must be a little bit stubborn.” (Personal Communication, June 20, 2015). Also, most police officers that we talked with admitted that at some time in their career, they lost control of a situation and used excessive force or more force than was necessary either to control a situation or make an arrest.

It is clear, then, that what constitutes police misconduct is at least in part a matter of definition and situation, and that although citizens and the police agree that police misconduct does occur in our society, the police definition and those of other citizens may not always agree, (Feige, 2015; Kovac, 2015; Cox, 1996:193). According to Champion (1997: 1-4) and Bartollas and Jaeger (1988:176), police misconduct falls into one (or more) of three categories. First, a situation in which officers, abuse their discretionary power either by disregarding a lawful obligation or by using their occupational power for personal ends with the pretense of acting under the color of law. Second, situations in which emotions of both the police and the participants/citizens are high, such as a riot or mass demonstrations. Tempers flare on both sides and the police are often difficult to control (Otu, 2006), direct orders by supervisors are frequently disregarded, and police discipline

collapses. Third, situations in which the police, during their day-to-day activities, use force beyond that which is necessary to control the situation or make an arrest. The enormous range of the legitimate authority of the police to use force is at the heart of the problem of defining and controlling misconduct (Klockars, 1996). Providing a precise calculus for determining police misconduct is at best difficult (Payne, 2002:17).

Body-worn cameras (BWCs) are small video cameras worn on the chest, uniform lapels, or sunglasses, (Otu, 2016). According to Stanley (2015), BWCs are also referred to as an “on-officer recording system” or “body cams” or “cop cams” are small, pager-sized cameras that clip onto an officer’s uniform or worn as a headset. BWCs record audio and video of an officer’s interactions with the public. Equipping police with video cameras started decades ago with cameras mounted to the dashboards of police patrol vehicles. However, the concept of BWCs is new and usage has increased over the last five years. BWCs that can be affixed to police officers’ uniforms and document their activities have received tremendous support from citizens (Satija, 2015). President Obama is calling for their use by all police department in the U.S.; Texas Governor Greg Abbott described the use of BWCs as “a step in the right direction.”

Occupational liability insurance (OLI) is also called professional indemnity insurance (PII) but more commonly known as error and omissions insurance (E&O) in the U.S. Liability insurance is a type of insurance that protects professionals such as police officers against bodily injury, personal injury, property damage, or other claims initiated by citizens that were caused by a wrongful act while conducting law enforcement activities (IRMI, 2015; Wikipedia, 2015) The coverage includes an alleged failure to perform on the part of police officer, financial loss, and brutality. Occupational liability insurance may take different forms or names depending on the coverage and the profession. In the medical profession it is called malpractice insurance and in other professions such as construction, insurance, consulting, brokerage, and law, it is referred to as error and omissions insurance. Unlike most of the above-mentioned professional liability insurance, our recommended police officer’s liability insurance should be claim-made basis liability insurance (JUA 2015:1).

Three federal statutes create police officer liability in different forms: Sections 1983, 1985, and 1981 of Title 42 of the U.S. Code. “A tort is a civil wrong where the action of one person is in violation of a legal duty required by law, and which causes injury to another person or damages his or her property,” (Berg 1999:268). In general, negligence and intentional tort form the primary base for civil liability. Civil liability created by Section 1983 provides liability for deprivation of civil rights; Section 1985 provides liability for conspiring to beat a suspect. Police officers can be held liable individually under Section 1983 and jointly under Section 1985. Finally, Section 1981 imposes liability for interference with the exercise of certain specific civil rights (Klockars, 1996). Each of the above sections embodies a form of definition of police misconduct. Finally, whichever definition the reader chooses to accept is immaterial as the central concern is that citizens will continue to

remain victims of police misconduct if officers are not mandated to purchase claim-made basis liability insurance in addition to the wearing of body cameras when on duty.

Literature Review

The available literature on police misconduct and liability insurance is almost non-existent. The few studies that are available lack a compelling theoretical perspective that allows a full explanation of police misconduct and its meaningful control. Most empirical research on police misconduct is based on data collected through observation of on-duty patrol officers, (Wihbey and Kille, 2015; Cao, 2003; Radelet, 1989; Cray, 1972; Reiss, 1971; Chevigny, 1969). Analyses of observational data make unique contributions to our understanding of police misconduct. Observation by independent observers enables one to enumerate, describe, and analyze instances in which misconduct occurs and whether or not such misconduct results in citizen complaints or departmental disciplinary actions (Worden, 1996). Observational data has weaknesses, namely, it may be biased as a result of “reactivity” when human beings behave differently due to the presence of observers (Worden, 1996). Many researchers believe that some observational data and the relationship between variables have high validity and reliability (Mastrofski & Parks, 1990; Worden, 1996;). Reiss 1971: 24) states that, “the use of force by the police is situationally determined by other participants in the situation and by the officers involvement in it, to such a degree that one must conclude the observers presence has some effect” (Reiss, 1968). According to Worden (1996), the first large-scale observational study of police was undertaken by Black and Reiss (1971: 15).

While estimates vary on the research of police misconduct and its control, sociologists, criminologists, and social psychologists have been conducting research on citizen complaints at the individual level using a limited number of police departments and have found no consistent measure among them (Lee and Vaughn, 2010; Cao, 2003; Toch, 1995; Wagner and Decker, 1993; Pate and Hamilton, 1991; Dugan and Breda, 1991; Reiss, 1971). There are many different opinions on police misconduct. One opinion is that police misconduct incidences are infrequent when compared to the number of citizen/police daily interactions (Otu, 2006; Klockers, 1996; Fyte, 1995; Wagner and Decker, 1993; Pate and Hamilton, 1991; Dugan and Beda, 1991; Worden, 1995; Kersteller, 1985; Littlejohn, 1981; Wagner, 1980).

On the other hand, most of the riots of the past centuries were caused by citizen reactions against police misconduct, starting with the Hay Market Riot of 1886, the Chicago riots of 1919; a police raid of an after-hour party in Detroit that led to the riots of 1967; the Rodney King incidence riot of 1992; the James Boyd killing riot of Albuquerque in 2014; the riot in Ferguson, M.O. in 2014 due to the killing of Michael Brown, the Baltimore riot in 2015 due to the Freddie Gray incident, and the most recent riot in Minneapolis in 2020 due to the killing of George Floyd by Police Officer Derek Chauvin, (Cox Media Group, 2020).

Many prominent lawyers and researchers have made recommendations to help stop police misconduct. I take issue with some of the recommendations. For example, President Obama and many others advocate the use of body cameras by all police officers. Hope exists that body cameras and smart phone video recordings of police activities may fuel anger among citizens and a push for police reform, but it may not deter officers from brutalizing citizens. The officers who killed Eric Garner and Michael Brown knew that they were being recorded and it did not deter them from their actions, nor were they indicted for any crime. The late Johnny Cochran made the following observations.

"I have found, through my own experiences and those of my clients, that some things work and some things do not. Here's what we need to do: (Cochran, 2002: 2) Change the culture from the top down and breaking the code of silence. Writing out a set of rules and consequences for officers and following them. Simplifying collection of hard evidence. Getting citizens involved: Strengthening complaint processes and citizens' Review Boards. Increasing involvement by State Government. Increasing involvement by Federal Government. Continuing to bring private lawsuits that keep the attention of department and higher government officials. Continuing to bring media and citizens' attention. Putting more money and resources into the system" (Cochran 2002: 1-6).

His recommendations are appropriate, but do not seem suitable for a heterogeneous society like the United States, (Otu, 2006). These recommendations are aimed primarily at changing institutional behavior. The Wickersham Commission made similar suggestions in the 1930s that were aimed at changing institutional behavior, which did not work. It would be difficult or impossible to implement most of Cochran's recommendations. "For example, changing police culture may be problematic because as Otu (2006:16) states that "police subculture has its roots in morality, solidarity, and the need for common sense or 'street smarts.'" Crank also states that, "culture lives and does not die without serious consequences (Crank, 1997). The circumstances that may destroy a culture are usually the circumstances that may induce crimes" (Otu, 1999: 273). According to Reiner (1992) and Greenwald (2015), the strength of police culture is based on a foundation that police work is a mission, that is, "a worthwhile enterprise, not just another job." It is because of this foundation that makes police culture so difficult to change in regards to the recommendations by Cochran. It is not necessary to change police culture in order to change police practices. Understanding police operational functions is crucial to acknowledging the culture that influences such functions (Otu, 2006).

Although it is common knowledge to Criminologists that all police departments have volumes of written policies, such policies are not necessarily enforced. Hence, the accountability (liability insurance) and enforcement of the wearing of body cameras' policy is what is needed—not compounding policies (Payne 2002:215). As the issue of police culture comes back to police officers protecting each other, the collection of "hard evidence" by fellow police officers is difficult to imagine and thus the necessity of liability

insurance and body cameras to police the police, (Otu, 2006). No studies on record exist that have recommended the use of both liability insurance and the wearing of body cameras as deterrence mechanisms to control police behavior. We question the effectiveness of a “civilian/citizen oversight,” “civilian review board,” and /or “citizens review board” strategies in combating police misconduct. A “citizens review board” is neither a cure-all nor likely to promote the desired result unless it is accompanied by a full package of accountability-building strategies, such as individual liability insurance and body cameras (Otu, 2006). Most political leaders of government (mayors, district attorneys, etc.) are elected officials and want good relationships with the police. As a result, they cannot “police the police” effectively (Otu, 2006). Also, the use of media to victims’ advantage as recommended by others has its popular benefits, but poor minority victims have little or no access to the media. Making police officers personally and financially responsible for their actions is more feasible in addition to the use of body cameras for hard evidence is enough of a deterrence mechanism. A just compensation for harm caused is more important to the victim than popularity through the media. Police misconduct has reached an alarming stage, and something has to be done.

Table 1: The Financial Cost of Police Misconduct to Taxpayers (beatings, shootings and wrongful imprisonment in the ten largest local police departments) 2010–2014

<i>City</i>	<i>Size of Department Number of Officers</i>	<i>Amount</i>
New York City	34,454	\$601.3 million
Chicago	12,042	\$239.7 million
Los Angeles	9,920	\$57.1 million
Philadelphia	6,515	\$54.million
Houston	5,295	\$3.2 million
Washington D. C.	3,865	\$30.5 million
Dallas	3,478	\$6.9 million
Phoenix	2,952	\$5.6 million
Baltimore	2,949	\$12.0 million
Miami-Dade County	2,745	\$3.1 million

Source: (from the cities): *The Wall Street Journal*: Elinson and Frosch (2014) *The Wall Street Journal*, Dow Jones & Company, Inc.

Note: Some cities reported data for fiscal years while some reported for calendar years.

This article uses information and tables from the data gathered by *The Wall Street Journal* through public records requests (Tario, 2015). The aim is to show readers the scope of the problem of police misconduct (brutality), and that even with data from only 10 cities; results show that Police misconduct costs taxpayers lot of money yearly. In just 2014,

The Wall Street Journal reported that 10 cities with the largest police departments paid out \$248.7 million in settlements and court judgments in police-misconduct cases. The data also shows a 48% increase from \$168.3 million in 2010.

Despite the potential importance that liability insurance and body cameras may have on police officer behavior, much of the previous literature on reducing police misconduct is focused on training, retention, an internal review board, a civilian review board, and criminal prosecution (Nation 2001; Phillips and Smith 2000; Stone 1998) Although all of these studies are informative and helpful in understanding police misconduct, none report a significant reduction in police misconduct cases because of the creation of a review board, etc. Only Otu (2006) has reported on the relationship between officers purchasing and maintaining occupational liability insurance and responsible policing. Other important studies that have used the concept of liability insurance to control police behavior in their writings are Ramirez, Wraight, Kilmister, & Perkins, (2019) and Wulff (2020). The current study contributes to filling the literature gap on how the obtaining of liability insurance and the wearing of body cameras would deter misconduct. This research covers two areas: the deterrence effect of occupational liability insurance on the behavior of police officers as it relates to police misconduct, and whether the wearing of body cameras would be effective in controlling police behavior and reducing police misconduct. Theoretically, the study of police misconduct is important because it shows a disagreement between what is right and wrong in a democratic government.

Table 2: The Costs of Misconduct as a Percentage of all Police Claim Payouts, 2010–2014.

<i>City</i>	<i>Misconduct Payout Percentage Per Total Police Claims.</i>
New York	72%
Chicago	89%
Los Angeles	39%
Philadelphia	72%
Houston	38%
Washington D. C.	75%
Dallas	71%
Phoenix	30%
Baltimore	74%
Miami-Dade County	33%

Source: (from the cities) *The Wall Street Journal*: Elinson and Frosch (2014) *The Wall Street Journal*, Dow Jones & Company, Inc.

Note: Some cities reported data for fiscal years while some reported for calendar years.

Theoretical Perspective

This research utilizes both the rational choice and punishment/deterrent theories in explaining police misconduct and control through requiring officers to wear body cameras and carrying professional liability insurance (Otu,1999). Police misconduct includes “the willful and wrongful use of force by officers who knowingly exceed the bounds of their office.” The unnecessary force in police misconduct by contrast is the result of ineptitude or carelessness and “occurs when well-meaning officers prove incapable of dealing with the situations they encounter without needless force, or too hastily resort to force” (Fyte, 1995: 207). The premise underlying this endeavor is that police misconduct and control cannot be fully and accurately addressed through just psychiatric and psychological screening of aspiring employees or by improving training methods. In fact, some police misconduct is a conscious act rather than the result of an unintended mistake resulting from stress or burnout. This idea is, in part, what is referred to as “hate crime police misconduct,” meaning that the explanation and control of conscious or unconscious police misconduct can be explained through theories of behavior (Otu, 2006).

Rational choice theory assumes that the decisions to engage in crime (misconduct) are conscious ones and informed by both the cost and benefits associated with the crime. Rational choice theory is an off shoot of the Classical School of criminology. The two principal branches of classicism are the deterrence principle and econometrics. The deterrence principle states that the law exists to protect the rights of both society and the individual and its chief purpose is to deter criminal behavior. As a result, Congress should enact a law requiring all police officers to always wear a body camera while on duty as well as purchasing and maintaining personal liability insurance as a conscious and unconscious deterrence mechanism against misconduct. Punishment, according to Bentham (1948: 170 “reprint”), should be used only to exclude some greater evil. The idea of requiring liability insurance and body cameras for individual officers is to apply just enough accountability/pain to offset the amount of pleasure derived from the offense. The economic perspective views the decision to commit a crime (misconduct) as essentially similar to any other decision and it is made on the basis of a cost-and- benefit analysis of the crime. The field of economics includes a theory of human behavior (police officers) that is quite similar to the deterrence theory. Many economists have approached crime as an economic choice. According to Vold and Bernard (1986), economists have long applied their techniques to the analysis of criminal behavior, which began with an article by Gary S. Becker in 1968. Both the deterrence and the economic perspectives agree that punishment should not be inflicted if it is groundless, ineffective, unprofitable, or needless. “Punishment according to the culture of the offender theory” states that “in order to make punishment effective, cultural dimensions have to be fully considered; we have to consider who is being punished and from which culture” (Otu, 1999: 253). To be appropriate, punishment models should demonstrate some understanding of the values and behaviors considered essential to the

offender's culture. Police service is an honorable field in which any act of dishonor should bring shame to the individual and organization, (Otu, 2006). According to Piers and Singer (1971), human psychology tells us that, universally, the emotion of shame imparts a negative feeling about oneself. This causes the shamed individual to feel dehumanized and without dignity. Finding a police officer guilty of misconduct in court is by itself shameful—and this not does include the involvement, awareness, and participation of an in-group audience (such as other police officers). Would-be abusers are assumed to be sensitive to the same shame and would be likewise deterred. Shame or the potential of it has an emotional bearing on a police officer's life whereas financial liability remains a conscious and unconscious reminder to all police officers that misconduct is a costly event (Otu, 2006). Cox (1996: 165) describes the police subculture as a "blue fraternity" or "brotherhood" that consists of informal rules and regulations, tactics, and folklore passed on from one generation of officers to the next. As a result, the conscious and unconscious costs associated with brutalizing citizens are also passed on.

According to Otu (2006), the police subculture is a crucial concept in the explanation of police behavior and attitudes. This is one of the many reasons why we need a mechanism of accountability and punishment that fits the police culture, namely, personal financial liability and publicity of the offense and the punishment. Different authors have made several worthwhile recommendations on how earlier during officer's career, knowing what police misconduct is and how often it occurs is crucial in understanding and controlling it. Currently, however, it is difficult to determine the extent of police misconduct. Documenting all instances of police misconduct is difficult in part because there is no central source of information on misconduct incidents, although by all indications (such as a public outcry), police misconduct occurs more frequently than we know. Only high profile and "unusual" misconduct cases are reported and provoke officers to break their codes of silence and inform on each other (White, 2001: 132).

The control or deterrent strategy holds that when police officers wear body cameras to videotape their actions and assume responsibility for their insurance premiums—which may increase due to court settlements by the insurance company—misconduct will be deterred. Those who would not be deterred by increased premiums may be deterred by the combination of high premiums, concrete video evidence and/or the "shame" of publicity for misconduct (being the "bad apple"). Finally, the hardcore repeat offender may be forced to resign when the majority of his/her salary goes to pay for insurance premiums.

In Bouffard, Exum, & Paternoster (2000), the authors argue regarding the role of emotions in human behavior as follows: "The person's state of emotionality or arousal level is an important context or foundation on which rational conduct rests. That is, the rational contemplation of a cost-benefits ratio may require a 'cool' head—a head not too 'hot' because of a dysfunctional lack of arousal" (p. 162). This research showed that by increasing the financial/emotional cost for police officers guilty of misconduct, the pleasure (emotional aspect) of misconduct could be decreased. It is common knowledge that a

source of obedience is deterrence. It would be up to Congress to act in establishing the requirement for all officers to wear body cameras, to purchase and maintain occupational liability insurance, and to make it possible to sue any officer who violates the law.

Currently, the issue of excessively high insurance premiums for physicians is making news, but it does not affect all physicians and, as such, high premiums would not affect all police officers. If need be, a cap could be placed on jury awards to control the possible amount that could be awarded to victims of police misconduct.

The fieldwork for the current study began with informal talks with officers in the state of Texas. The officers improvised their answers by combining experience, expectations, opinions, and emotions, and connecting disparate parts into a coherent whole. When the informal interviews were thoroughly analyzed it became clear that some police officers had given responses fully in line with the law, the Constitution, their policies, and academy training. Analyzing the answers, it was clear that some officers were struggling to give the “right answers” instead of true answers, and that they considered certain answers to be important. A discrepancy did appear between some police officers’ personal perceptions of how they dealt with suspects in terms of interviews and how they behave on the street. According to Goodstein (1983), each organizational culture has beliefs and values that helps members to know what beliefs are important and the way in which these values influence individual officers’ decisions while at work. It is expected that officers will refer to these values and beliefs when talking about their work.

According to Buckingham (2000:63), interview data cannot be considered completely truthful because interviews have been shown to be “an exceptionally slippery medium.” Generally, we found a relationship between the presence of a researcher and lawful talk/behavior. Although lawful responses were given when we talked to different officers, through the use of method triangulation and research procedure, we were able to analyze all the data and strongly indicate that the use of body cameras—in combination with the purchase of liability insurance—will deter officers from misconduct.

This article proposes:

- a. requiring all police officers to wear body cameras and keep them on when on duty;
- b. that all officers carry (claims-made basis policy) occupational liability insurance;
- c. that police officer salaries should be increased to cover basic liability insurance premiums, and,
- d. that financial liability should be removed from the employer (government) and placed on the individual officers’ liability insurance.

This proposal will give officers the incentive to “swallow their pride” in some situations and behave well (lawfully), knowing that their actions are being recorded by their body cameras and the need to maintain low insurance premiums (Otu, 2006). Other arguments have been made to the effect that this proposal, if adopted, might inhibit the ability of

officers to perform their duties. For example, Berg (1999: 270) and Novak, Smith, & Frank (2003:352) state that, “when officers become too concerned about avoiding the use of force, they may avoid risky situations, begin getting injured more frequently on the job, or fail to prevent private citizens from being injured or killed,” and that “officers may engage in fewer proactive law enforcement activities as a way to insulate them from litigation.” The responses to these arguments are simple. Physicians and other professionals are concerned about lawsuits or catching deadly transmitted diseases, which encourages them to be extra careful in treating their patients and performing their duties according to the law, respectively, (Otu, 2006). Why would this not work in the same way for police? Physicians never stop performing risky surgeries because of the fear of being sued; hence, a police officer would not stop performing his or her duties because of fears of a lawsuit (Otu, 2006). Instead, police officers will be more careful and demonstrate only lawful behavior when performing their responsibilities, with body cameras as their “witnesses.” Law enforcement officers who neglect their duties (proactive/reactive) may find themselves targeted in a civil suit. Popular claims for failure to protect include allegations of failure to arrest a drunk driver, a domestic violence situation, a failure to protect a witness, and leaving a citizen in a dangerous place. For example, in the lawsuit “Estate of Sinthasomphone v. City of Milwaukee,” police were called to investigate a young male who was bleeding and appeared to be drunk, running naked in the street. The investigating officers believed that the incident was homosexual domestic situation between Jeffrey Dahmer and the young man. The officers did not know at the time that Dahmer had killed many others. As a result, the officers left the young man in Dahmer’s residence and he killed the young man. In the lawsuit (Estate of Sinthasomphone v. City of Milwaukee, 1995), the Estate alleged that the officers violated the young man’s rights by not intervening. The city paid over \$800,000 for an out-of-court settlement for the police officer’s failure to protect/intervene (Crime TV, 2005)

Arguments have also been made that police unions may fight this proposal and not allow it to be implemented (Hertz 2014). Although police unions bristle at new proposals, success in blocking implementation tends to be very low. This researcher sees police unions as supporters of good policies. Although citizens want the police to be tough on criminals and enforce the law, but they also want them to do it sensibly. (Otu, 2006).

Similar arguments were made during the *Miranda Vs. Arizona* decision, which require officers to read suspects their rights before interrogation. Shortly after the U.S. Supreme Court *Miranda* decision in 1966, several studies sought to examine its impact on police officers’ behavior. Among the most systematic studies were those conducted by Michael Ward and Associates in 1967 in New Haven, C.T.; Pittsburgh; and Washington, D.C. Each study found that although the *Miranda* warning was routinely given to suspects in custody, there was little effect on the law enforcement process (Otu, (2006); Ward, Ayres, Hess, Schantz, and Whitebread (1967)). Ward et al. (1967) suggested that *Miranda* warnings reduced the ability of the police to obtain a confession in relatively few cases. Confessions

often occurred later during interrogation, once plea negotiations had begun. Thus, Ward et al. found that confessions during interrogation were largely unhampered by Miranda (Berg, 1999: 161).

This study shows no hampering effect on lawful law enforcement duties if the proposal is adopted and implemented in any/all jurisdictions. According to Payne (2002: 211), “The increase in suits against police departments and their governments has been facilitated primarily due to the erosion of the doctrine of Sovereign Immunity, and court decisions allowing government to be viewed as persons for purpose of Section 1983 cases.” We as a society should bring back limited government immunity and require our police officers to take responsibility for their behavior by purchasing liability risk insurance and wearing body cameras. If we adequately increase police officials’ salaries, require them to carry claim-made basis liability insurance (Otu, 2006), and require the wearing of body cameras at all times when on duty, no doubt exists that (a) police officers would be deterred from misconduct, and (b) those not deterred would leave the service when their insurance premiums became too high.

Discussion and Conclusion

A major argument of the Rational Choice theories is that human beings are rational and will not engage in any conduct that is not in their best interest. As such, all rational actors will deviate from acts that undermine their self-interest. Therefore, mandatory liability insurance will serve as a deterrent to police misconduct. This idea should be given a chance and police must implement important new ideas before concluding that such ideas are unworkable. Riots and civil lawsuits against officers and departments have become a common method of seeking accountability, with government paying victims and their families tens of millions of dollars through settlements or civil jury awards following judgments against officers (Tario, 2015; Human Rights Watch, 1998). Victims of police misconduct deserve compensation, but this does not mean the government should “widen the net of victims” by using taxpayer money to settle police officers’ misbehavior lawsuits or by encouraging “broken windows or broken kneecaps” to continue. When the employer/government uses tax money directly or indirectly to settle police misconduct lawsuits, the number of victims only increases, with the police not taking full responsibility for their actions. Without major changes to policies that monitor and check police conduct, society as a whole would become direct victims (Otu, 2006). The major thrust of this study is that officers should be held fully responsible for their actions by mandating them to carry personal occupational liability insurance. In addition, other reforms, including wearing body cameras at all times while on duty should be implemented.

Again, it is the responsibility of police administrators to make sure that policy, procedures, and training are in accordance with the law and norms of our society. Departmental policies and training procedures do not have to be in contrast with the law;

hence, officers behaving in accordance with departmental policies that stand in contrast with the Constitution should be able to shift the responsibility/liability to the (employers) city, state, or federal government (Otu, 2006). The following are reasonable expectations of this proposal:

1. police behavior on duty will remain transparent and videotaped;
2. police misconduct will drop to an absolute minimum (specific and general deterrence);
3. police officers will be liable, accountable, and responsible for their behavior;
4. police officers who refuse to change will ultimately resign or retire when their insurance premiums become more than they can afford;
5. police chiefs will have reduced workloads, not having to fight in court to justify the dismissal of a brutal police officer;
6. police officers' daily work performance will be transparent to any interested party (viewing body camera video);
7. good police behavior will save the government/society money; and,
8. police officers will have an incentive/reward for good behavior.

Continuing with body cameras alone without other policy changes in our opinion will not meet the desired policy goal of holding officers fully accountable and deterring them from abusing their power. The foregoing policies proposals should be given full consideration by the relevant federal, state, and local policing agencies if the goal of reducing police abuse of power and use of excessive force is to be achieved.

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