



The Stop LAPD Spying Coalition joins communities across the United States in organizing against racist police brutality and systems of oppression that foster state violence, and the continuing marginalization and murders of black and brown people. Modern policing in the U.S. since its beginnings in the 19th century to control slaves and urban workers is predicated on an underlying assumption that there are classes of people police call “criminals” and now “terrorists” who must be contained in cages and who are predominantly people of color.

Using the events of September 11th, 2001 as their excuse, police have intensified their surveillance and militarization programs, incorporating counter-terrorism policies into domestic policing. Counter-terrorism policies are transforming policing into an intelligence-gathering process that focuses on data collection, storage, and sharing to “predict” criminal behavior. Standards requiring criminal predicate to begin police investigations are eroding. This shift creates an operational and structural apparatus that legalizes speculative policing codified as Intelligence-Led Policing. Moreover, these practices are not based on evidence, and waste resources—all while serving to maximize corporate profits.

The trajectory of Intelligence-Led Policing leads to racial profiling and invasion of privacy. These programs criminalize specific communities to justify apprehension, brutality, and killing. A burgeoning culture of suspicion and fear is permeating our society, encouraging the public to *See Something, Say Something* if someone appears “suspicious.” Such assumed legitimacy leads to “Do Something.”

It is against this backdrop that the Stop LAPD Spying Coalition offers a review and analysis of the American Civil Liberties Union of California’s recently published report titled “Making Smart Decisions About Surveillance.”

Reforms will not radically change an institution whose flaws are built in by design: institutions rooted in the use of violence to preserve a social order based upon exploitation and conquest. Change and transformation can only happen through sustained grassroots efforts that inform our organizing and advocacy. Ultimately it is Los Angeles communities who must determine how they will be “*protected and served.*”

With gratitude and appreciation to everyone who spent countless hours to help develop this document.

The Stop LAPD Spying Coalition

February 15, 2015

1. Brief overview

“Making Smart Decisions About Surveillance” claims to function as a “first-of-its-kind guide providing step-by-step assistance to help communities ask and answer the right questions about surveillance.”¹ Unsurprisingly, in the ACLU’s view, the “right” questions and answers ultimately lead to a push for new legislation,² which would regulate how municipal authorities go about acquiring further surveillance tools and technologies, and how they account for the technologies that are already being deployed. A model ordinance is included at the end of the report in an appendix. The concrete specifications of that ordinance are as follows:³

- Before seeking funds for, acquiring, or using new surveillance technology, before using existing surveillance technology in a new way or location, and/or before entering into agreements with a non-City/County entity to acquire, use or share surveillance technologies, there must be a *public hearing* at which a City or County seeks and gains the approval of its Council or Board.
- A City or County must obtain its Council or Board’s approval of a Surveillance Use Policy prior to using that new technology.
- That Surveillance Use Policy, as well as a Surveillance Impact Report, must be released in print and online at least a month prior to the public hearing. Both of these reports must have information about the proposed purposes and authorized uses of this technology, among other things.
- Surveillance Use Policies must also be produced for the surveillance technologies that are currently being deployed, and these policies must be approved by the Council or Board.
- Relevant Surveillance Reports must be released on a yearly basis by the Council or Board, and a public meeting held. These surveillance reports must include a “summary of community complaints” about the surveillance technologies in question, whether data acquired was shared with outside agencies, and what the justification was for sharing them, in addition to other categories of information (such as costs and crime statistics). This yearly process is characterized as “oversight” of the implementation of surveillance technologies after initial approval.

At least two basic observations can immediately be made about how this ordinance would delegate and (try to) regulate authority.

The public and directly affected communities have no formally specified agency or power except through the City (officials and law enforcement) and its Council.

Within this framework, the “public” may express its opinions and have access to information about surveillance decisions, but the authority to draft policy, assess impacts, and interpret “community complaints” ultimately rests with the City authorities or City Council/Board. These are likely the same authorities who want to use surveillance technologies in the first place, or who often act as a rubber stamp for the parties who are pushing for more surveillance.⁴ The public can only influence this process through direct advocacy to members of the Council/Board. Furthermore there exists no process for the public to alter the City Council/Board agenda to introduce a counter-proposal for a different method of solving the problems surveillance is intended to

¹ See the prefatory letter authored by Nicole A. Ozer and Peter Bibring. Link to the report: <https://www.aclunc.org/publications/making-smart-decisions-about-surveillance-guide-communities> .

² A conclusion that is hardly surprising coming from an organization staffed primarily by lawyers...

³ See appendix pp. 22-25.

⁴ Our own City Council’s propensity to “rubber stamp” can be seen with the recent approval of the allocation of tens of millions of dollars in surveillance-related Urban Area Security Initiative (UASI) grant money without discussion (and with the attempt to suppress public comment): http://lacity.granicus.com/MediaPlayer.php?view_id=103&clip_id=13922 . Nor is this an aberration: hundreds of millions of dollars have passed through the same hands with no public debate. For the total amount of UASI grant money awarded to the LA/LB urban area over the period of a decade, see here: <https://info.publicintelligence.net/SenatorCoburn-UASI.pdf#page=10>.

address.⁵ In other words, within this framework, it is assumed that communities' voices can be reflected and represented in the votes, reports and agendas of the City and its Council/Board.

The oversight process is based on assumptions that the City and the Council/Board are capable of self-auditing in regards to surveillance programs, and that the concerns of the most impacted communities are well understood and represented by the City and its Council/Board.

The oversight process specified by the model ordinance is the Council/Board making decisions on the basis of the City's yearly self-auditing: i.e. on the basis of yearly City reports that include specified categories of information, such as a use policy describing the purposes of surveillance technology, a "summary of community complaints" about the surveillance technologies in question, whether data acquired was shared with outside agencies, and what the justification was for sharing it, information on cost, etc. Such an oversight process is effective only if the City itself is willing and able to produce detailed and accurate descriptions of surveillance technology usage, fiscal cost and their impact on targeted communities, and if specifying these information categories deepens its commitment to do so.

Our attempts to engage with the City over its auditing processes lead us to question the validity of these assumptions. A recent example is provided by the Office of the Inspector General's audits of the Suspicious Activity Reporting program. Technically, these audits meet the basic specifications referenced here. They provide information about when the Major Crimes Division authorizes the entering of a Suspicious Activity Report (SAR) into the Palantir hardware-software platform to be shared with the JRIC: namely, whenever the activity is "reasonably indicative of intelligence-gathering or pre-operational planning related to terrorism or other criminal activity."⁶ They talk about the purpose of Suspicious Activity Reporting: "to foster the sharing of SARs across all levels of government" as desired by the 9/11 Commission. But this information is treated as a purely procedural checklist: the OIG and Police Commission make no attempt to critically evaluate criteria and purposes of Suspicious Activity Reports, imagining what abuses they enable.⁷

Adding more mandatory categories of information like a "summary of community complaints" is not likely to improve these audits, because the OIG and Police Commission feel free to not draw even the most obvious conclusions about the data they already do collect. For instance, even though 30% of identified persons in SARs sent to the JRIC last year were Black folks, echoing similar results in the 2013 audit,⁸ in January of this year LAPD Inspector General Alex Bustamante said there was no racial profiling involved, and the Police Commission accepted this answer without further discussion.⁹ This is not an isolated case. Groups like Youth Justice Coalition, Stop LAPD Spying Coalition, and Los Angeles Community Action Network, which conduct community participatory research, often find City audits lacking in comparison with their own research especially in regards to human impact.

In our experience, auditing processes and City Council public meetings preceding votes give the City more powerful platforms to spread misleading narratives that undermine community members' opposition,

⁵ At certain points within the report (e.g. p. 3 and p. 10), the ACLU does gesture towards promoting a community meeting framework in which a variety of perspectives beyond the law enforcement and business sectors are presented. But a) these would be perspectives on the surveillance agenda set by law enforcement and other municipal authorities, which of course already limits the discussion in very significant ways; b) it's not even clear if these would be the meetings at which decisions are made; it is clear the ACLU has no intention to push for any direct popular power in that decision-making process; c) community presentations of any sort were not a big enough priority to make their way into ACLU's model ordinance.

⁶ Quotes taken from the January 2015 audit, which is provided and contextualized here: <http://stoplapdspying.org/lapd-inspector-general-denies-evidence-of-racial-profiling/> .

⁷ We, on the other hand, have done just that here: <http://stoplapdspying.org/wp-content/uploads/2013/04/PEOPLES-AUDIT-UPDATED-APRIL-2-2013-A.pdf#page=6> .

⁸ The worrying percentages of SARs filed on non-white folks in earlier years are discussed here: <http://stoplapdspying.org/wp-content/uploads/2013/04/PEOPLES-AUDIT-UPDATED-APRIL-2-2013-A.pdf#page=13> .

⁹ This non-discussion can be heard in the recording of the January 27 Police Commission meeting, beginning at 1 hour 5 minutes 40 seconds. (Police Commission recordings can be found here: http://lacity.granicus.com/ViewPublisher.php?view_id=97 .)

especially given that those who attend public hearings and engage the City Council are given only 2 minutes' speaking time when commenting on audits or proposals, and no ability to demand or critique City officials' answers to the challenges they pose.¹⁰

2. A catalog of cops: Sources for the ACLU report

The first hint of deeper problems can be found in the sources ACLU chose to rely upon when drafting a "guide for communities." They do include short news articles and even shorter statements jointly issued by community and advocacy organizations.¹¹ But when it comes to more in-depth (or at least longer) full studies, the ACLU relies almost exclusively on reports authored by law enforcement or by governmental bodies deeply involved in the tracking, targeting, apprehension and/or prosecution of human beings. The following is just a partial list of police-friendly reports cited by the ACLU:

- "How are innovations in technology transforming policing" by the Police Executive Research Forum (**PERF**), a think tank that was headed by William Bratton for years:
http://www.policeforum.org/assets/docs/Critical_Issues_Series/how%20are%20innovations%20in%20technology%20transforming%20policing%202012.pdf .
- "Big Data: Seizing Opportunities, Preserving Values," by the White House:
http://www.whitehouse.gov/sites/default/files/docs/big_data_privacy_report_may_1_2014.pdf .
- "CCTV: Developing Best Practices" (DHS):
http://www.dhs.gov/xlibrary/assets/privacy/privacy_rpt_cctv_2007.pdf .
- "Evaluating the Use of Public Surveillance Cameras for Crime Control and Prevention surveillance" (DOJ "COPS"—An acronym for Community oriented policing services):
http://www.cops.usdoj.gov/Publications/e071112381_EvalPublicSurveillance.pdf .

The primary exception to this rule was reports drafted by the ACLU; naturally, "Making Smart Decisions About Surveillance" relies on a fair number of these. **Still, ACLU cites the PERF report alone more times (5x) than ACLU cites all other ACLU reports combined (4x).**

It is difficult to see how such over-reliance on police-friendly reports could not result in a pro-police bias.

3.1 ACLU's notions of "community" highlight City and Federal institutions first and foremost, and the public last of all.

Hopefully we can agree that the term "community" is most obviously applied to a group of people who have a great deal in *common*:¹² say, shared living conditions, shared experiences (for instance, of being targeted by police), shared spaces, and relatively unmediated interactions, which taken together allow for the development of increasingly overlapping perspectives and goals. Institutions, on the other hand, are structures that are *set up* and *stand* apart from surrounding spaces;¹³ they are structures which assign different roles to people, mete out different levels of power to different groups, and often format interactions in such a way that some perspectives are silenced and others imposed. Institutions are not communities, and in fact often create barriers to the formation of communities. While all individuals have relationships to and interactions with institutions, individuals' places in communities are different from their institutional roles.

¹⁰On the repression of public comments at these meetings, see Sections 5.2-3.

¹¹ Like "Civil Rights Principles in an Era of Big Data," which the ACLU dubs a "report" on p. 7, in an apparent effort to rather literally gloss over the one-sided nature of ACLU's research process. "Civil rights Principles in an Era of Big Data" is a one-page position piece: <http://www.civilrights.org/press/2014/civil-rights-principles-big-data.html>.

¹² We have this on etymological grounds if nothing else, with "community" and "common" deriving from the closely related Latin words *communitas* and *communis*, from which, incidentally, we also get "commune."

¹³ Again, we have this on etymological grounds, with "institution" deriving from the Latin verb *instituere*, "set up, put up."

Behind the framework of ACLU's ordinance is the assumption that a vote in the context of a public hearing would actually lead to more consensual decisions of the City (Council) to authorize the City (Police)'s use of surveillance. The above-described conflict between community and institutional identities leads us to question this assumption. More importantly, our lived experiences demonstrate that even with overwhelming and vociferous popular opposition the City remains relatively indifferent to community concerns.¹⁴ In light of such experiences, the idea that councilmembers can effectively represent those who come from impacted communities is highly problematic to us. Communities can have very different experiences from those who claim to represent, serve, and protect them.

ACLU's ideas about "community" often allow for most of these problems to be overlooked. These ideas can be better understood by examining how the ACLU frames the differences between "community" and law enforcement and/or other institutionally backed stakeholders.

Throughout the first half of "Making Smart Decisions About Surveillance," the "community" is described as having an adversarial relationship with law enforcement, and also with the city, since they are experiencing a democratic processes that is failing. The community suffers the consequences of wrong surveillance choices and ultimately lacks resources to change this condition:

- Introductory letter: *More than ever, people are aware of how billions of dollars in federal funding and equipment provided directly to law enforcement is **circumventing normal democratic processes and preventing communities from thoroughly evaluating the costs and risks of surveillance.** As a result, many community leaders and residents are no longer willing to heed local law enforcement's call to "just trust us"...few resources exist to help communities make thoughtful decisions about surveillance. That's where this document comes in.*
- Pp. 4-6: *Communities that have failed to accurately estimate the full financial cost of a surveillance system **have dealt with massive cost overruns...The community at large may also pay a heavy price if surveillance technology is acquired and deployed without public evaluation of the risks to the community and strong safeguards to prevent misuse.** Surveillance can easily intrude upon the rights of residents and visitors...surveillance can erode trust in law enforcement, making it harder for officers and community members to work together to keep the community safe...Just the perceived threat of surveillance has the potential to harm community members by discouraging political advocacy, efforts to seek counseling about reproductive choices, avenues to explore one's sexuality, and other activities that are clearly protected by the federal and California constitutions.*

There are already problems with these ideas. It is wrong and inaccurate for ACLU to assume that all communities are essentially helpless without its intervention. It is even more inaccurate to assume that all communities agree that police officers can aid people in keeping their community safe.

Starting on Page 9, however, the problems multiply. We see a large shift in the ACLU's use of the term "community." Though previously allowed some distinctness, distance from and distrust of law enforcement officers, the "community" is suddenly capable of "including **public officials, law enforcement officers**" in their institutional roles in addition to "diverse community members." Further down on the page, the ACLU reinforces this new understanding of "community" in a related statement: "The best way to consider whether surveillance is the right choice and avoid costly mistakes is to engage the entire community—including **law enforcement, local lawmakers**, and members of the public—in a thorough discussion about any surveillance proposal." All of the sudden, law enforcement and municipal officials have been integrated back into the community. The third terms in these two phrases—"diverse community members" and "members of the public"—seem to refer to something like our notion of "community," but they have now been demoted to last place in ACLU's syntax.

The ACLU report then begins to talk about "community" as if it not only includes the City Council/Board and police or other policy makers, but is actually *identical* to them. Take these quotes from pages 10-11:

¹⁴ Sections 5.1-4 provide an ongoing example; almost any community organizer could give you a long list of other campaigns that have been met with a similar level of indifference.

- **Your community should also prepare and release a surveillance impact report** to help everyone understand the scope and potential costs of the proposal and a draft Surveillance Use Policy that details the safeguards that would be put in place if the proposal were approved.
- **[I]nitial community approval should be obtained** before any steps towards acquiring surveillance technology are taken.

Recall that preparing and releasing impact reports and giving approval are powers that the ACLU's ordinance grants to City institutions, not to the "community" in our sense of the term—that's what makes these uses of "community" so strange.

Finally, and quite perplexingly, the ACLU begins to speak of the *community* as those who determine the purposes behind the use of new surveillance equipment.¹⁵ The following quotes from pp. 12-13 are just some of the points at which the community is understood as having this kind of agency.

- *What specific community purposes will be aided by adopting this technology?*
- *Will this surveillance technology help your community achieve that purpose? After your community identifies the purposes that surveillance technology might be able to address, you should evaluate whether the proposed technology would actually achieve them.*
- *Even if a specific technology is appropriate for your community's purposes, there still may be financial, legal, and practical concerns that may make adopting it undesirable.*

Recall that the ACLU's ordinance specifies that it is the City that drafts the reports that clarify these purposes.

The set of ideas about "community" that ACLU is drawing from in these segments of the report are quite different from, and more problematic than, those of the first pages.

We maintain that in these moments, the ACLU is drifting dangerously close to adopting the Department of Homeland Security's warped perspective on "community." **On the top of page 9, right before we see the shifts in ideas about community, the ACLU highlights a DHS report** entitled *CCTV: Developing Privacy Best Practices*. **In this report we see a similarly troubling discourse around "community."** As far as DHS is concerned, "community" seems to be used as a synonym for "city," distinguished in terms of scale from the "homeland" DHS claims to protect.¹⁶ "Community law enforcement organizations" is a phrase that pops up. The panel on "community perspectives," which contributes to drafting CCTV "best practices,"¹⁷ consists of individuals from a board of representatives, a mayor's office, a city council, a state emergency management agency, a DHS administrative office, an IT firm that specializes in surveillance systems geared toward law enforcement, and a particularly aggressive Baltimore variant on what the LAPD would call a "community policing" partnership.¹⁸

It is obviously to the advantage of DHS to give favor to the perspectives of law enforcement, City officials, and security vendors, and all other institutions which define their role as monitoring, censoring, or rooting out the Other. It is just as obvious that these perspectives are not *community* perspectives, which would focus on the impacted people who struggle to stay *together* while DHS and allied institutions assign to some individuals the role of targeted "Other."

3.2 The ACLU and the media on Bill Bratton: a history of manufacturing "community"

The narrow scope of ACLU's surveillance report is evidenced by its alignment with DHS' definitions of community. This, however, is not the first time that the ACLU has structured its public statements around a very

¹⁵ See Section 6, entitled "Missions creeping into communities" for more on why this is especially perplexing from the perspective of a coalition that has studied how these purposes are expressed in city proposals.

¹⁶ See sentences such as, "The fourth panel, on Community Perspectives, profiled five U.S. cities in various stages of implementing CCTV systems" (on p. 2).

¹⁷ The panel participants are named here: http://www.dhs.gov/xlibrary/assets/privacy/privacy_rpt_cctv_2007.pdf#page=20.

¹⁸ The Clean and Safe Programs of the Downtown Partnership of Baltimore, Maryland: http://articles.baltimoresun.com/1993-06-24/news/1993175079_1_downtown-partnership-safety-guides-advertising-campaign.

exclusive concept of “community.” The ACLU has a record of joining with the media in *overlooking* perspectives of impacted communities on institutional policies.

The Stop LAPD Spying Coalition is based in Skid Row, housed by the grassroots organization Los Angeles Community Action Network (LA CAN). LA CAN members were particularly dismayed to see the ACLU’s public approval of the extremely troubling policing practices of the Bill Bratton era. During his time as Chief of LAPD, Bratton ushered in the Safer Cities Initiative, a program based on the “broken windows” theory of policing. This particular example of ACLU’s complicity possesses an unfortunate enduring relevance, not just for Skid Row residents, or even Angelen@s in general, but for all who are organizing against police murders across the country: Eric Garner is rightly counted among the many community members targeted by broken-windows policing tactics.¹⁹

Briefly described, “broken-windows” policing is the theory that violent crime thrives in an atmosphere of general “disorder,” so that the best way to curb all crime is to aggressively police infractions and misdemeanors in “high risk,” i.e. low-infrastructure, neighborhoods.²⁰ The first year of the Safer Cities Initiative²¹ alone resulted in the issuing of 12,000 citations, and about 9,000 arrests (750 arrests per month) in Skid Row, which is a community of around 10,000 people.²²

Nonetheless, LA and national media hailed Bill Bratton’s record of restoring trust between the LAPD and the community.²³ Toward the end of his term, polls of registered voters, conducted by national firms,²⁴ recorded unprecedented rates of approval; a Harvard study based on telephone surveys and select focus groups agreed.²⁵ Various explanations were advanced for these high “community” approval ratings, the most frequent of which is expressed succinctly in a 2009 article from the *New York Times* entitled “Hail to the Police Chief”:

Mr. Bratton went into the black community and didn’t leave. He courted black leaders, attended church and community meetings and bonded with as many African-Americans up and down the social ladder as he could. Mr. Bratton slowly broke down the hostility from the black community and, once crime began dropping, he won its backing and eventual admiration.

Skid Row residents—who, given that they are predominantly African American,²⁶ should certainly count as part of the “black community”—would likely dispute every single assertion in this excerpt. While Bratton’s troops entered Skid Row in numbers not seen outside of Baghdad,²⁷ LAPD brass has been unresponsive to Skid Row

¹⁹ Matt Taibbi has a brief but insightful piece on the relationship between broken-windows policing and Eric Garner’s murder: <http://www.rollingstone.com/politics/news/the-police-in-america-are-becoming-illegitimate-20141205?page=2> .

²⁰ From the horse’s mouth: <https://www.crimesolutions.gov/ProgramDetails.aspx?ID=182> . Incidentally, when the NY police union blamed the shooting of NYPD officers on a less-than-repressive reaction to mass demonstrations against police brutality, it was deploying a variant of this general logic.

²¹ Aptly named if we consider that many downtown *communities*’ continued existence conflicted with City *institutions*’ interest in gentrifying downtown.

²² For these numbers, see here: <http://www.lafla.org/pdf/policinghomelessness.pdf#page=5>; <http://www.lafla.org/pdf/policinghomelessness.pdf#page=44> . For photos of “broken-windows” policing in action on Skid Row, see here: <http://cangress.org/la-is-crafting-a-new-plan-for-skid-row-unfortunately-in-reality-its-really-just-talking-points/> ; <https://storify.com/MaxBlumenthal/bratton-s-safer-cities-skid-row-s-pain> .

²³ National media: http://www.nytimes.com/2013/12/11/opinion/william-j-brattons-record-bodes-well-for-new-york.html?_r=0 , <http://www.csmonitor.com/USA/2009/0624/p02s17-usgn.html> ; LA Times: <http://articles.latimes.com/2009/jun/22/local/me-poll22> , <http://articles.latimes.com/2009/mar/26/local/me-lapd-bratton26> .

²⁴ The polls of registered voters are cited here: <http://articles.latimes.com/2009/jun/22/local/me-poll22>

²⁵ This study was requested and touted by none other than the LAPD: http://www.lapdonline.org/may_2009/news_view/41762 ; the relevant text starts here: <http://assets.lapdonline.org/assets/pdf/Harvard-LAPD%20Study.pdf#page=52> , and the methodology is discussed here: <http://assets.lapdonline.org/assets/pdf/Harvard-LAPD%20Study.pdf#page=19> . Notice that the researchers brush aside overwhelmingly negative views that teenagers expressed of the LAPD in their focus groups: <http://assets.lapdonline.org/assets/pdf/Harvard-LAPD%20Study.pdf#page=56> .

²⁶ <http://www.lafla.org/pdf/policinghomelessness.pdf#page=10>

²⁷ http://www.justicestrategies.org/sites/default/files/publications/JS_LAPD_7-13_FNL.pdf#page=8

community members’ attempts to express their concerns and set up meetings.²⁸ And Skid Row residents neither back nor admire the agents who criminalize homelessness.

During the Bratton era, media, academics and policy think tanks joined the LAPD in selecting limited members of the “black community” to manufacture a consensus between that community and the institutions that claimed to serve and protect it.²⁹ This was an ideal moment for the ACLU to organize for the rights of those excessively targeted by police and expose abusive and racist police practices. But on the occasion of Bill Bratton’s retirement in 2009, the ACLU had this to say:³⁰

Chief Bratton’s resignation is a great loss for the city of Los Angeles. He believes in community policing, and he restored the confidence of the community in the LAPD.

Fascinatingly, this was followed almost immediately by the following admission.

While Chief Bratton has made some progress in ending racial profiling by the LAPD, it’s unfortunate that he rejected our recent report documenting continued racial profiling by the department – a report that showed black and Latino residents of this city are stopped, frisked and arrested far more often than whites.

4.1 Community resistance versus misinformed community

The ACLU’s assumption that the City is capable of self-auditing entails the idea that the City does not need to ignore complaints, because the City is capable of acting in the best interests of everyone. This idea also structures and limits other discussions within the report. “**Making Smart Decisions About Surveillance**” is peppered with case studies about public outcries and resistance in response to the expansion of surveillance programs or arsenals. These case studies would appear to illustrate *true* communities in action, self-advocating for their own interests in opposition to City institutions’ agendas. But in keeping with their generally positive perspective on the City, **the ACLU consistently frames these case studies as instances of poor communication or lack of information that caused unfortunate setbacks on the road to City-community consensus—the kind of setbacks that public debates can easily fix.** The ACLU sticks to its story about the City, even at the cost of mischaracterizing or omitting crucial information.

4.2 San Jose PD’s drones: the ACLU minimizes and mischaracterizes informed community perspectives

Let’s start with an example that strikes a chord for us as an organization trying to keep (or kick) police drones out of LA.³¹ The account that the ACLU presents in this report is as follows (quoted from page 11).

*San Jose residents were outraged when they learned that their police department had purchased a drone **without any public debate**. Amid critical media coverage and protests from community groups, civil-rights advocates, and local residents, police apologized and said they would ground the drone until they could conduct **adequate public outreach**.*

Lack of formally sanctioned public debate can indeed be a bad thing—but it is not the worst thing about this story: San Jose PD actively misled journalists who were documenting US law enforcement’s nationwide use of drones, stating that it had no unmanned aerial vehicles. After these journalists obtained documents that proved otherwise, San Jose police played a game of semantics to evade limitations on drone use that might be imposed

²⁸ <http://cangress.org/tag/safer-cities-initiative/>

²⁹ Including the city council, which sung Bratton’s praises: <http://articles.latimes.com/2009/mar/26/local/me-lapd-bratton26>.

³⁰ <https://www.aclusocal.org/statement-from-ramona-ripston-on-the-resignation-of-chief-william-bratton-2/>

³¹ Given that drones are crashing over coalition members’ heads at protests (see our report, “Securing Impunity,” for more on that: <http://stoplapdspying.org/securing-impunity/>), we’re not sure which verb is the more appropriate one, even after the grounding of the Draganflyer models that the LAPD received from Seattle.

by federal regulatory bodies. **It is the presence of this information, rather than a simple absence of public debate, which largely inspired the protests.**

As part of a larger Drone Census project, investigative journalists from Motherboard and Muckrock had filed requests for any financial documents pertinent to the purchase of drones. San Jose PD responded that they had no such documents—but later on, the leak of an Urban Area Security Initiative (UASI) grant proposal from San Jose PD, a grant proposal whose filing necessarily predated at least one of those records requests, proved they had been lying.³²

Both the the journalists' records requests and this explicit and false denial referenced technical terms for drones (UAVs) alongside the layman's term (i.e. "drones").³³ But upon being forced to disclose that it in fact had UAVs, the San Jose Police Department added insult to injury by deploying the curious logic that its UAVs are *not* drones in an attempt to dodge federal oversight.³⁴ **San Jose PD's drone fiasco does not represent a mere failure to engage the public; it represents attempts to mislead the public and dodge oversight on the basis of the always disputable translation of layman's terms into legally binding definitions. Protests were called in the wake of these two disclosures.**³⁵

This is not the first time that the ACLU's treatment of the San Jose drone controversy has flown in the face of available information. In a letter about the San Jose purchase,³⁶ ACLUNC linked to the primary documents showing the active attempt to mislead the public.³⁷ But the letter neglected to mention this and mischaracterized the issue as reflecting "no policy overseeing its use of the drone" rather than highlighting that the SJPD denied it had records of financial documents indicating it wanted to obtain drones. This has the effect of minimizing the reasons for the rupture between the City and communities.

4.3 Oakland's Domain Awareness Center: the ACLU erases community research that it formerly acknowledged.

Oakland's Domain Awareness Center presents another case study of great interest to a coalition like Stop LAPD Spying, which seeks to map out architectures of surveillance. The Domain Awareness Center, a mass surveillance facility originally designed to monitor Oakland's port, was scheduled to encompass the whole of Oakland; this planned expansion was temporarily curbed by organized public resistance. "Making Smart Decisions About Surveillance," however, erases the information that distinguishes community resistance from community misinformation or lack of public debate. The ACLU gives two accounts of this debacle. The one quoted below (quoted from p. 10) is highlighted as a "case study."

OAKLAND'S 'DOMAIN AWARENESS CENTER' FORCED TO SCALE BACK AFTER KEEPING COMMUNITY IN THE DARK

In 2013 the City of Oakland tried to expand its "Domain Awareness Center," originally focused on the Port of Oakland, into a citywide surveillance network linking together video cameras from local streets and schools, traffic cameras, and gunshot microphones. Instead of soliciting early public input about the expanded system,

³² <http://motherboard.vice.com/read/despite-federal-drone-money-san-jose-police-cant-locate-drone-records> ; <http://motherboard.vice.com/read/despite-repeated-denials-san-jose-police-definitely-have-a-drone>

³³ The denial is quoted here: <http://motherboard.vice.com/read/despite-repeated-denials-san-jose-police-definitely-have-a-drone> : "Our Department does not use aerial drones, remotely piloted vehicles (RPVs), remotely piloted aircraft (RPAs), unmanned aerals (UAs), unmanned aerial vehicles (UAVs), and/or unmanned aerial systems (UASs), nor does our Fiscal Unit have any records related to these items." Here are the CPRA documents in which both technical and layman's terms are introduced: <https://www.muckrock.com/foi/san-jose-336/drone-documents-san-jose-police-department-second-request-12596/#1236737-final-response>.

³⁴ <http://arstechnica.com/tech-policy/2014/08/san-jose-police-say-faa-cant-regulate-its-drone-use-faa-disagrees/>

³⁵ <https://www.indybay.org/newsitems/2014/09/16/18761711.php>

³⁶ <https://www.aclunc.org/blog/san-jose-police-departments-secret-drone-purchase-wheres-accountability>

³⁷ This is where the hyperlink embedded in "told Vice" (under the subheading "No policy") leads: <https://www.muckrock.com/foi/san-jose-336/drone-documents-san-jose-police-department-second-request-12596/#1236737-final-response> . In the letter at the very top of the Muckrock page, Shawn Musgrave alludes to and links to documents showing San Jose PD's lies—"negative response" is the euphemism he uses when communicating with the PD in question.

Oakland tried to move forward without any meaningful engagement of the community. Residents were outraged and the City Council voted against expanding the system.

A supplementary account appears on p.5 under the heading of “Funds spent on surveillance may be wasted due to community backlash”:

*Oakland was forced to scrap most of the planning for its Domain Awareness Center and scale the project back considerably after **community members protested the misleading mission statement and lack of transparency for the project. Engaging with the community before deciding whether to go forward with a surveillance proposal can help your community avoid a similar mistake.***

Once again, the ACLU chooses to attribute the outcry against the Domain Awareness Center primarily to a lack of meaningful information and engagement—a “mistake.”

As we saw in the San Jose example, this framing relies in part on previous statements that the Northern California chapter issued. In a February 2014 open letter to Oakland officials, the following excerpts all appear under the subheading, “Need for Oversight.”³⁸

*The DAC resolution (84593) adopted by the City Council last July was a step in the right direction...But it did not go far enough. In particular, **the City Council—and the public—lacks essential information that is necessary to engage in meaningful oversight...***

*At the January 28, 2014 Public Safety Committee, the Port presented on the DAC and explained that its purpose was to enhance Port security by giving the city’s first responders access to Port surveillance and sensor feeds. **But if the mission of the DAC is to ensure Port security, then why the need for cameras trained at Oakland residents?** In addition, the draft privacy policy states that one of the “missions” of the DAC is to “improve readiness to prevent, respond to, and recover from major emergencies at the Port and in the greater Oakland region and.” [sic]...It is unclear how the DAC would “prevent” a major emergency, unless it operates as a comprehensive surveillance center aimed at identifying suspicious activities that might be precursors to terrorism...*

*Third, there **has been an alarming lack of transparency on issues as ostensibly straightforward as cost. To date, the City Council and public have still not been provided with concrete information about the ongoing staffing and maintenance costs to the City, after the expiration of federal grant money...***

The same three points are hit in both contexts: lack of public/City/“community” engagement; lack of transparency; and problems with the mission statement. Similar framings are present in a January 2014 open letter on the same subject, with subheadings “Lack of transparency” and “Oversight.”³⁹ In all of these contexts, there is an emphasis on *lack* of information and engagement as the foundation of distrust, rather than an acknowledgment of the *presence* of distressing information and a *history* of repressive community-police interactions.

It seems that “Making Smart Decisions About Surveillance” borrowed much from the February 14 letter; but it goes one more step in the wrong direction. There was another half of the letter, which presented community concerns, or at least watered-down versions of them. **“Making Smart Decisions About Surveillance” actively omits all references to specific community concerns.**

The ACLU’s January and February letters were coming on the heels of interactions between the ACLU, the *East Bay Express*, and the Oakland Privacy Working Group,⁴⁰ a coalition committed to curbing any expansion of the DAC. A December 2013 article in the *East Bay Express* documented the research and resistance of the Working Group,⁴¹ and featured an exchange in which **the ACLU was shown subsets of emails that the Working Group obtained** via California Public Records Act requests. **The emails, which pertained to the construction and initial deployment of the DAC, made it crystal clear that Oakland Police Department**

³⁸ https://www.aclunc.org/sites/default/files/20140213-aclu_letter_to_oakland_city_council.pdf#page=3

³⁹ <https://www.aclunc.org/sites/default/files/20140128-letter-to-oakland-public-safety-re-dac.pdf>

⁴⁰ Site here: <https://oaklandprivacy.wordpress.com/about/> .

⁴¹ The full released emails are here. <https://publicintelligence.net/oakland-dac-emails/> and here: <https://publicintelligence.net/oakland-dac-saic-proposal/> . The article is here: <http://www.eastbayexpress.com/oakland/the-real-purpose-of-oaklands-surveillance-center/Content?oid=3789230&showFullText=true> .

staffers were using the Domain Awareness Center during the Trayvon Martin protests and May Day, among other demonstrations.⁴²

Linda Lye, the ACLU staff attorney who was shown the documents that *proved* the DAC was being used to spy on protesters, was the author of the February letter; so upon seeing that the press release accompanying this letter was entitled “OPD Documents Expose Grave Potential For Abuse of Domain Awareness Center,”⁴³ one would expect that part of the letter would describe these emails.

This turns out not to be the case. Appended to the ACLU’s open letter were police reports on political demonstrations against Urban Shield. Those documents showed only that selective enforcement of traffic laws was used as a method to target and impede the movements of Occupy protesters.⁴⁴ The ACLU presented this as evidence that Oakland authorities *might* use the Domain Awareness Center to target people based on political ideology. In keeping with the tentative, watered-down nature of this claim, this part of the letter began with the sub-heading “Potential for abuse” (our emphasis). **The ACLU spoke only of “concerns that the Oakland Police Department might use the DAC to target individuals based on ideology,” not the recently established fact that they were doing just that already.**⁴⁵

The February letter had already erased some available information about community concerns and the documents on which those concerns are founded; but “**Making Smart Decisions About Surveillance**” goes further, erasing even the unnecessarily tentative claim that appears in that earlier letter.

5.1 The ACLU Surveillance Report and the Los Angeles Police Commission

So far, we have established the following characteristics of the ACLU’s legislative fix, the report that advances it, and the ACLU’s underlying assumptions and favored framings:

- The ordinance that the ACLU is pushing for does not allow for the community to have any particular agency to structure debates or to propose or vote on alternative measures or policies independently of City institutions and representatives. The ACLU’s model ordinance puts the process of report-drafting,

⁴² As summarized by the *East Bay Express* (see the footnote above for links to the articles and to the emails themselves):

During construction of the first phase of the DAC, from roughly August 2012 to October 2013, city staffers repeatedly referred to political protests as a major reason for building the system. Emails to and from Lieutenant Christopher Shannon, Captain David Downing, and Lieutenant Nishant Joshi of OPD and Ahsan Baig, Oakland’s technical project leader on the DAC, show that OPD staffers were in the surveillance center during the Trayvon Martin protests this year, and that they may have been monitoring marches in Oakland. In the same chain of emails, Shannon asked if the Emergency Operations Center and the DAC control room’s layout had “changed much since May Day,” referring to yet another large political rally in Oakland when the DAC appears to have been used by OPD to monitor demonstrations...

Upon being shown these emails, ACLU staff attorney Linda Lye, who is also the author of the February 2014 letter, reacted the way that anyone should.

Linda Lye... was alarmed when we showed her emails that revealed that the Oakland Police Department has already started using the DAC to keep tabs on people engaged in First Amendment activity. “The fact that the focus so far has been on political protests, rather than the violent crime that’s impacting Oakland residents, is troubling, and telling about how the city plans to use the DAC,” she said.

⁴³ <https://www.aclunc.org/blog/opd-documents-expose-grave-potential-abuse-domain-awareness-center>

⁴⁴ https://www.aclunc.org/sites/default/files/20140213-aclu_letter_to_oakland_city_council.pdf#page=5

⁴⁵ https://www.aclunc.org/sites/default/files/20140213-aclu_letter_to_oakland_city_council.pdf#page=2 . Here are the relevant excerpts: *Information recently obtained from the Oakland Police Department through a Public Records Act Request underscores our concerns about the **potential for abuse**. These records show that OPD has targeted political protesters based on their ideology...Numerous **bicyclists associated with the Occupy Oakland Protest and “FTP” symbols were cited for vehicle code violations** such as running the red lights. At the same time, a bicyclist who was seen committing identical vehicle code violations (running two red lights), but who “stated that he was anti-occupy and that he was in the area to try and dissuade any protest,” was let off with a warning...Unfortunately **our concerns that the Oakland Police Department might use the DAC to target individuals based on ideology or other inappropriate factors are grounded in recent events.***

internal review and critique in the hands of City authorities, assuming that these City institutions will accurately report and display a sufficient degree of sensitivity to the concerns and experiences of directly affected communities (Section 1).

- In this report *and* elsewhere, the ACLU, like the police and the media, *minimizes* and *mischaracterizes* information that would reveal fundamental differences between the perspectives and interests of City institutions and communities (Sections 3.1-2 and 4.1-2).
- In this report *and* elsewhere, the ACLU downplays the uprisings that make visible ruptures in this manufactured consensus, framing them as avoidable misunderstandings between City and community; to this end, it will go so far as to actively *erase* facts and voices that it demonstrably had access to and had previously acknowledged as important (Section 4.3).

To LA-area organizers who interact with City institutions on a regular basis, these characteristics, assumptions and framings will sound very familiar. There are significant parallels between the problems with the ACLU surveillance report and the institutional behaviors that complicate civic participation in LA. This implies that in some respects, the effect of the ACLU's recommendations would be to codify a worrisome status quo.

In the next section of the report, we will demonstrate those parallels. We will focus on relevant patterns of behavior of the Police Commission. This is for several reasons. First, in a recent interview, Peter Bibring suggested that if LA adopted some version of the model ordinance, the City authority that would be given more decision-making and auditing powers (referred to as the "Council/Board" in the ordinance) would likely be the Police Commission.⁴⁶ Second, the Commissioners have had a particularly active role in pushing forward a controversial contract with Taser International for fully 7,000 body cameras, and LAPD's march toward equipping the majority of officers with body cameras is itself a case study in "Making Smart Decisions About Surveillance." Finally, the Stop LAPD Spying Coalition and many other community organizations have mobilized against this surveillance sea change, so this particular struggle is instructive as to the limits of ACLU's framework for solving conflicts between the City and communities.

5.2: The Body Camera Debate: the City and its Commission make a unilateral proposal; directly impacted families and community organizations are not allowed to structure the debate

ACLU viewed the process the city went through to prepare the public for the introduction of body cameras as largely positive. Here is the ACLU's characterization of this "case study" (quoted from page 15 of the report).

LAPD BODY CAMERA POLICIES PROTECT OFFICERS AND THE PUBLIC

*After announcing its intention to adopt body cameras, the Los Angeles Police Department reached out to the police union, the ACLU, **and the public**, to get input on the program and help designing policies that adequately safeguard privacy of officers and citizens. Being transparent about the program and soliciting input from the beginning can help ensure policymakers identify problems and address them from the start*

Public forums are being created and information is being distributed; policies will be drafted and approved before the cameras are rolled out beyond the pilot program; the city is meeting the ACLU's checklist.

From our perspective, the biggest issue with this process is also the issue that ACLU's model ordinance would never fix: ***the City denied the community the power to frame the debate, let alone vote on the issue of body cameras (a problem which the ACLU's model ordinance makes no attempt to remedy)***. The LAPD, like the ACLU, thought it important that public be *informed* by the city and *invited* to sessions to give their input on body camera policy—but no space was created for community members and grassroots organizations who have

⁴⁶ Bibring says this in a February 2 debate with Hamid Khan, which you can watch here: <http://www.laprogressive.com/big-brother-watching/> (relevant comments at around 30 min 15 sec).

the lived experiences, the research skills, and the imagination required to *propose meaningful policy alternatives*.

As Police Commission President Soboroff will tell people every chance he gets—most recently, in the public forums on body cameras and in an interview with “Which Way, LA?”⁴⁷—body cameras were on his agenda long before the fallout of Ferguson allowed them to be presented as primarily a solution to police brutality. A pilot program was already underway in March of 2014,⁴⁸ after a year of planning, and Soboroff, with the aid of the Police Foundation (which regularly receives funding from companies wishing to suggest and secure contracts with the LAPD⁴⁹), already had intentions to expand it. The White House’s reaction to Ferguson—a promise that federal money would be made available to expand body camera programs across the country—allowed the Mayor to formally back the Police Commissioner’s bid to equip the majority of LAPD officers with body cameras in the near future. Body cameras were originally a unilaterally proposed Police Commission initiative; post-Ferguson debates around police brutality gave the initiative an unexpected boost, but were not their original impetus.

LA-area community organizers like the Youth Justice Coalition have spent years working with families directly affected by police brutality, and simultaneously doing the extensive research required to document the extent of lethal use of force here, and to demonstrate its disproportionate impact on marginalized communities.⁵⁰ After this long, collaborative process, they have proposed steps to lessen the impact of police brutality, steps that are backed by directly affected families and individuals; and they have explained what greater accountability could look like.⁵¹ But whenever these recommendations are advanced, Soboroff’s response is simple dismissal.⁵² On “Which way, LA,” he said, “First of all, body cameras are happening. It doesn’t need any more analysis or paralysis, or global statements about how bad police are, because that’s foolish...” (No such global statements had been made preceding these comments.)

Given the fact that Soboroff and others cite the ACLU’s approval in lieu of an actual community mandate,⁵³ the ACLU is well situated to productively intervene—but the ACLU’s model ordinance and report manage to completely avoid engaging with this problem

5.3: The Police Commission and the media minimize and mischaracterize community perspectives on body cameras in order to manufacture a consensus between the City and communities

Above, we discussed Soboroff’s account of the Commission-initiated process behind the body camera program. But Soboroff also regularly presents a narrative that encourages the public to assume there is a consensus between City-dictated initiatives and community outcries. Over and over again, he cites the family of Michael Brown, who, according to Soboroff, “from the depth of their sorrow,” recommended that all officers wear body cameras.⁵⁴ This is not 100% false, but it is misleading in by now familiar ways. For one thing, that recommendation was issued by the *lawyers* for Michael Brown’s family in a press conference on November

⁴⁷Part 1 of the January 14 townhall: https://www.dropbox.com/s/cqxy14pz6fq7zvp/BodyCam_PT1.mp3?dl=0 ; part 2: https://www.dropbox.com/s/cqxy14pz6fq7zvp/BodyCam_PT1.mp3?dl=0 ; “Which Way, LA” segment: <http://www.kcrw.com/news-culture/shows/which-way-la/the-lapd-prepares-to-wear-body-cameras> .

⁴⁸ <http://www.dailynews.com/general-news/20140311/officials-report-positive-reviews-of-lapds-on-body-cameras>

⁴⁹ <http://arstechnica.com/tech-policy/2014/10/private-donors-supply-spy-gear-to-cops/>

⁵⁰ Report here: <http://www.youth4justice.org/wp-content/uploads/2014/09/Dont-Shoot-to-Kill-Summary-September-2014.pdf> ; raw data here: <http://www.youth4justice.org/wp-content/uploads/2014/09/LA-County-Law-Enforcement-Use-of-Force-2007-2014-Final.pdf> .

⁵¹ Beginning here: <http://www.youth4justice.org/wp-content/uploads/2014/09/Dont-Shoot-to-Kill-Summary-September-2014.pdf#page=10> .

⁵² For instance, around 8 min 40 seconds into the “Which Way, LA” segment, and around 12 minutes 20 seconds and 1 hour 45 minutes 40 seconds in the January 14th town hall; links above.

⁵³ For instance, around 9 min 10 seconds in the “Which Way, LA” segment; and around 7 minutes 50 seconds and 14 minutes 40 seconds in the January 14 hearing.

⁵⁴ For instance, 2 ½ minutes into the “Which Way, LA” segment (linked to above); also at around 10 minutes 15 seconds in the January 14 hearing.

25—lawyers who, one could reasonably infer, had more than a hand in drafting the diplomatic official written statement that was issued on November 24.⁵⁵ In the same span of time, Michael Brown’s stepfather directly made remarks of a much different nature, which put him at risk for being charged with inciting a riot—the point being that launching a reformist campaign for body cameras was not the response he had in mind.⁵⁶ It takes a politician to make a community mandate out of these conflicted and conflicting emotions and statements.⁵⁷

The manufacturing of consensus was a big problem at the body camera town hall in Watts, CA on January 14. Throughout the course of the town hall, community members and members of grassroots organizations tried repeatedly to break through the narrow frame of debating around policy *for* body cameras, instead proposing alternative methods of holding police accountable and identifying structural issues that would make body cameras ineffective at producing indictments in officer-involved shootings.

Of the over thirty public commenters at the January 14 meeting,⁵⁸ more than two thirds rejected body cameras as a solution. Their reasoning for doing so included the following points:⁵⁹

- *You can’t stop a genocide (/police state terrorism) by capturing it on film; we want justice, not just cameras.*
- *Eric Garner’s murderers were not indicted despite clear footage. There have been over 600 instances of fatal use of force by police officers since 2000, and no indictments. What’s to say they will produce any more indictments when there is a little more documentation showing those deaths?*
- *There’s no indication that the footage from a body camera would be as clear during violent altercations (would they show whether police officers or victims are on top during a chokehold, for instance?); police have failed to produce such footage at the town hall.⁶⁰ The outward-facing body camera would almost certainly not show when exactly an officer drew his gun.*
- *LA-area victims of police brutality have seen clear footage of what occurred excluded from trial.⁶¹*
- *There were no consequences for the officers who tampered with recording equipment on dozens of police cars in the Southeast division. (While the individual officers might have been difficult to identify, which is the Police Commission’s normal excuse for not intervening, they didn’t punish the supervisors, either.) Given that officers have control of body cameras’ on/off switches, tampering might not even be necessary.*
- *The relationship between Taser International and the LAPD is disgusting and destructive; it means that the corporation profits twice from police brutality: first via the use of often lethal tasers, and second by being awarded the contract to document the use of these and other police weapons.*
- *Body cameras will only normalize ongoing surveillance of people during protests and in everyday situations.*

⁵⁵ On the press conference: <http://www.dailydot.com/politics/ferguson-cop-camera-press-conference/> ; on the written statement: <http://www.vox.com/xpress/2014/11/24/7278977/ferguson-grand-jury-decision> .

⁵⁶ <http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/12/03/should-michael-browns-stepfather-be-charged-with-inciting-a-riot-what-about-the-rioters/> ; <http://thinkprogress.org/justice/2014/12/03/3598954/ferguson-police-investigating-michael-browns-stepfather/> .

⁵⁷ Here we are signal-boosting community members’ callouts of the Police commission’s mischaracterization of the Brown family commission. You can hear them in the audio from January 14: https://www.dropbox.com/s/cqxy14pz6fq7zvp/BodyCam_PT1.mp3?dl=0 .

⁵⁸ Again, audio can be found at the link above. Though we’re focusing on the January 14 meeting, the same was true of the 15th: <http://stoplapdspying.org/lapd-body-cameras-could-be-a-cop-out-say-angelenos/> ; http://pinktank-codepink.nationbuilder.com/lapd_cops_out .

⁵⁹ All of these are paraphrases of comments made during the January 14 hearing.

⁶⁰ To that particular objection, Soboroff rather dismissively responded (at 40 minutes 25 seconds in the January 14 hearing) that people should go to Youtube if they desired to see how body cameras operate.

⁶¹ In a cynical misuse of Code 352: <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=evid&group=00001-01000&file=350-356> . For one infamous case, see here: <http://articles.latimes.com/2014/mar/24/local/la-me-ln-federal-lawsuit-chp-officer-20140321> and the footage in question here: <https://www.youtube.com/watch?v=gcAcJUDzdZw> .

Among the substantive alternatives that people proposed were the appointment of an independent prosecutor to investigate officer-involved shootings and the demand for public hearings on police operational policies.

One part of the Police Commission's response was to insist that body cameras "*are* happening" and to deflect by saying that the question of whether to use body cameras was a matter for the City Council (when in fact, it has yet to come to a vote before the Council, and the LAPD and the Commissioners are actively pushing this agenda without any kind of mandate from the Council).⁶² **But in addition to unilaterally declaring the limits of public participation, Soboroff felt a need to downplay both the quantity and quality of dissent.** On "Which Way LA," Soboroff stated, "You get some very small fringe groups that say don't do it because we just never trust the police." Such a statement, while inaccurate, serves as a way of eliminating barriers to consensus between communities and law enforcement. Dissent is then seen as minimal and of little importance.⁶³ Media reports also helped reinforce the idea that it wasn't the majority who opposed body cameras. Using headlines with beginnings like, "Not everyone agrees..." or "LAPD Chief Beck, Others..." and adopting the standard reporting format that quotes one person who is for body cameras and one person who is against them, followed by a large amount of statements by police and/or municipal officials, news stories about the town halls downplayed the dissent and re-centered the discussion around *the voices of authority*.⁶⁴ The LAPD, the Police Commission, and media falsely represented the community concerns and made it appear as if the choice for body cameras was almost fully supported by the community.

The ACLU model ordinance and report does not address this problem—nor does the ACLU intervene on behalf of the community concerns. An ACLU representative was present at the January 14 meeting and was aware that the meeting was not going well. The only public comment given by the ACLU in light of the controversial meeting was a re-tweeting of a link to an LA Times article⁶⁵ that featured the problems identified above: the headline includes the phrase, "Not everybody trusts" (rather than the honest, "Overwhelming majority of community members do not trust"); two-thirds of the article is spent on pro-camera perspectives, and on the remarks of Chief Beck and Commission President Soboroff. (Not coincidentally, this is also the article that the Office of the Inspector General chose to retweet.) The ACLU, and Peter Bibring individually, also directed their Twitter followers to the "Which Way, LA" segment without comment or criticism.

*5.4 The Police Commission actively excludes and now *literally* erases the most stubbornly audible voices on the rare occasions when widely-reported ruptures expose the falsity of the consensus.*

On days when particularly controversial issues are discussed, one of the more familiar tactics of the Commission as an institution is to try to bar access to a large portion of the people who attempt to attend their supposedly public meetings, directing them to an overflow room, where they watch the Commission speak before a half-empty hall. This was demonstrably the tactic employed, for example, in the summer of 2013 when activists came to protest the politically motivated prosecution of Los Angeles Community Action Network (LA CAN) human rights organizer and anti-gentrification activist Deborah Burton for supposedly "assaulting" an officer with a toy air-horn during a protest.⁶⁶ While news channels captured footage of dozens of demonstrators

⁶² At around 1 hour 46 minutes 30 seconds in the January 14 hearing.

⁶³ And however often the Police Commission calls itself an independent civilian oversight board, it's clear that they represent the law enforcement perspective. In the very same "Which Way LA" interview in which he openly derided the groups who questioned the usefulness of body cameras, Commission President Soboroff expressed unqualified support and concern for LAPD officers (and in addition made it clear he intended to push for officers to get a raise). At the January 14 body camera hearing in Watts, Soboroff says, "We, the LAPD," within the first two minutes. He then corrects himself, but the slip is a telling one.

⁶⁴ For examples of this type of formatting, see the following: <http://www.myfoxla.com/story/27854935/not-everyone-agrees-lapd-officers-should-have-body-cams> (with the "for" voice being LAPD collaborator Monica Harmon); <http://losangeles.cbslocal.com/2015/01/14/lapd-body-camera-policy-to-be-discussed-in-south-la-canoga-park-meetings/>; <http://www.latimes.com/local/lanow/la-me-ln-community-lapd-body-cameras-20150115-story.html> .

⁶⁵ See the re-tweet here: <https://twitter.com/LANow/status/555825458831310848> .

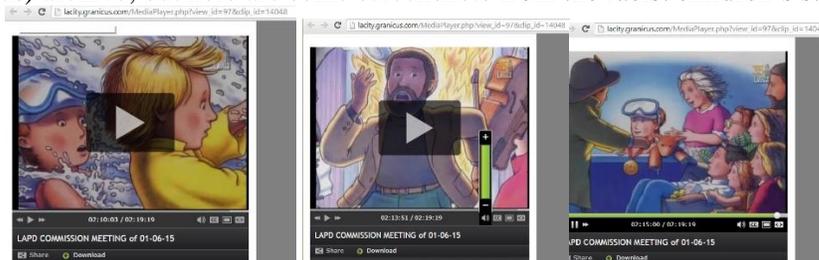
⁶⁶ <http://cangress.org/tag/deborah-burton/>

gathering to speak out before the Commission, footage from inside the meeting showed a mostly empty hall as Deborah Burton’s supporters were by and large directed to the overflow room.⁶⁷

On January 6 of this year, these exclusionary strategies failed, because an outside occupation and growing rally also required containment; eventually, in an effort to keep the outside activity to a minimum, they allowed people to pack the hall at the Police Commission meeting. Finally, the majority of the people who showed up to speak their minds got the opportunity to do so. The series of comments on the realities of police brutality and the inefficacy of the Police Commission as a form of oversight were so staggering that even the media reliably reproduced the emphasis.⁶⁸

In response, the Police Commission **literally erased huge swaths of public comment from the first video versions that they put online.** Initially, they produced a version that replaced nearly an hour of public comment with completely different content: for instance an interview with the actor who played Wyatt Earp (a very pro-police fiction to introduce).⁶⁹ At the end of the video, there was a racist children’s story that is worth examining in more detail. The story is about a white family that takes a bath. The bath water overflows and begins to inundate surrounding apartments— but, in this racist fiction, it’s a good thing, because a POC neighbor just accidentally set his home on fire. The bathtub pilgrim puts the fire out and a POC firefighter gives him a medal.

The coalition has put up a copy of the video,⁷⁰ which has since been taken down from the City’s (Granicus) archive; but here are some screenshots from the racist children’s story.



24 hours later, the Police Commission produced a complete video that was lacking ANY audio, literally silencing dissent.⁷¹ (After being publicly called out on January 14 they did finally put up an unaltered video⁷² and eventually took at least the first video down.)

This is the type of oversight body that the ACLU would task with compiling yearly reports that include, among other things, a summary of community complaints. **The open intolerance of the Police Commission for anything outside of their narrow frame of acceptable concerns is a huge obstacle to any meaningful form of restraint or oversight of the police,** an obstacle that the ACLU’s proposal conveniently overlooks, and that the ACLU seems poised to reinforce.

6. Missions creeping into communities: top-down discourses of “purpose” and “use” of surveillance

There was one further immediately perceptible weakness to the model ordinance taken at face value: a fundamental misunderstanding of “mission creep.”

⁶⁷ News footage: <http://losangeles.cbslocal.com/2013/06/18/human-rights-organizers-protest-demand-lapd-investigate-charges-against-community-organizer/> ; footage from the police commission meeting: http://lacity.granicus.com/MediaPlayer.php?view_id=97&clip_id=11941 .

⁶⁸ <http://losangeles.cbslocal.com/2015/01/06/community-members-demand-officer-firings-over-ezell-ford-shooting/> ; <http://ktla.com/2015/01/06/lapd-chief-charlie-beck-called-coward-during-police-commission-meeting/>

⁶⁹ Starting at around 1:38 of the following video: <https://www.dropbox.com/s/nrwi0q02qw2grul/Jan%20%20first%20attempt%20at%20damage%20control.mp4?dl=0> .

⁷⁰ The same video linked to in the immediately preceding footnote.

⁷¹ Last time we checked, that video was still up: http://lacity.granicus.com/MediaPlayer.php?view_id=97&clip_id=14049 .

⁷² http://lacity.granicus.com/MediaPlayer.php?view_id=97&clip_id=14087 .

Mission Creep is the insidious tendency of the uses of a particular tactic or technology to quietly expand beyond prior boundaries and limits. This is something we need to be committed to detecting and reversing rather than codifying away.

The ACLU ordinance's strategy for containing mission creep is to require that both the purposes and authorized uses of the surveillance technologies be specified in advance, and to further require that any changes of the manner in which surveillance technology is used get approval from the City Council/Board. The underlying assumption seems to be that "mission creep" is the actual switch to different, unauthorized uses of a particular surveillance technology. While not untrue, that's only part of the picture. Mission creep also occurs because the Federal policies governing funding of surveillance technology encourage and legitimize the use of expansive words like "protect," "mitigate," "prevent" and "major events" in explanations of purpose.

More often than not, it is Federal authorities who are in a position to allocate funds toward increasing a City's surveillance apparatus, so acceptable purposes must incorporate the buzzwords of Federal policy objectives. Take, for instance, the Urban Areas Security Initiative (UASI), a DHS-backed program, which by 2012 had disbursed over \$640 million to the Los Angeles/Long Beach urban area alone.⁷³ UASI specifically aids the militarization of police forces and the strengthening of the surveillance state's local infrastructures, as part of nationwide DHS grant allocations totaling over \$41 billion since 2002.⁷⁴ Acceptable purposes/uses for UASI grants have drawn from a genealogy of presidential directives and "vision" and "mission" statements, beginning with the Bush Administration's Homeland Security Presidential Directive 8 (HSPD-8), and (currently) ending with the 2011 Presidential Policy Directive 8 and National Preparedness Goal.⁷⁵ These directives establish clusters of key words used to articulate ideas about the purpose of surveillance and other "counterterrorism" strategies. Consider first excerpts from HSPD-8.⁷⁶

- *This directive establishes policies to strengthen the **preparedness** of the United States to **prevent and respond to threatened or actual domestic terrorist attacks, major disasters, and other emergencies** by requiring a national domestic **all-hazards** preparedness goal...*
- *The term "Federal preparedness assistance" means Federal department and agency grants, cooperative agreements, loans, loan guarantees, training, and/or technical assistance provided to State and local governments and the private sector to **prevent, prepare for, respond to, and recover from terrorist attacks, major disasters, and other emergencies.***
- *The term "preparedness" refers to the existence of plans, procedures, policies, training, and equipment necessary at the Federal, State, and local level to maximize the ability to **prevent, respond to, and recover from major events.** The term "readiness" is used interchangeably with preparedness.*

Here we have two word clusters that are a part of this Federal discourse of purpose. One is about actions and involves the terms "prevent," "prepare for," and "respond to"; another focuses on threats: "terrorist attacks," "major disasters," and "other emergencies." Notice that both clusters have certain variations, and one option for the "threat"—simply "major events"—should raise some red flags for us from the "mission creep" perspective.

Consider next the following excerpts from the 2011 National Preparedness Goal.⁷⁷

We define success as:

⁷³ On LA/LB UASI figures, see here: <https://info.publicintelligence.net/SenatorCoburn-UASI.pdf#page=10> .

⁷⁴ On the \$41 billion number, see here: <http://www.motherjones.com/politics/2014/10/swat-warrior-cops-police-militarization-urban-shield> .

⁷⁵ HSPD-8 is here: <http://www.fas.org/irp/offdocs/nsdp/hspd-8.html> ; the 2011 Policy Directive is here: <http://www.dhs.gov/presidential-policy-directive-8-national-preparedness> ; the 2011 Preparedness Goal is here: http://www.fema.gov/media-library-data/20130726-1828-25045-9470/national_preparedness_goal_2011.pdf .

⁷⁶ See the footnote above for a link to HSPD-8, which is a rather short document considering its widespread influence.

⁷⁷ See this excerpts here: http://www.fema.gov/media-library-data/20130726-1828-25045-9470/national_preparedness_goal_2011.pdf#page=5 .

*A secure and resilient Nation with the capabilities required across the whole community to **prevent, protect against, mitigate, respond to, and recover from the threats and hazards that pose the greatest risk.***

Using the core capabilities, we achieve the National Preparedness Goal by:

- ***Preventing**, avoiding, or stopping a **threatened or an actual** act of terrorism.*
- ***Protecting** our citizens, residents, visitors, and assets against the greatest **threats and hazards** in a manner that allows our interests, aspirations, and way of life to thrive.*
- ***Mitigating** the loss of life and property by lessening the impact of future disasters.*
- ***Responding** quickly to save lives, protect property and the environment, and meet basic human needs in the aftermath of a **catastrophic incident**.*
- ***Recovering** through a focus on the timely restoration, strengthening, and revitalization of infrastructure, housing, and a sustainable economy, as well as the health, social, cultural, historic, and environmental fabric of communities affected by a **catastrophic incident**.*

If possible, the inventory of buzzwords describing actions and threats has become even vaguer in this document.

These sets of terms show up again in Los Angeles-area documents pertaining to UASI grants used to purchase a particular software system that functions as the user interface of Surveillance Utility Vehicles seen in recent demonstrations.⁷⁸ The system, Future Concepts' Antares^x, connects these vehicles to a regional surveillance hub known as a Fusion Center (in this case, the Joint Regional Intelligence Center or JRIC) through a program called the Los Angeles Regional Common Operating Picture Program (LARCOPP). In a document from Santa Monica, in which the Chief of Police is asking for the Council to authorize the awarding of a UASI-based contract to the company that produces this software, the following terminology is used:⁷⁹

- *The purchase of hardware and the Antares system associated with the LARCOPP project would provide the Police Department with regional command and control capabilities that could be used during times of **disaster and emergency**. The equipment would strengthen regional communication and interoperability in order to **protect, respond to and mitigate terrorist attacks, major disasters, and other all-hazard emergencies**.*

The above-quoted excerpt is under the "Executive Summary." A nearly identical formulation is under "Background." Under a different section, we have the following formulation with several troubling tweaks:

- *The LARCOPP system would provide coordinated, regional command and control **during emergencies**. The LARCOPP system with Antares system would equip the City of Santa Monica, mutual aid Area A (the City of Beverly Hills, Culver City and the City of Los Angeles) agencies and Los Angeles County with the ability to communicate with other agencies' already equipped with LARCOPP in addition to Federal and State jurisdictions. The upgrades would satisfy the need for quick dissemination of data and **sharing of critical information on minor and major incidents in order to control and mitigate large scale, regional emergencies**.*

Clearly the 2011 National Preparedness Goal has greatly influenced how the purpose of these surveillance tools is framed. The 2011 language of "catastrophic incidents" also seems to have been adopted and further adapted here, turning into "minor and major incidents." While we should keep track of explicit bits of mission creep in the form of added adjectives like that, **the larger problem is the ever-expanding interpretations of words like "prevent" and "control" in an era of predictive policing.**

⁷⁸ As outlined in another Stop LAPD Spying report: "Securing Impunity: Surveillance, Militarization, and Extensive Information-Gathering in LA During the First Week of Non-Indictment Protests": <http://stoplapdspying.org/securing-impunity/>. See in particular under "Monday, December 1."

⁷⁹ The document can be viewed here: <http://www.smgov.net/departments/council/agendas/2011/20110927/s2011092703-B.htm>.

The ACLU seems well aware that “mission creep” is built into these phrases. Below is an excerpt of an ACLU letter first quoted in Section 4.3, regarding the ACLU’s involvement in resistance against the expansion of Oakland’s Domain Awareness Center (at least partially through UASI funds).

At the January 28, 2014 Public Safety Committee, the Port presented on the DAC and explained that its purpose was to enhance Port security by giving the city’s first responders access to Port surveillance and sensor feeds. But if the mission of the DAC is to ensure Port security, then why the need for cameras trained at Oakland residents? In addition, the draft privacy policy states that one of the “missions” of the DAC is to “improve readiness to prevent, respond to, and recover from major emergencies at the Port and in the greater Oakland region and.” [sic]...It is unclear how the DAC would “prevent” a major emergency, unless it operates as a comprehensive surveillance center aimed at identifying suspicious activities that might be precursors to terrorism...

Indeed, similar receptions and adaptations of the same federal buzzwords can be found in all other UASI-related documents that we’ve encountered to date.⁸⁰ What all this suggests is that mission creep is not something that can be legislated away or eliminated from local policy, but rather something that must be detected, documented and disputed on a case-by-case basis, attacking the implicit acts of categorization underlying the deployment of surveillance technologies in less-than-dire situations. Case-by-case disputation seems like something the ACLU should be fairly familiar with—but of course, to be successful in this endeavor, it would need community partners on the ground establishing the time, place and manner in which technologies are misused.

7. Conclusion

We have known for a long time that the Police Commission works to contain critical voices. Their legitimacy as an oversight body is being rightfully and openly questioned by growing ranks of people who have had the misfortune of attempting to push them for meaningful action or even just thorough research.

But what “Making Smart Decisions About Surveillance” has made painfully clear is that the ACLU itself, by not reaching out to diverse communities and take the most impacted communities’ lead in crafting their analysis and recommendations, increasingly silences the voices of those communities.

The very Police Executive Research Forum (PERF) report from which the ACLU so heavily draws makes it obvious that outreach is a valued tool for *pacification*, and that any attempts by the public or lawyers to actually restrict the use of surveillance is unwelcome in the eyes of police. This comes through clearly in the very excerpts that the ACLU report quotes: “We need to have discussions with the public about new technologies and the robust privacy policies adopted to protect privacy. This lessens the pushback we get [and] benefits us in the long run” (on p.9). The introduction to the PERF report makes it even clearer that lawyers are not valued by police for their commitment to ensure the constitutionality of surveillance technologies.

*No doubt there will be challenges in the Age of Technology. For example, 80 percent of our survey respondents told us they expect to increase the practice of placing GPS devices on crime suspects’ vehicles. But the U.S. Supreme Court is currently considering a case that will decide whether GPS tracking of cars violates the Fourth Amendment ban on unreasonable searches and seizures. So at the moment, we don’t know whether this is one technology that will be restricted by the courts. **But I expect that the setbacks will be far outnumbered by the advances, especially as police find ways to use multiple technologies in concert with each other.**⁸¹*

⁸⁰ From Long Beach:

http://longbeach.granicus.com/DocumentViewer.php?file=longbeach_ce39a8d5cd4dd11a3b95513b83ee20b1.pdf ; from

Los Angeles: http://clkrep.lacity.org/onlinedocs/2010/10-0455-S5_RPT_CAO_03-07-11.pdf ; from Burbank:

http://burbank.granicus.com/MetaViewer.php?view_id=2&clip_id=6178&meta_id=216030 .

⁸¹ http://www.policeforum.org/assets/docs/Critical_Issues_Series/how%20are%20innovations%20in%20technology%20transforming%20policing%202012.pdf#page=10 .

That piece of the puzzle is a familiar one—but what is now coming through to us is that the ACLU is nonetheless committed to cultivating an increasingly congenial relationship with police and related municipal authorities. The ACLU is not opposed to following Law Enforcement’s lead in regarding “community” as essentially synonymous with the institutions that purport to represent, protect and serve it. The ACLU actively revises narratives of resistance to support the idea that the community is misinformed. The ACLU stands by as City institutions erase the voices that produce a counter-narrative; often, it appears to participate in this silencing. The pushing of the model ordinance leaves power in the City’s hands and effectively pacifies popular resistance by allowing institutions to self-audit.

We find the process by which the ACLU report was developed to be deeply problematic, which further puts the recommendations of their report in question.

If reformist legislative measures are to be considered, they must at minimum include a requirement that the public hearings feature community counter-proposals—particularly proposals that have a vocal and sustained backing among directly affected people and their chosen organizational partners.

We call for an understanding that more often than not those who have the deepest commitment to assessing the costs of the use of surveillance are those from directly impacted communities, and a requirement that city oversight must be publicly sized up against reports emerging from targeted communities.

We call for the exposing of the Police Commission and the media for their role in erasing, silencing, and discounting any dissent that breaks away from the frames the City uses to structure and direct reformist campaigns.

We call for an understanding that “mission creep” is an unfolding reality that is often not reflected in any explicit change in purposes or specified uses of technologies. We call for the ACLU and City authorities to acknowledge this threat, and regularly solicit reports from those subjected to surveillance in order to understand how the City is really interpreting and executing its policies.

Please email your comments or questions about this report at stoplapdspying@gmail.com

For further information on the Stop LAPD Spying Coalition please go to our website at:

www.stoplapdspying.org