

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (hereinafter "Settlement Agreement") is entered into by and between Mayor & City Council of Baltimore (the "Mayor and City Council"), Baltimore Police Department ("BPD"), Christopher Sharp ("Sharp") and the American Civil Liberties Union of Maryland Foundation ("ACLU") (the Mayor and City Council, the BPD, Sharp, and ACLU are each individually referred to as a "Party" and collectively referred to as "the Settling Parties").

RECITALS

WHEREAS, Sharp asserts that, on May 15, 2010, he used his cell-phone camera to video and audio record the arrest and beating of an acquaintance at Pimlico Race Course; that officers of the Baltimore Police Department stopped him, seized his cell phone, and detained him while one officer left the area with the phone; and that after the officers returned the phone, Sharp discovered that the officers had deleted video of the arrest and all other videos that had been stored on the device, including numerous videos of his young son and other personal events (the "Incident");

WHEREAS, Sharp filed a complaint in Baltimore Circuit Court styled *Sharp v. Baltimore City Police Department, et al.*, which was removed to federal court under the same caption, and which currently is docketed as Civil Action No. 1:11-cv-02888-CCB (D. Maryland), seeking damages and injunctive and declaratory relief as a result of the Incident (the "Litigation");

WHEREAS, BPD disputes the allegations in the complaint in the Litigation;

WHEREAS, the Settling Parties have agreed to resolve the Litigation on the terms stated below with no admission by any Party;

NOW THEREFORE, in consideration of the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Settling Parties hereby covenant and agree as follows:

1. Recitals/Definitions Contractual: The foregoing recitals and definitions set forth in this Settlement Agreement are contractual and incorporated into and made part of this Settlement Agreement.

2. Effective Date. This Settlement Agreement shall become effective when it is fully executed by all Parties and each Party has delivered an executed copy of the Settlement Agreement to the other Parties (the "Effective Date").

3. Warranty of Capacity to Enter Into Release: The Settling Parties each represents and warrants that no other person or entity has any interest in the claims, demands, allegations or causes of action released in this Settlement Agreement except as otherwise set forth herein and that he or it has the sole right and exclusive authority to execute this Settlement Agreement, to receive the sum specified in it, and to release all

claims on his or its behalf, and that he or it has not sold, assigned, transferred, conveyed or otherwise disposed of any claim, demand, obligation or causes of action referred to in this Settlement Agreement.

4. Payment: Within sixty (60) days after the Board of Estimates approves this Settlement Agreement, the Mayor & City Council shall pay the following amounts:

4.1 \$25,000.00 (Twenty Five Thousand Dollars) (the "Damages Claim Settlement Amount") by check made payable to "Christopher Sharp," which shall be delivered to co-counsel for Sharp, Deborah A. Jeon, Esq., American Civil Liberties Union of Maryland Foundation, 3600 Clipper Mill Rd., Ste. 350, Baltimore, Maryland 21211; and

4.2 \$225,000.00 (Two Hundred Twenty Five Thousand Dollars) (the "Attorney's Fees and Costs Settlement Amount") by check made payable to "American Civil Liberties Union of Maryland Foundation and Wiley Rein LLP," which shall be delivered to co-counsel for Sharp, Deborah A. Jeon, Esq., American Civil Liberties Union of Maryland Foundation, 3600 Clipper Mill Rd., Ste. 350, Baltimore, Maryland 21211;

4.3 The Damages Claim Settlement Amount and the Attorneys Fees and Costs Settlement Amount shall be referred to, collectively, in this Settlement Agreement as the "Settlement Sum."

5. Non-Monetary Relief: The Mayor & City Council and the BPD further agree to provide the following non-monetary relief within forty-five (45) days of the Effective Date:

5.1 The BPD will adopt and implement the policy concerning citizens' rights to audiotape videotape and photograph police activity, attached as Exhibit A;

5.2. The BPD will remove the current General Order J-16, addressing these rights, from circulation, which will be replaced with the policy concerning citizens' rights to audiotape videotape and photograph police activity, attached as Exhibit A;

5.3. The BPD will adopt and implement the training regimen described in Exhibit B related to citizens' rights to audiotape videotape and photograph police activity; and

5.4. The BPD will issue a written apology to Sharp, attached as Exhibit C.

6. Approval by City's Board of Estimates: The Settling Parties understand that payment of the Settlement Sum as set forth in this Agreement is subject to, and contingent upon, the prior approval of the City's Board of Estimates. In the event that the Board of Estimates rejects the settlement, this Settlement Agreement will become void

and of no legal effect, upon which time the parties may continue to pursue whatever claims and/or defenses otherwise available to them in the Litigation.

7. Mutual Releases and Covenant Not to Sue: In consideration of both the payment of the Settlement Sum and the Non-Monetary Relief specified in Sections 4 and 5 of this Settlement Agreement, Sharp and the BPD (the "Releasing Parties"), each on behalf of himself or itself and his or its respective heirs, assigns, and successors in interest, hereby releases and forever discharges and covenants not to sue the Releasing Parties, their agents, principals, officers, employees, employers, agencies, departments and any and all other persons, firms, entities or corporations acting on behalf of the Releasing Parties from any and all claims which the Releasing Parties have as of the Effective Date that arise out of or relate to the Incident or the Litigation, including, but not limited to, any and all losses, costs, expenses, debts, actions (statutory, in law or in equity), causes of action, suits, damages, claims, garnishments, demands and all other claims, liabilities and obligations of any nature whatsoever, whether known or unknown, including attorneys' and consultant's fees, in connection with the Incident or the Litigation.

8. Costs and Expenses: Except for the costs and expenses included in the Settlement Sum, the Settling Parties will each be responsible for his or its own costs and expenses incurred in connection with the prosecution, defense and settlement of the claims asserted in the Incident or Litigation.

9. No Admission of Liability: The Settling Parties contend that the claims and allegations asserted in the Litigation and Incident are disputed. It is understood and agreed by the Settling Parties that this Settlement Agreement and the Releases contained herein shall in no way be construed as an admission of any issue of law, fact or liability on the part of any of the Settling Parties, and any such issues are expressly denied. It is understood and agreed by the Settling Parties that the purpose of this Settlement Agreement is solely to resolve differences among the Settling Parties economically.

10. Joint Public Statement: The Settling Parties agree to issue a joint public statement to the media regarding the resolution of the Litigation. The joint public statement shall be in a form approved by the Settling Parties and attached hereto as Exhibit D.

11. No Evidence of Need to Indemnify: It is understood and agreed by the Settling Parties that this Settlement Agreement, including payment of the Settling Sum, is not to be construed as evidence of an obligation on behalf of the Mayor & City Council and/or BPD to indemnify any officer or official of the Baltimore Police Department for any reason or any other person for claims of intentional conduct, as such contention is expressly denied.

12. Drafting of the Agreement: The Parties acknowledge and agree that this Settlement Agreement represents the product of negotiations and shall not be deemed to have been drafted exclusively by any one Party. In the event of a dispute regarding the meaning of any language contained in this Settlement Agreement, the Settling Parties

agree that the same shall be accorded a reasonable construction and shall not be construed more strongly against one Party than any other.

13. Entire Agreement of the Parties: Except as provided herein, it is understood and agreed by the Settling Parties that this Settlement Agreement constitutes the entire Settlement Agreement among the Settling Parties with respect to the subject matter hereof and supersedes all other prior and contemporaneous written or oral agreements and discussions. This Settlement Agreement may only be amended by a writing signed by all Parties hereto.

14. Severability: In the event that any covenant, condition, or other provision contained in this Settlement Agreement, other than Sections 4 and 5 concerning Payment and Non-Monetary Relief, is held to be invalid, void, or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Settlement Agreement and shall in no way affect, impair or invalidate any other covenant, condition or other provision contained herein. If such condition, covenant or other provision shall be deemed invalid due to its scope of breadth, such covenant, condition or other provision shall be deemed valid to the extent of the scope of breadth permitted by law.

15. Survival of Terms: The Settling Parties agree that this Settlement Agreement shall be binding upon and inure to the benefit of the Settling Parties and their respective successors, assigns, heirs, executors, administrators, and personal representatives. The Settling Parties understand and agree that the terms, covenants, and conditions set forth in this Settlement Agreement shall survive the closing of the Settlement Agreement.

16. Knowing and Voluntary Act: Each of the Settling Parties represents that each has read this Settlement Agreement and acknowledges that each has been represented or had the opportunity to be represented by legal counsel of his or its own choice throughout all of the negotiations which preceded the execution of this Settlement Agreement and that each Party has executed this Settlement Agreement with the consent and on the advice of such legal counsel. Each of the Settling Parties further acknowledges that each Party's counsel have had adequate opportunity to make whatever investigation or inquiry they may deem necessary or desirable in connection with the subject matter of this Settlement Agreement prior to the execution hereof and the delivery and acceptance of the considerations specified herein.

17. Waiver of jury trial: To the extent an action is filed in any court for a breach of any covenant, term or condition of this Settlement Agreement, the Settling Parties hereby agree that such action will be subject to the continuing jurisdiction of the Hon. Catherine C. Blake, Judge, for the United States District Court for the District of Maryland, and voluntarily waive any and all rights to a trial by jury, with the exception of all such actions that Sharp is a party to, in such actions, the Settling Parties shall retain their respective right to a trial by jury.

18. Governing Law: This Settlement Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maryland, without giving effect to its conflicts of law provisions. Any disputes arising out of or under this Settlement Agreement, including but not limited to any action for breach of any covenant, term or condition of this agreement, shall be subject to the continuing jurisdiction of the United States District Court for the District of Maryland, Hon. Catherine C. Blake.

19. Counterparts: This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same instrument. A facsimile or copy signature will be binding and legal in all respects as if it were an original signature to this Settlement Agreement.

IN WITNESS WHEREOF, the Parties or their duly authorized representatives have executed this Agreement as of the date indicated below:

IN WITNESS THEREOF, the Parties have executed this Agreement as of the date indicated below:

CHRISTOPHER SHARP

Dated: _____

**AMERICAN CIVIL LIBERTIES UNION OF
MARYLAND FOUNDATION**

By: _____
Deborah A. Jeon, Esq., Legal Director of the
American Civil Liberties Union of Maryland
Foundation

Dated: _____


**MAYOR AND CITY COUNCIL OF
BALTIMORE**

By: *George A. Nilson*
George A. Nilson, Esq., City Solicitor of
Baltimore

Dated: 2/18/2014

BALTIMORE POLICE DEPARTMENT


By: _____


Anthony W. Batts, Police Commissioner

Dated: _____

Approved as to Form and Legal Sufficiency

By: _____


Daniel C. Beck

18. Governing Law: This Settlement Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maryland, without giving effect to its conflicts of law provisions. Any disputes arising out of or under this Settlement Agreement, including but not limited to any action for breach of any covenant, term or condition of this agreement, shall be subject to the continuing jurisdiction of the United States District Court for the District of Maryland, Hon. Catherine C. Blake.

19. Counterparts: This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same instrument. A facsimile or copy signature will be binding and legal in all respects as if it were an original signature to this Settlement Agreement.


IN WITNESS WHEREOF, the Parties or their duly authorized representatives have executed this Agreement as of the date indicated below:

IN WITNESS THEREOF, the Parties have executed this Agreement as of the date indicated below:

CHRISTOPHER SHARP

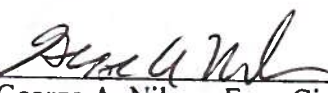
Dated: _____

**AMERICAN CIVIL LIBERTIES UNION OF
MARYLAND FOUNDATION**

By: 
Deborah A. Jeon, Esq., Legal Director of the
American Civil Liberties Union of Maryland
Foundation

Dated: January 28, 2014

**MAYOR AND CITY COUNCIL OF
BALTIMORE**

By: 
George A. Nilson, Esq., City Solicitor of
Baltimore

Dated: 2/18/2014

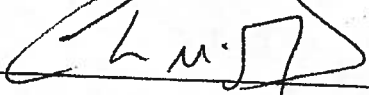
18. **Governing Law:** This Settlement Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Maryland, without giving effect to its conflicts of law provisions. Any disputes arising out of or under this Settlement Agreement, including but not limited to any action for breach of any covenant, term or condition of this agreement, shall be subject to the continuing jurisdiction of the United States District Court for the District of Maryland, Hon. Catherine C. Blake.

19. **Counterparts:** This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same instrument. A facsimile or copy signature will be binding and legal in all respects as if it were an original signature to this Settlement Agreement.

IN WITNESS WHEREOF, the Parties or their duly authorized representatives have executed this Agreement as of the date indicated below:

IN WITNESS THEREOF, the Parties have executed this Agreement as of the date indicated below:

CHRISTOPHER SHARP



Dated: 1/28/2014


**AMERICAN CIVIL LIBERTIES UNION OF
MARYLAND FOUNDATION**

By: _____

Deborah A. Jeon, Esq., Legal Director of the
American Civil Liberties Union of Maryland
Foundation

Dated: _____

**MAYOR AND CITY COUNCIL OF
BALTIMORE**

By: 
George A. Nilson, Esq., City Solicitor of
Baltimore

Dated: 2/18/2014

EXHIBIT A

I. POLICY

The Baltimore Police Department (BPD) recognizes that Members of the general public have:

- a First Amendment right to video record, photograph, and/or audio record BPD Members while BPD Members are conducting official business or while acting in an official capacity in any public space, unless such recordings interfere with police activity;
- a Fourth Amendment right to be free from unreasonable searches and seizures of both person and property; and
- a Fourteenth Amendment right to due process in advance of property deprivation.

In furtherance of the this policy, Members may not prevent or prohibit any person's ability to peaceably observe or record police activity that occurs in public, or where the person recording otherwise has the right to be.

II. REGULATIONS

- A. Photographing and recording are common and lawful activities. Taking photographs or recording from a place where a person has a right to be does not constitute suspicious conduct.
- B. In areas open to the public, Members shall allow all persons the same access for photography and recording as is given to the news media. Members shall be aware that:
 - 1. All persons have the same right to take photographs or make recordings as news media, as long as the person has a legal right to be present where he or she is located.
 - 2. All persons have the right under the First Amendment to observe and record Members in the public discharge of their duties.
 - 3. Public settings include, e.g., parks, sidewalks, streets, and locations of public protests; but that protection extends also to an individual's home or business, common areas of public and private facilities and buildings, and any other public or private facility at which the individual has a legal right to be present.
 - 4. Persons may also record their own interactions with police officers. Just as bystanders have the right to record police activity, persons have a right to record their own actions with officers

who are exercising their police powers, without the need to obtain consent.

5. The fact that a person has a camera or other recording device does not, however, entitle the person to cross a police line, to enter an area that is closed to the public, or to enter any area designated as a crime scene.

C. As long as the photographing or recording takes place in a setting where the individual has a legal right to be present and does not interfere with a Member's safety, Members shall not inform or instruct people that photographing or recording police officers, police activity or individuals who are the subject of police action (such as a Terry stop or an arrest) are not allowed; require a permit; or require the Member's consent. Additionally, Members shall not:

1. Order that person to cease such activity;
2. Demand that person's identification;
3. Demand that the person state a reason why he or she is taking photographs or recording;
4. Detain that person;
5. Intentionally block or obstruct cameras or recording devices;
6. Demand to review or erase any images or recordings; or
7. In any way threaten, intimidate or otherwise discourage an individual from recording Members' enforcement activities.

NOTE: Members may ask questions during the course of a contact, but Members are reminded that there is no justification for ordering a person to stop or requiring that they answer unless the Member reasonably suspects that a person has committed, is committing, or is about to commit any crime.

D. Members are reminded that the public does not have a right to interfere with police activity. Interference consists of conduct, threats, actions or activities that prevent or hinder, or purport to prevent or hinder, Members from doing their job.

NOTE: Observing or recording police activity, alone, does not constitute interference.

1. If a person is photographing or recording police activity from a position that impedes or interferes with the safety of Members

or their ability to perform their duties, a Member may direct the person to move to a position that will not interfere. However, a Member shall not order the person to stop photographing or recording.

2. A person has the right to express criticism of the police activity being observed. So long as that expression does not jeopardize the safety of any Member, suspect or bystander; and so long as that expression does not violate the law or incite others to violate the law, the expression does not constitute interference.

E. Evidence on a Camera or Recording Device; Probable Cause

1. Members may not request or seize an individual's camera or recording device for the purposes of deleting, destroying, or otherwise concealing information which they believe may portray individual BPD Members or the BPD in a negative light. Concerns of this nature do not provide a basis to request or seize cameras or recording devices.
2. Probable cause exists only where the known facts and circumstances are such that a reasonable Member in the same situation would believe that evidence of a crime will be found.
3. If a Member has probable cause to believe that a camera or other recording device contains images or sounds that are evidence of criminal acts, the Member shall request that the person either:
 - a. Voluntarily provide the device or recording medium (e.g., the memory chip) to the Member; or
 - b. Where possible and practicable, and in the presence of the Member, voluntarily transmit the images or sound via text message or electronic mail to the Member's official government electronic mail account.
 - c. Consent to take possession of a camera or recording device must be given voluntarily, without coercion or threats. A Member shall not, implicitly or explicitly, coerce consent to take possession of any recording device or any information thereon.
4. If the person voluntarily provides the camera or recording device to the Member, the Member shall:
 - a. Exercise due care and caution with any of the individual's property or electronic device(s);

- b. Complete a Form 93/56, "Property Receipt," and provide the pink copy to the individual. Retain all other copies;
 - c. Provide the individual with the name and contact information of the Officer who took custody of the individual's property;
 - d. In the "Property Listing / Evidence Recovered" section of any applicable field report(s), list the item(s) surrendered by the individual and held/submitted as evidence.
 - e. Document your request, and the individual's response, in the narrative of applicable field reports and/or charging documents.
 - f. DO NOT make any attempt to view, download, or otherwise access any material contained on the device.
 - g. **Protection of any potential evidence is paramount.** Only members of the Cyber and Electronic Crimes Unit may make efforts to access material contained on the device.
5. Members may not seize the recording or recording device unless sufficient exigent circumstances exist to justify a warrantless seizure. Members must evaluate the sufficiency of exigent circumstances as they would for any other type of evidence.
6. **If the person declines to voluntarily provide the camera or recording device,** or to electronically transmit the sound and/or images where possible and practicable, and there is probable cause to believe that the evidence is in immediate jeopardy of being tampered with, altered, deleted, or destroyed, you may temporarily seize the device for safekeeping/preservation of the evidence while the appropriate application(s) for Search and Seizure Warrant(s) are made.
- a. DO NOT make any attempt to view, download, or otherwise access any material contained on the device.
 - b. **Protection of any potential evidence is paramount.** Only members of the Cyber and Electronic Crimes Unit may make efforts to access material contained on the device.
 - c. Apply for, execute, and return any Search and Seizure Warrant(s) in accordance with General Order J-7, "Search and Seizure Warrants."

- d. Submit the recovered camera, video recording device, etc., in accordance with General Order N-1, "Control of Property and Evidence."
 - e. Complete all appropriate field reports.
- F. Members shall not, under any circumstances, erase or delete, or instruct or require any other person to erase or delete, any recorded images or sounds from any camera or other recording device that is in the possession of a nonmember, or that has been voluntarily turned over or seized under the terms of this order.
- G. Members shall maintain cameras and other recording devices that are in Department custody so that they can be returned to the owner intact with all images or recordings undisturbed.

Permanent Rank Supervisor / OIC

- A. Ensure that any camera or video recording device that has been used to photograph and/or video record police activity comes into the custody of the BPD:
 - 1. Through the voluntary consent of the individual in possession of the item.
 - 2. Through execution of a Search and Seizure Warrant.
 - 3. Through some valid exception to the warrant requirement.
- B. Permanent Rank Supervisors must provide the review and approval of any application for a Search and Seizure Warrant as required by General Order J-7, "Search and Seizure Warrants."

Duty Detective, Cyber and Electronic Crimes Unit

- A. Provide guidance and assistance to members on those occasions when an Application for a Search and Seizure Warrant is made for a camera, video recording device, etc., believed to contain evidence related to a criminal investigation.
 - 1. Specific attention should be given to helping those members properly define or describe the various data formats and storage devices they may be seeking in their Warrant Application.
 - 2. Make any appropriate recommendations that may assist in the preservation of data, photographs, video "clips," etc.

3. In the course of a criminal investigation, and/or at the request of a member of the Department, access and download evidentiary materials contained on a device in that member's custody.

COMMUNICATION OF POLICY

Supervisors shall be responsible for communication of this policy to their subordinates, and to ensure their compliance. Supervisors also must set the example for their subordinates by acting appropriately when observed or recorded in public and by disciplining the subordinate or advising the appropriate individual(s) in the Department with disciplinary authority about any subordinate's violation of this Policy. This Order is effective on the date of publication, is to be read at all roll calls for five consecutive days, and is to be posted on all Departmental Bulletin Boards.

EXHIBIT B

1. IMPLEMENTATION OF NEW POLICY RE CITIZENS' RIGHTS TO OBSERVE AND RECORD

1.1 Within 60 days of the Settlement Agreement's Effective Date, BPD agrees to inform each officer and employee about this Settlement Agreement and the responsibilities of each officer and employee pursuant to it.

1.2 Within 120 days of issuing a policy or procedure pursuant to this Agreement, BPD agrees to ensure that all relevant BPD personnel have received and read their responsibilities pursuant to the policy or procedure, including the requirement that each officer or employee report violations of policy; that supervisors of all ranks be held accountable for identifying and responding to policy or procedure violations by personnel under their command; and that personnel be held accountable for policy and procedure violations. BPD agrees to document that each relevant BPD officer or other employee has received and read the policy. Training beyond roll call, or similar training, will be necessary to ensure officers understand and can perform their duties pursuant to the policy.

1.3 Unless otherwise noted, the training required pursuant to the Settlement Agreement shall be delivered within 365 days of the Effective Date, and annually thereafter. Within 180 days of the Effective Date, BPD shall set out a schedule for delivering all training required by this Agreement within 365 days of the Effective Date.

2. OFFICER TRAINING RE CITIZENS' RIGHTS TO OBSERVE AND RECORD

2.1 Within 365 days of the Effective Date, BPD shall provide all officers and trainees with approximately 2.5 hours of initial training on citizens' rights to record, including the requirements of this Settlement Agreement. Thereafter, BPD shall provide all officers with approximately 1.5 hours of such training on an annual basis and shall incorporate training on citizens' rights to record, including the requirements of this Settlement Agreement, into its annual in-service and police academy training on Constitutional Law and/or Police Liability. This training shall be taught by a qualified legal instructor with significant experience in First Amendment and Fourth Amendment issues, and/or a member of its in-house training staff or adjunct instructor that has been trained by a qualified legal instructor with significant experience in First Amendment and Fourth Amendment issues, and shall:

(a) address Fourth Amendment and related law, BPD policies, and requirements in this Settlement Agreement regarding searches and seizures;

(b) address First Amendment and related law, BPD policies, and requirements in this Settlement Agreement on the rights of individuals verbally to

dispute, to observe, and to record (by audio recording, video recording, photographing, etc.) officer conduct;

(c) address the differences among various scenarios in which individuals' interact with BPD personnel while exercising their First Amendment rights; between probable cause, reasonable suspicion, and mere speculation; and between voluntary consent and mere acquiescence to police authority;

(d) provide guidance on the legal requirements for conducting searches, with and without a warrant;

(e) provide guidance on the permissible nature and scope of searches based on the level of intrusion on an individual's privacy interests;

(f) specify the procedures for executing searches, including handling, recording, and taking custody of seized property or evidence;

(g) provide guidance on effecting an arrest with and without an arrest warrant; and

(h) provide guidance regarding the nature and scope of searches incident to an arrest.

2.2 BPD agrees that as part of the training, BPD will require all active Officers to answer the multiple-choice questions attached to this Exhibit B as Attachment 1.

2.3 BPD agrees that all subsequent annual training sessions will include testing similar in form, content, and length to that in Attachment 1. BPD agrees that all subsequent annual training and testing materials will be developed by the qualified instructors required under Section 4, below.

3. ROLL CALL AND/OR ON-LINE TRAINING

3.1 In addition to agreeing to provide the annual training required by Section 2, above, BPD agrees that it will provide all officers with roll call and/or on-line training on the rights and scenarios identified in Section 2 at least twice annually.

4. INSTRUCTOR SELECTION

4.1 BPD agrees actively to seek out and retain qualified instructors, including instructors from outside BPD, with expertise in areas such as law and investigations, as necessary, to supplement the skills of in-house training staff and adjunct instructors and/or to train its in-house training staff and adjunct instructors. Additionally, BPD agrees to incorporate experts and guest speakers such as judges, prosecutors, and community members, to participate in instruction regarding citizens' rights to record and/or to train its in-house training staff and adjunct instructors.

5. **TRAINING EVALUATION**

5.1 Within 365 days of the Effective Date, BPD agrees to develop and implement a process that provides for the collection, analysis, and review of data to document the effectiveness of training and to improve future instruction, course quality, and curriculum. This process shall measure and document student reaction to and satisfaction with the training they received; and student learning as a result of training, including the extent to which students are applying the knowledge and skills acquired in training to their jobs.

5.2 Within 365 days of the Effective Date, BPD agrees to develop and implement documented and approved testing policies and procedures to ensure that all testing is valid, reliable, and fair. Both knowledge-based and performance-based tests shall be designed, developed, administered, and scored according to established professional standards of practice.

5.3 All tests shall be job-related, testing knowledge and skills required for successful job performance.

6. **TRAINING RECORDS**

6.1 Within 365 days of the Effective Date, BPD agrees to develop and implement a system that will allow the Training Division to track electronically, maintain, and report complete and accurate records of current curricula, lesson plans, training delivered, and other training materials in a centralized electronic file system. This system shall, at a minimum:

(a) maintain training records for each recruit and each sworn member of the Department;

(b) record the course description, duration, curriculum, date and location of training, name of instructor, and the personnel who completed the training;

(c) document delivery of Roll Call and/or on-line training sessions under this agreement; and

(d) document officers who did not complete required training and all corrective actions taken.

6.2 Within 365 days of the Effective Date, BPD agrees to develop and implement accountability measures, including disciplinary and non-disciplinary corrective action, to ensure that all officers successfully complete all required training programs in a timely manner.

7. **COMPLAINT INTAKE, CLASSIFICATION, ASSIGNMENT, AND TRACKING**

7.1 BPD agrees to track, as a separate category of misconduct complaints, allegations that an officer has in any way interfered with a civilian's First Amendment right to observe, record, and/or verbally comment on the performance of police duties in an area open to the public, or where the individual has a right to be, such as a person's home or business. Improper interference with this right includes improperly detaining or arresting or threatening to detain or arrest individuals for interfering with a law enforcement investigation, disorderly conduct, or similar charges.

7.2 BPD's centralized numbering and tracking system shall maintain accurate and reliable data regarding the number, nature, and status of all misconduct complaints, from initial intake to final disposition, including investigation timeliness and notification to the complainant of the interim status and final disposition of the investigation. This system shall be used to determine the status of complaints and to confirm that a complaint was received, as well as for periodic assessment of compliance with BPD policies and procedures and this Agreement, including requirements on the timeliness of administrative investigations.

7.3 Where a supervisor receives a misconduct complaint in the field alleging that misconduct has just occurred, the supervisor shall gather all relevant information and evidence and provide this information and evidence to BPD's Internal Affairs Division.

Attachment 1 – Roll Call Training Questions – Citizens’ Right to Record

Several Members break up a fight in front of a bar. One Member sees two bystanders across a side street who appear to be recording.

(1) Can the Member ask bystanders whether they saw the fight and what they saw?

- a) **Yes**
- b) No

(2) If the bystanders state that they recorded the fight, can the Member ask to watch the videos?

- a) **Yes**
- b) No

(3) One bystander consents to the Member’s request and plays the video for the Member, who determines the video may be useful evidence. Which of the following are options for obtaining the video?

- a) Ask the bystander to give the Member the phone so that the Cyber and Electronic Crimes Unit can transfer the video, then complete a Form 93/56 if the individual agrees.
- b) Ask the bystander to text or email a copy of the video to the Member’s BPD phone/email account.
- c) Use the bystander’s phones to text or email a copy of the video to the Member’s BPD phone/email account.
- d) A, B, and C.
- e) **A and B but not C.**

(4) The second bystander declines the Member’s request to see the video. What can the Member do?

- a) **If, and only if, the Member has probable cause to believe that phone has evidence of a crime and the individual will delete or alter videos on the phone, seize the phone for safekeeping until a warrant can be obtained; otherwise, nothing as far as viewing the videos or obtaining the phone.**
- b) Advise the bystander that the Member must be allowed to review the videos because the videos are evidence of a crime.
- c) Seize the phone and watch the videos to determine if they have any evidence.
- d) Direct the bystander to provide contact information so that the Member can follow up at another time.

Same scenario, but this time one of the bystanders has crossed the side street and is recording while walking from Member to Member and arrestees and asking several questions repeatedly about the arrests. Members have to walk around the recording/questioning individual while performing their duties. What can the Members do?

- a) Take the bystander's phone to see if it has videos of the fight.
- b) Nothing. The bystander has a First Amendment right to record the officers while on a public sidewalk.
- c) **Direct the bystander back across the side street because the bystander is getting in the way of Members' performance of their duties.**
- d) Direct the bystander back across the side street and follow the individual so as to block the individual's ability to record.
- e) Direct the bystander to leave the area and advise the individual of the possibility for arrest for failure to comply.

Two Members notice an individual photographing them as they patrol Harborplace. Which of the following is a permissible action for the Members to take?

- a) Direct the individual to stop photographing the Members.
- b) Ask the individual why he or she is photographing the Members. If the individual cannot supply a valid justification, direct the individual to stop and leave Harborplace.
- c) **Ask the individual questions, but not require the individual to provide any answers, to stop photographing, or to leave Harborplace, and not threaten arrest.**
- d) Demand the individual's identification, then detain the individual while confirming whether the individual is potentially dangerous.

Members see an individual photographing the BPD's and BCFD's response to a serious car accident. Can a Member direct the individual to stop?

- a) Yes. There is no right to photograph an accident scene where people may be injured.
- b) Yes, unless the individual can show credentials for a news organization such as the *Sun*.
- c) Yes, unless the individual works for a news organization or as a freelance journalist/photographer/blogger.
- d) **No. The individual's status as a member of the media (or otherwise) is irrelevant to the individual's right to photograph.**

After a vehicle stop, a Member begins arresting the driver for outstanding warrants. Individuals across the street begin recording the arrest on their phones while cursing and

insulting the Member. Another Member arrives to support the arrest and observes the individuals across the street. What can the second Member do about those individuals?

- a) Direct the individuals to disperse because they are hindering the arrest.
- b) **Nothing. The individuals are exercising their First Amendment rights and are not interfering with the arrest or threatening the officers' safety.**
- c) Direct the individuals to move only as far away as necessary so that their curses and insults cannot be heard by the officers so as to not interfere with the officers' actions.
- d) Warn the individuals that they face arrest for disorderly conduct if they do not leave.

A Member pulls over a driver for an illegal u-turn and observes the driver's cell phone on the dashboard. The driver confirms that the phone is recording the stop. What can the Member do about the recording?

- a) Arrest the individual for violating Maryland's Wiretap Act because the individual did not have the Member's consent to record the conversation.
- b) Seize the phone because there is probable cause to believe that the individual used the phone to violate the Maryland Wiretap Act, then obtain a warrant for the recordings to be accessed and reviewed.
- c) Direct the individual to delete the recording because the individual did not have the Member's consent to record the conversation.
- d) **None of the above. The Member had no expectation of privacy in an on-duty conversation with an individual about official police business.**

EXHIBIT C

February 14, 2014

Christopher Sharp
c/o Deborah A. Jeon, Esq.
American Civil Liberties Union
of Maryland Foundation
3600 Clipper Mill Rd Ste 350
Baltimore, Maryland 21211

Dear Mr. Sharp,

On behalf of the Baltimore Police Department, we would like to express our sincere regret and apologize for the unfortunate events that you reported took place on May 15, 2010. As an agency, we would like to apologize to you for any inconvenience, loss or damages you believe you suffered as a result of those events and the subsequent litigation. We are also deeply saddened and troubled by the fact that as a result of these events you have indicated that you have lost your trust in the police. We would like to personally assure you that we are working tirelessly to regain your trust. As part of that effort, the Baltimore Police Department is committed to instituting best practices and ensuring that the constitutional rights of its citizenry is protected. To that end, we have worked with your attorneys, the ACLU and the Justice Department to develop and implement a police recording policy and training that will be the bench mark for law enforcement agencies throughout the country. While we understand that this may not fully regain your trust, we hope you will see this as a significant step.

The Baltimore Police Department is committed to maintaining the highest ethical standards. We assure you that we are committed to making its members cognizant of the fact that, in the performance of their duties, they are representatives of the Baltimore Police Department and the City of Baltimore, as well as the law enforcement community as a whole, and ensuring that they act, accordingly.

Sincerely,

Anthony W. Batts, Commissioner

EXHIBIT D

***** JOINT STATEMENT OF THE PARTIES *****

The American Civil Liberties Union of Maryland Foundation (ACLU), Christopher Sharp, and the Baltimore City Police Department are pleased to announce that they have reached an agreement that will enhance police practices and will settle a longstanding lawsuit alleging violation of a citizen's right to record police activity in public and illegal search and seizure. The lawsuit was brought more than two years ago, on behalf of Mr. Sharp, who alleged that Police Department officers deleted personal videos, including many of his young son, from his cell phone after he had used the phone to record Police Department officers arresting a female friend at the 2010 Preakness.

Under the settlement, the Police Department has agreed to institute a new policy that confirms citizens' rights to photograph as well as video- and audio-record police activities in public or wherever citizens have the right to be. In addition, every officer will be trained on the new policy, and the Department will track complaints of misconduct to ensure adequate training for compliance with the new policy.

The ACLU and Mr. Sharp recognize that the Baltimore Police Department's current leadership has agreed to take steps to address the issues raised by this lawsuit and has engaged in diligent efforts to resolve this lawsuit in a positive and constructive manner. They applaud those efforts and the Department's willingness to implement the new policy and take the steps necessary for training, as set forth in this agreement. The Department recognizes that Mr. Sharp, in bringing this lawsuit, has focused on the need for systemic reforms that the parties all believe will improve policing in Baltimore.

The parties believe that it is in their best interests, and the best interest of the Baltimore community, to bring finality to the case. The parties all want to ensure that Baltimore citizens enjoy the full freedoms guaranteed to them by law, and all want effective and lawful policing. The parties all believe that police respect for the citizens they serve and adherence to the Constitution, along with training to aid the officers in doing so, are essential to achievement of their collective goal of making the Baltimore community a safer one. Mr. Sharp and the Department are gratified that this chapter has been brought to a close, and look forward to working together to realize the promise of the settlement announced today.

"We are proud to join with the Baltimore Police Department to announce a resolution to Christopher Sharp's case that upholds the First Amendment rights of all in Baltimore while supporting public safety," said Deborah A. Jeon, Legal Director of the American Civil Liberties Union of Maryland Foundation. "The ACLU is grateful to Mr. Sharp for his courage in taking a stand for the fundamental, democratic right of citizens to use technology to hold government officials accountable for their actions in the public sphere."

“We are thankful for the hard work and creative thinking that was necessary to create this agreement. The policy developed through this agreement is reflective of our mission to work closely and corroboratively with stakeholders in the community, to include the ACLU and Justice Department. We will continue to develop and implement practices, policies, and training that will set the standard for best practices for law enforcement agencies throughout the country.” said Police Commissioner Anthony W. Batts.