

U.S. COMMISSION ON CIVIL RIGHTS

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BRIEFING

EDITED

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FRIDAY, MARCH 18, 2016

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The Commission convened in Suite 1150 at
1331 Pennsylvania Avenue, Northwest, Washington,
D.C. at 9:00 a.m., Martin R. Castro, Chairman,
presiding.

PRESENT:

MARTIN R. CASTRO, Chairman

PATRICIA TIMMONS-GOODSON, Vice Chair

ROBERTA ACHTENBERG, Commissioner

GAIL HERIOT, Commissioner

PETER N. KIRSANOW, Commissioner

DAVID KLADNEY, Commissioner

KAREN K. NARASAKI, Commissioner

MICHAEL YAKI, Commissioner*

MAURO MORALES, Staff Director

MAUREEN RUDOLPH, General Counsel

* *Present via telephone***NEAL R. GROSS**

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STAFF PRESENT:

PAMELA DUNSTON, Chief, ASCD
JENNIFER CRON-HEPLER, Parliamentarian
TERESA BROOKS
JOE D'ANTONIO
LATRICE FOSHEE
SEAN GOLIDAY
GERSON GOMEZ
ALFREDA GREENE
AYAN ISLAM
MARCLE NEAL
JUANDA SMITH
TAMIKA TUCKER
MORGAN TUFAROLO
MICHELE YORKMAN
DAVID MUSSATT, Director, RPCU
LENORE OSTROWSKY, Acting Chief, PAU
JOHN RATCLIFFE, Chief, BFD

COMMISSIONER ASSISTANTS PRESENT:

SHERYL COZART
ALEC DUELL
AMY GRANT
JASON LAGRIA
CARISSA MULDER
ALISON SOMIN
KIMBERLY TOLHURST
IRENA VIDULOVIC

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P-R-O-C-E-E-D-I-N-G-S

(9:00 a.m.)

CHAIRMAN CASTRO: Good morning, everyone. We're calling this meeting to order. We're beginning with a briefing of the U.S. Commission on Civil Rights. It's currently 9:00 a.m. Eastern Time on March 18th, 2016. This briefing is taking place at the Commission's Headquarters at 1331 Pennsylvania Avenue. Thank you.

(Off microphone comment.)

CHAIRMAN CASTRO: Thank you. What would I do without you, Madam Vice Chair and you, Panel? I would not be heard. So let me start over again. The briefing is coming to order at 9:00 a.m. Eastern Time on March 18th, 2016.

You wouldn't think I've been doing this for five years, right? I forgot to turn my mic on. We're having the briefing here at the Commission's Headquarters at 1331 Pennsylvania Avenue Northwest in Washington, D.C.

I'm Chairman Marty Castro. Commissioners who are present with me at this briefing are the Vice Chair Timmons-Goodson and Commissioners Kladney, Narasaki, Achtenberg, and Heriot. I understand that Commissioner Kirsanow's supposed to

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1 be here. I don't see him.

2 PARTICIPANT: He'll be here at 10:00.

3 CHAIRMAN CASTRO: He'll be here at 10:00?

4 Okay, great. And then Commissioner Yaki is to be
5 attending by phone. Commissioner Yaki, are you on
6 the phone?

7 (No audible response.)

8 CHAIRMAN CASTRO: Okay, well he will
9 hopefully join us soon. Nonetheless, we do have a
10 quorum of the commissioners present. Is the court
11 reporter present?

12 COURT REPORTER: Yes, sir.

13 CHAIRMAN CASTRO: Is the Staff Director
14 present?

15 DIRECTOR MORALES: I am.

16 APPROVAL OF AGENDA

17 CHAIRMAN CASTRO: All right, so the
18 meeting will now come to order. The first item is
19 the approval of the agenda. As you know, we've got
20 a briefing first and later in the afternoon we have
21 a business meeting.

22 So to the extent that we have any agenda
23 changes, I would entertain a motion either to approve
24 the agenda or any amendments that folks would like to
25 move to add anything to the agenda.

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1 COMMISSIONER KLADNEY: Mr. Chairman?

2 CHAIRMAN CASTRO: Your microphone.

3 COMMISSIONER KLADNEY: Mr. Chairman, I
4 would like to, oh the agenda for the business meeting?

5 CHAIRMAN CASTRO: Business meeting, yes.

6 COMMISSIONER KLADNEY: I would like to
7 add a proposed administrative instruction 124 that I
8 have proposed and distributed to everyone. It's the
9 one about the time limits in submitting stuff to
10 Commission Members before the meeting.

11 CHAIRMAN CASTRO: Okay. And stuff, you
12 mean the technical term stuff, right?

13 COMMISSIONER KLADNEY: Yes, technical
14 term stuff. If I may?

15 CHAIRMAN CASTRO: Yes.

16 COMMISSIONER KLADNEY: I'll provide it
17 to, I think Commissioner Heriot, we've provided this
18 to you and we talked about it yesterday.

19 COMMISSIONER HERIOT: Yes.

20 CHAIRMAN CASTRO: Okay, so you made a
21 motion. Do we have a second?

22 COMMISSIONER HERIOT: I'm just wondering
23 why we aren't doing this during the business meeting
24 instead of --

25 CHAIRMAN CASTRO: We are, we just have

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1 to set the agenda for the business meeting right now.

2 COMMISSIONER HERIOT: But we should do
3 it, setting the agenda for the business meeting at
4 the business meeting.

5 CHAIRMAN CASTRO: Well, we're doing it
6 now. This is the way we've done it the last two
7 times. So is there a second?

8 COMMISSIONER HERIOT: I second.

9 CHAIRMAN CASTRO: Okay. Any other
10 amendments?

11 COMMISSIONER HERIOT: Yes. I would like
12 to amend the agenda to include a discussion of sending
13 a letter to the University of Connecticut and to the
14 Office of Civil Rights and the Department of Education
15 regarding the University of Connecticut.

16 CHAIRMAN CASTRO: Okay. Is there a
17 second to that?

18 PARTICIPANT: Second.

19 CHAIRMAN CASTRO: Okay. We have a second
20 to that as well. Any other amendments?

21 (No audible response.)

22 CHAIRMAN CASTRO: Hearing none, let us
23 move to approve the agenda with the amendments.
24 Commissioner Narasaki, did you have something?

25 COMMISSIONER NARASAKI: No.

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1 CHAIRMAN CASTRO: Okay. All those in
2 favor say aye.

3 (Chorus of aye.)

4 CHAIRMAN CASTRO: Any opposed?

5 (No audible response.)

6 CHAIRMAN CASTRO: Any abstentions?

7 (No audible response.)

8 PANEL ONE: PRACTICES OF MUNICIPAL COURT SYSTEM

9 CHAIRMAN CASTRO: Okay. So now we move
10 on to the briefing. As you know, today we are looking
11 at a very important issue, municipal policing and
12 courts, a search for justice or request for revenue.

13 In light of the 2015 Department of
14 Justice report on patterns and practices in policing
15 and municipal court practices in Ferguson, Missouri,
16 that commission's report, our commission's report
17 will be focused on some of those findings, but also
18 expanding it to other similarly situated
19 jurisdictions across the country that may be
20 experiencing similar issues.

21 This report will address specifically
22 enforcement of federal laws that violate Title VI of
23 the Civil Rights Act. This briefing was at the
24 request of and with the support of the majority of
25 the commission at the request of our Vice Chair. And

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1 I would like to afford her an opportunity to say a
2 few words before we get started.

3 VICE CHAIR TIMMONS-GOODSON: Thank you
4 very much, Chairman Castro. Good morning, all. I
5 want to begin by thanking the wonderful people behind
6 the scenes, as has oft been repeated when you see a
7 turtle on the top of a fence post, you know that he
8 didn't get there by himself.

9 Today's briefing is the product of much
10 effort by many individuals who you will not see today,
11 but we're here because they put us here. I thank all
12 of them. But let me say an extra word of thanks to
13 Angela French-Bell, Dr. Sean Goliday, Sheryl Cozart,
14 Jason Lagria, Pamela Dunston, and Latrice Foshee for
15 all of their hard work in putting the briefing
16 together.

17 I also think my fellow Commissioners for
18 supporting the briefing topic and thank their special
19 assistants for the valuable input throughout.

20 With this briefing, municipal policing
21 and courts, a search for justice or a quest for
22 revenue, the U.S. Commission on Civil Rights seeks to
23 shed a bright light on the targeting of citizens by
24 police and the courts in order to generate revenue
25 and the illegal enforcement of fees and fines in

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1 certain jurisdictions.

2 Justice, if it can be measured, must be
3 measured by the experience the average citizen has
4 with the police and the lower courts. Unfortunately,
5 the justice of today, using the barometer set forth
6 in that quote from our Supreme Court should give all
7 of us concern.

8 Too many citizens across too many
9 communities in our country see justice at a very low
10 level, even approaching injustice, for it is in the
11 municipal courts around America that distrust is in
12 the atmosphere rather than the sweet fragrance of
13 justice.

14 That's because our citizens assert that
15 they've come to be viewed as customers in a business
16 model rather than as citizens calling upon their
17 justice delivery system to do justice. Today, the
18 U.S. Commission on Civil Rights takes up this very
19 important topic.

20 In the wake of the civil unrest following
21 the killing of Michael Brown, the U.S. Department of
22 Justice investigated the Ferguson Police Department
23 and municipal courts. DOJ uncovered racially biased
24 policing which was fostered by the court system.

25 Among the gravest injustices uncovered

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1 was the fact that the courts played a role in the
2 policing of community members and in collecting fees
3 that would support the municipality's budget
4 shortfalls.

5 Unfortunately, the practice of the
6 patterns and practices of Ferguson is not an isolated
7 behavior. As America's civil rights watchdog, the
8 Commission must investigate the pervasiveness of
9 issues similar to those found in Ferguson and
10 recommend an appropriate response.

11 Our three panels today consist of
12 national experts and legal scholars, community
13 leaders and advocates, and scholars and criminal
14 justice experts. It's our hope that as we join this
15 conversation and offer recommendations, that the
16 justice, the experience of average citizens with
17 police and the lower courts is improved. I thank you
18 so very much Mr. Chairman for affording me a few
19 minutes to say those things.

20 CHAIRMAN CASTRO: Well, thank you, Madam
21 Vice Chair for making this issue a priority for the
22 Commission. As we all know that, as we've seen in
23 our work, revenue and profit should never ever be the
24 driving force for issues of incarceration, detention,
25 and certainly not how our municipal courts and police

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1 function.

2 It creates a situation where it
3 denigrates our Government and makes it difficult to
4 defend when it's those communities are least able to
5 defend themselves that are victimized by this profit
6 mode of the system of justice.

7 So we will start now with a little
8 overview of some of the housekeeping functions on how
9 the panels will run today. During the presentation,
10 you'll see that there's a system of warning lights,
11 red, green, yellow like traffic lights.

12 Every panelist is going to have seven
13 minutes to make a presentation. And the green light
14 means start. Yellow means you've got two minutes to
15 go, start wrapping up. And red means stop.

16 If you go over the red, I'll try to
17 politely stop you and then we'll have an opportunity
18 to engage more with you when we have question and
19 answer period from the Commissioners. So don't fret
20 if you can't get everything out in that seven minutes.

21 Once that is done, each panel will move
22 forward. And my Commissioners will, in turn, seek
23 opportunities to engage with each of you. So with
24 that housekeeping out of the way, the first thing I
25 would like to do is introduce our first panel and

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1 then swear you all in.

2 Our first panelist this morning is Lisa
3 Foster, director of the Access to Justice Office of
4 the Department of Justice. Our second panelist is
5 Vikrant Reddy, senior research fellow at Charles
6 Kotch institute. Is it Kotch or Koch?

7 MR. REDDY: Koch.

8 CHAIRMAN CASTRO: Koch. Our third
9 panelist is Nusrat Choudhury, staff attorney at the
10 American Civil Liberties Union Racial Justice
11 Program. And our fourth panelist is Emily Napier,
12 director of justice strategies at the Center for
13 Community Alternatives.

14 I'll ask each of you to raise your right
15 hand and swear or affirm that the information that
16 you're about to provide to us is true and accurate to
17 the best of your knowledge and belief. Is that true?

18 (Chorus of yes.)

19 CHAIRMAN CASTRO: All right, thank you.
20 Ms. Foster, please proceed.

21 MS. FOSTER: Thank you, Mr. Chairman, and
22 good morning.

23 CHAIRMAN CASTRO: Good morning.

24 MS. FOSTER: The Department of Justice
25 first --

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1 CHAIRMAN CASTRO: Oh, you've got to turn
2 your microphone on.

3 MS. FOSTER: Oh, sorry.

4 CHAIRMAN CASTRO: Sorry, everyone. You
5 have to just press the button.

6 MS. FOSTER: Good morning, again.

7 CHAIRMAN CASTRO: Good morning again.

8 MS. FOSTER: And thank you. The
9 Department of Justice first became involved in the
10 issue of fines and fees in conjunction with our
11 investigation of the Ferguson Police Department.

12 We quickly came to realize that the
13 problems we uncovered there were not unique to
14 Ferguson or to St. Louis County or even to the state
15 of Missouri. I want to emphasize that a lot of our
16 understanding came from the work of many of the people
17 who are on this panel and in this room, that is the
18 advocacy community in this country had been aware of
19 these problems for frankly longer than the Department
20 of Justice had.

21 It's difficult to overestimate the
22 breadth and complexity of these problems. There are,
23 in the United States today, approximately 6,500
24 municipal courts operating in 34 states. And when I
25 use the term municipal court, that I want to

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1 emphasize, that's not the term that is always used by
2 the courts themselves.

3 Some of them are called city court, some
4 of them are called mayor's courts, they're parish
5 courts, they're justice of the peace courts. But
6 they share some common characteristics.

7 The vast majority are courts of limited
8 jurisdiction. That is they have authority to
9 adjudicate traffic violations and municipal code
10 violations. There are some that have limited
11 misdemeanor jurisdictions, some have full misdemeanor
12 jurisdiction, and a handful actually have felony
13 jurisdiction.

14 Some states have very few, some states
15 like New York and Texas have hundreds. Many of the
16 municipal courts are part time, and in 28 states one
17 does not need to be a lawyer to be the municipal court
18 judge.

19 Some state courts are unified. That is
20 the highest state court has direct authority over all
21 of the courts in the state including the municipal
22 courts, but in some states the municipal courts
23 operate independent of the state court system.

24 To add even more complexity to the
25 problem, these issues are not confined to municipal

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1 courts. In the states that don't have what are called
2 municipal courts, they often are experiencing some of
3 the same problems with respect to revenue generation
4 and what in our view are unconstitutional practices
5 even though they're occurring at the state court
6 level.

7 As a result of what the Department
8 learned, we held in December of last year an
9 unprecedented two day meeting. The first day, we
10 brought judges, court administrators, advocates,
11 prosecutors, defense attorneys, and academics to the
12 Department of Justice for a working session that we
13 called poverty and the criminal justice system, the
14 effect and fairness of fees and fines.

15 Our goal in that session was to talk with
16 justice system stakeholders about the issues of fines
17 and fees, to highlight some of the reforms that have
18 already taken place throughout the country, and to
19 talk specifically about what the Department of
20 Justice could do to help state and local courts make
21 needed changes.

22 The second day was an expanded meeting at
23 the White House that included a larger number of
24 people from around the country including some of the
25 people who had been victims of problems in their local

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1 courts. At the end of those working sessions, the
2 Department pledged to continue its involvement in
3 this issue and to help state and local courts with
4 their efforts to reform.

5 On Monday of this week, I am proud to
6 announce that the Department issued its first efforts
7 in this regard. We did so by sending a letter to all
8 of the participants in our December meetings as well
9 as every state court administrator and every state
10 chief justice.

11 And we made four announcements. The
12 first is that the Department's Bureau of Justice
13 assistance will be awarding \$2.5 million in
14 competitive grants to state, local, or tribal
15 jurisdictions who together with community partners
16 want to test strategies to restructure the assessment
17 and enforcement of fines and fees.

18 The second is that again through our
19 Bureau of Justice assistance, we plan to provide
20 financial assistance to the National Task Force on
21 fines, fees and bail practices that is being led by
22 the Conference of Chief Justices and the Conference
23 of State Court Administrators.

24 That task force had its first meeting on
25 Monday and Tuesday of this week in Arlington. It's

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1 a task force comprised of judges, state court
2 administrators, advocates, two Department of Justice
3 officials sit ex-officio on the commission.

4 And it will work to draft model statutes,
5 court rules, policies, and procedures, and serve as
6 a clearinghouse for local and state courts for best
7 practices around the country.

8 Third, the Department issued a resource
9 guide which is a compilation of everything we could
10 find on the issue of fines and fees. And it's broken
11 down into multiple categories and is meant to provide
12 as a bibliography for people who are interested in
13 the issues. And it has links to everything that's
14 cited in the guide.

15 Finally, the Department issued a Dear
16 Colleague letter. And that letter is addressed
17 principally to state court administrators and state
18 chief justices. And the purpose of our letter was
19 to provide clarity with respect to the constitutional
20 principles at stake in the enforcement of fines and
21 fees.

22 We set out seven principles that we
23 believe are black letter law with respect to these
24 issues. And I'm going to highlight just a couple of
25 them.

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1 The first is that courts must not
2 incarcerate a person for non-payment of fines and
3 fees without first conducting an indecency
4 determination and establishing that the failure to
5 pay was willful.

6 Second, that courts need to consider
7 alternatives to incarceration for indigent defendants
8 unable to pay fines and fees. Third, that courts not
9 condition access to a judicial hearing on the pre-
10 payment of fines or fees.

11 Fourth, that courts must provide
12 meaningful notice when enforcing fines and fees.
13 Fifth, that they not issue arrest warrants or license
14 suspensions as a means of coercing payment when
15 individuals have not been afforded constitutionally
16 adequate procedural protections.

17 Six, that they not employ bail or bond
18 practices that cause indigent defendants to remain
19 incarcerated solely because they cannot pay for their
20 release. And finally, that courts safeguard against
21 unconstitutional practices by court staff and in
22 particular private contractors who unfortunately have
23 been some of the worst abusers in this area.

24 I'm going to stop there. I would like
25 to submit a copy of the Department's letter for the

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1 record.

2 CHAIRMAN CASTRO: Yes.

3 MS. FOSTER: And I have copies for each
4 of the Commissioners if you would like.

5 CHAIRMAN CASTRO: Great. And also if
6 you have that bibliography. I don't know if you have
7 that.

8 MS. FOSTER: I do. I have multiple
9 copies.

10 CHAIRMAN CASTRO: We would appreciate
11 that as well. You want to get those documents?
12 Thank you. Mr. Reddy?

13 MR. REDDY: Hi, thank you so much, Mr.
14 Chairman. And I want to thank the --

15 CHAIRMAN CASTRO: Is your mic on?

16 MR. REDDY: Oh, I did the same thing.

17 CHAIRMAN CASTRO: Thank you.

18 MR. REDDY: Mic is on now, correct?

19 CHAIRMAN CASTRO: Yes.

20 MR. REDDY: Thank you so much. It's
21 great to be here this morning. I really appreciate
22 the invitation. I want to note that I am a member
23 of the Commission's Texas State Advisory Committee.
24 And it's a great honor and privilege for me to be
25 able to work with the Commission on a regular basis.

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1 And a great honor and privilege to serve my home
2 state.

3 What I'm going to do today, you've got,
4 or at least you will soon have a copy of my written
5 statement. But what I'm going to focus on in my oral
6 statement today is the perspective of this issue, on
7 this issue, excuse me, from a conservative or
8 libertarian point of view because I don't think that
9 it is something that is discussed a lot in the
10 national dialogue on this issue.

11 I think it's incredibly important, and I
12 think there are a lot of left/right areas of unity
13 that go unacknowledged.

14 I'll start by talking about the
15 philosophical issue here. The power to punish is the
16 greatest domestic power that a government wields.
17 And philosophers have debated the purpose of this
18 power for centuries.

19 And if you go to law school as I did,
20 you'll find on the first day of your criminal law
21 class you were told that after centuries of debate,
22 we've come down to four justifications.

23 Those justifications, broadly speaking,
24 are incapacitation, retribution, deterrents, and
25 rehabilitation. What professor never writes on the

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1 chalkboard raising revenue? That has never been
2 considered one of the legitimate purposes of the
3 criminal justice system.

4 However, for a variety of reasons, we've
5 reached a point where in many, many places this is
6 exactly what is happening. We're here today
7 primarily, I assume, because of what happened to the
8 City of Ferguson two years ago.

9 The DOJ report from Ferguson determined
10 that something like 20 percent of that city's
11 municipal budget came from criminal justice fees and
12 fines. Ferguson's a small town. This also happens
13 in very big cities.

14 In Chicago which is the third biggest
15 city in the United States, 15 percent of the budget
16 that same year, 2014, came from criminal justice fees
17 and fines.

18 Now I want to say that it's not
19 illegitimate in some circumstances to expect a
20 convicted offender to bear the cost of at least a
21 portion of their own punishment in the criminal
22 justice system.

23 But when you've got enormous sections of
24 the local government's budget coming from criminal
25 justice fees and fines, I think you can reasonably

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1 wonder whether or not the "quest for revenue" which
2 is the title of today's briefing, is displacing those
3 four legitimate purposes of the criminal justice
4 system which I mentioned earlier.

5 I think conservatives and libertarians
6 often worry that a conflict of interest is developing
7 in our criminal justice government institutions, that
8 the police officers, the courts, the community
9 supervision officers are in a position to raise
10 revenue through the execution of their day to day
11 functions in the criminal justice system.

12 And it's really profoundly disturbing. I
13 found a quotation from one of the founding fathers,
14 George Mason who wrote that when the same man or set
15 of men holds both the sword and the purse, there is
16 an end of liberty.

17 I think it's something we should all be
18 concerned about. Some people may be a little
19 surprised that this is such an issue of discussion on
20 the right, but it really is and I don't think anybody
21 should be surprised in the slightest because
22 fundamentally, a conservative or a libertarian point
23 of view is one that is skeptical of big government,
24 and government run amuck.

25 And the issue we're discussing today is

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1 nothing if not big government. I'm going to cite
2 some very prominent conservative and libertarian
3 voices that I think all of you will recognize, and
4 may surprise you here what people are talking about
5 on the right.

6 National Review's William F. Buckley,
7 Jr.'s magazine wrote that city's avarice tempts
8 police to arrest and jail too many people in order to
9 collect fines, fees, tickets and the like.

10 As the DOJ found in its report following
11 the Michael Brown shooting in Missouri, Ferguson's
12 law enforcement practices are shaped by the City's
13 focus on revenue rather than by public safety needs.

14 Grover Norquist is probably known to a
15 number of people in this room, he's a famous anti-tax
16 crusader. He serves on the Board of the National
17 Rifle Association. We actually held a summit on
18 criminal justice reform last November, Mr. Norquist
19 was there.

20 He said something very interesting about
21 how these criminal justice fees and fines begin to
22 ebb away at relationships between law enforcement and
23 community members. He said, you know, when you've
24 turned the policemen into tax agents, and in the bible
25 it's very clear that nobody likes the tax collectors

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1 because that's the guy that's always looting you,
2 people hate that guy who's physically right there and
3 hitting you with \$100 fee or fine.

4 And we're putting into that position guys
5 who are wearing uniforms, and the kids are then
6 supposed to go to that guy for help? And then they
7 keep giving more tickets because we can't pay the
8 first ticket? We've turned these guys into tax
9 collectors and then we wonder why people hate them
10 because we don't read history.

11 The American Legislative Exchange Council
12 has actually passed model legislation, noting that we
13 ought to prioritize victims' restitution in our fees
14 and fines because, and I'm quoting from their model
15 bill here, research has found no direct correlation
16 between the payment of state criminal fines and lower
17 recidivism rates.

18 I could go on and on, and I did in fact
19 list several other conservative organizations that
20 have said very similar things in my written testimony.
21 I'm going to note a couple of prominent examples that
22 I find especially troubling that I think get to the
23 heart of what we're talking about today.

24 In one Louisiana municipality, the
25 offenders are charged \$100 just for the opportunity

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1 to enter into a payment plan because they can't pay
2 the original fine or fee in full.

3 There is a small town in Illinois where
4 you were charged a \$30 booking fee upon arrest. What
5 was extraordinary about that fee to me is that if you
6 are later discharged, the fee is not refunded to you.

7 This actually went to court and was
8 upheld, but there was a dissent which I thought was
9 very powerful. The dissenting judge wrote that \$30
10 while perhaps a modest amount to "the governing class
11 in our society including lawyers and judges" is
12 nevertheless equivalent to the federal minimum wage
13 for more than half a day of work.

14 I'll conclude by offering three quick
15 recommendations to the Commission moving forward.
16 First of all, I think the jurisdictions generally
17 ought to limit fees and fines to an amount that is
18 adequate for satisfying retributive interests and for
19 the restoration of victims.

20 At a certain point beyond this point, you
21 have little more than mechanisms for raising revenue
22 with your criminal justice fees and fines. And I
23 think that setting some sort of a cap in jurisdictions
24 would be very helpful.

25 A second thing I want to note is that we

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1 should ensure that our jurisdictions provide for
2 alternative mechanisms when people cannot pay fees
3 and fines. Community service is a very simple one
4 and there are many large states like Arizona, New
5 York, North Carolina that don't even have such a
6 provision.

7 We should also make sure that our
8 jurisdictions offer workable payment plans. There's
9 one notorious story from the Ferguson report in which
10 a woman who had accumulated something like \$1,000
11 worth of fees and fines tried to send in small
12 portions, \$25 checks, \$50 checks.

13 They were sent back to her because she
14 didn't pay the entire thing in full. She did end up
15 doing six days in total at different times in jail.
16 And the entire incident stemmed from \$151 parking
17 ticket.

18 Finally, the last thing I want to note is
19 that a very large part of the national conversation
20 right now surrounds criminal justice reform and the
21 reduction in incarceration rates in the United
22 States. I hope we continue to move in that direction.

23 It seems to me that what has happened
24 here and a big part of why we have moved to this kind
25 of a problematic system is that we ratchet up

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1 incarceration; it became very, very expensive. We
2 started looking for ways that we could pay for it,
3 and we turned to criminal justice fees and fines as
4 the solution.

5 So my hope is that if we reverse the
6 incarceration problem, we may also reverse some of
7 those incentives.

8 CHAIRMAN CASTRO: Thank you, Mr. Reddy.

9 MR. REDDY: Thank you very much, look
10 forward to questions.

11 CHAIRMAN CASTRO: Ms. Choudhury?

12 MS. CHOUDHURY: On behalf of the American
13 Civil Liberties Union, I thank the Commission for
14 both holding this briefing and inviting us to the
15 table. We have submitted a written statement to the
16 Commission on the topic of today's briefing.

17 And in the time allotted to me, I want to
18 do four things. The first is to address the scope
19 of the problem. The second is to discuss the
20 devastating impact on families, communities, and
21 public safety when courts turn to revenue generation
22 rather than the fair and equal administration of
23 justice.

24 Third is to discuss a series of best
25 practices that permit local governments to punish and

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1 deter crime while also protecting constitutional
2 rights. And fourth, I ask the Commission to help end
3 these practices by doing three things, issuing a
4 written report on their findings, recommending best
5 practices to address these problems, and holding an
6 additional briefing on the role of for-profit
7 companies in fostering the abuses that we'll discuss
8 today.

9 First, the scope of the problem. Since
10 2010, the American Civil Liberties Union and its
11 affiliates across the country have exposed and
12 challenged courts and local and state governments
13 that illegally jail the poor as a result of abusive
14 practices that seek to generate revenue.

15 And we've done this in Colorado, Georgia,
16 Louisiana, Maine, Michigan, Mississippi, New
17 Hampshire, Ohio, and Washington, showing that this
18 truly is a national problem spanning from the Pacific
19 Northwest to New England, from the Midwest to the
20 Deep South.

21 Perversely, despite the goal to generate
22 revenue, these practices are not systematically
23 documented to actually generate net revenue when
24 taking into consideration serious costs. Those costs
25 include the costs of policing, the costs of jail and

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1 incarceration, and the costs of job loss, family
2 separation, and other harms imposed on impacted
3 people and their families.

4 These practices violate core
5 constitutional rights that the Department of Justice
6 has highlighted in its letter. But local governments
7 either intentionally flouts this clearly established
8 law, are woefully ignorant of it, or simply are unsure
9 how to apply it.

10 And the city of DeKalb County, Georgia
11 actually provides an illustrative example. In 2015,
12 the ACLU filed a federal law suit against the county
13 on behalf of Kevin Thompson, a black teenager who was
14 jailed because he could not afford to pay court fines
15 and probation company fees stemming from a single
16 traffic ticket.

17 Thompson wasn't alone. While black
18 people made up 54 percent of the DeKalb County
19 population in 2014, nearly every probationer jailed
20 in DeKalb County's court for non-payment of fines and
21 fees in the months leading up to the law suit were
22 black. And this was a pattern we observed in numerous
23 Georgia courts.

24 Thompson was jailed because of a scheme
25 to generate revenue for the county which in 2010 faced

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1 a \$100 million shortfall. The county sought to
2 bridge the gap by enlisting a for-profit company,
3 Judicial Corrections Services to help boost
4 collections of fines and fees.

5 But that company had a direct financial
6 incentive against identifying the poor, against
7 helping the court do its job. And that's because
8 indigent people should have their company fees waived
9 or reduced.

10 When Thompson couldn't pay, his Judicial
11 Correction Services (JCS) probation officer not only
12 didn't explain his rights, but actually misinformed
13 him, told him that it would cost \$150 for a public
14 defender when in fact the true cost was \$50 and
15 waivable for the poor. Unrepresented, he showed up
16 in court and was jailed for five days, taken off to
17 jail in handcuffs in front of his own mother.

18 This leads to the second point, that the
19 jailing of poor people who cannot afford to pay fines
20 and fees deeply and devastatingly impacts them and
21 their communities.

22 ACLU plaintiff Qumotria Kennedy lost her
23 part time cleaning job and was separated from her
24 teenage daughter when she was jailed for unpaid
25 traffic tickets totaling more than \$1,000 that she

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1 simply could not afford to pay.

2 In another Mississippi town, we
3 interviewed a woman who was a domestic violence
4 survivor. Although she experienced frequent abuse
5 from her husband, she feared calling the police. And
6 on one occasion a year ago, she delayed calling the
7 police during an argument in which her husband was
8 violent.

9 She feared her own arrest. She finally
10 made that phone call, and actually her worst fear was
11 confirmed. She was arrested, taken away from her
12 children, separated from them for four days, and the
13 police never pursued her abuser. These practices
14 alienate entire communities and they undermine public
15 safety.

16 But this leads to my third point, that
17 courts and police must push back against the pressures
18 to generate revenue off the backs of poor people, and
19 reforms recently adopted by the City of Biloxi,
20 Mississippi illustrate exactly how.

21 Last Tuesday, the ACLU settled a class-
22 action law suit against the City of Biloxi and the
23 for-profit company Judicial Correction Services (JCS)
24 to challenge the widespread arrest and jailing of
25 poor people based on arrest warrants charging them

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1 with non-payment which weren't preceded by procedural
2 protections.

3 In the settlement, Biloxi adopted
4 sweeping reforms that truly provide a model for how
5 courts can administer justice fairly and equally.
6 And that model includes six critical components.

7 The first is the elimination of for-
8 profit probation for the collection of fines and fees.
9 And so this ensures that profit motivated actors do
10 not distort the city's criminal justice and civil
11 justice system.

12 Second, Biloxi has adopted detailed court
13 procedures and a bench card to guide judges step by
14 step on how to protect rights at every stage at which
15 fines and fees are imposed or collected, from initial
16 appearance to sentencing enforcement.

17 Third, Biloxi judges will now consider
18 ability to pay at the sentencing phase to prevent the
19 imposition of crippling fine and fee burdens that
20 poor people can never hope to repay.

21 Fourth, Biloxi has created a full time
22 public defender's office, taking seriously the role
23 and the need to provide counsel to the indigent at
24 every stage of the process including at sentencing
25 and also when jail is on the table for a charge of

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1 non-payment.

2 Fifth, the Biloxi municipal court will
3 now offer numerous alternatives to incarceration for
4 people unable to pay their fines and fees. These
5 include payment plans, community service, and even
6 approved programs and job skills training, mental
7 health counseling, education and drug treatment.

8 And finally sixth, the Biloxi municipal
9 court has adopted a clear standard that judges can
10 apply for determining who is unable to pay a fine or
11 a fee. And judges will presume that someone is unable
12 to pay when they earn 125 percent or lower than the
13 federal poverty guideline, when they are homeless,
14 incarcerated, or reside in a mental health facility.

15 These reforms are a road map for the
16 future, and other cities should follow them, other
17 courts should heed, follow exactly these procedures
18 as they heed the Department of Justice's call to
19 reform their policies and practices.

20 CHAIRMAN CASTRO: Thank you, Ms.
21 Choudhury. We'll get to you with some more questions
22 --

23 MS. CHOUDHURY: Thank you.

24 CHAIRMAN CASTRO: -- in the next part of
25 the panel. Ms. Napier, you have the floor.

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1 MS. NAPIER: Thank you for this
2 opportunity. Just to let folks know a little bit
3 about the Center for Community Alternatives because
4 I think we're one of the lesser known organizations
5 here, although we do have two people testifying so
6 that should mean something.

7 CCA is New York State's oldest
8 alternative to incarceration agency. We've been
9 operating for almost four decades now. And we're
10 unique in that we provide direct services to people
11 in the juvenile and criminal justice systems, but we
12 also engage in research, public policy development,
13 training, and advocacy to address the myriad barriers
14 that folks face in our programs.

15 And that is true of our work on the
16 financial consequences of involvement in the criminal
17 justice system. So in 2007 we published one of the
18 first reports in the country on this topic called
19 sentencing for dollars, the financial consequences of
20 a criminal conviction.

21 And we concluded even then in 2007 it is
22 time to confront our attraction to financial
23 penalties head on. We need to de-emphasize the goals
24 of revenue enhancement, cost shifting, and user fees.
25 Public safety is a community goal and a public good.

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1 As such, the cost should be borne by the
2 public and not shifted to those who can least afford
3 these burdens. So now almost ten years later, we're
4 encouraged to see this issue finally getting the
5 national attention that it deserves.

6 In that sentencing for dollars report, we
7 cataloged every mandatory surcharge, fee, and civil
8 penalty imposed by New York State Statute on people
9 caught up in the criminal justice system. There were
10 almost 40 such penalties scattered throughout
11 multiple sections of the law making it really
12 impossible to have a comprehensive view of the
13 cumulative impact of those penalties.

14 The use of those mandatory surcharges
15 began in 1982, and the development of other
16 increasingly imaginative penalties flourished in the
17 '90s. And since then, the amounts of the existing
18 penalties have steadily increased, and new penalties
19 have continued to be imposed.

20 In a paper that we presented in 2008, we
21 examined the cumulative impact of those financial
22 penalties on individuals and their families. And so
23 I would ask you to consider the example of Lou, a 23
24 year old man struggling with heroin addiction who was
25 arrested and charged with driving under the influence

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1 which is a misdemeanor.

2 The charge was reduced to a traffic
3 infraction of driving while ability impaired. But
4 despite the final outcome of not rising to the level
5 of a criminal conviction, Lou faced significant
6 financial penalties totaling \$1,795.

7 And there's a chart in my written
8 testimony that breaks down what each fee was. Only
9 \$500 of that \$1,795 was the fine, the actual sentence.
10 The rest of it was various fees, surcharges, et
11 cetera.

12 Explaining the impact of that financial
13 burden, Lou said the fines and fees just make a bad
14 situation worse. It's stressful. You're already in
15 a mess. It's a bad time in your life and it just
16 makes it worse. It's people who can't afford it who
17 are affected.

18 These aren't rich people who get caught
19 in these situations. It would have been impossible
20 for me to pay it. My mom paid it. But it doesn't
21 make you feel good on top of everything else that's
22 happening to have to go to your mom for something
23 like that.

24 So because Lou was not in a position to
25 pay due to his sporadic employment as a result of his

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1 heroin addiction, the burden was shifted to his
2 parents. And reflecting on that, Lou's mother said
3 it was stressful. Here we are trying to think ahead
4 to retirement and we have this extra burden.

5 We didn't always have the money on hand,
6 so paying using credit made it even more expensive.
7 But most people wouldn't have and wouldn't even be
8 able to get the money. We accessed our home equity
9 loan for it. Lou's sisters were in college at the
10 time, and instead of helping them, we were paying his
11 fees. We felt obligated to pay to avoid long term
12 damage to Lou.

13 So in this situation, Lou's parents both
14 had master's degrees. They had jobs that provided
15 middle class income. They owned a home. And yet
16 even they struggled to stay on top of the financial
17 penalties that resulted from their son's criminal
18 justice system involvement.

19 And they're certainly not an anomaly, as
20 the net of our criminal justice system has expanded
21 to touch almost every family. But their relative
22 financial stability is also not typical of families
23 subjected to these financial penalties.

24 We explored the theme of family
25 obligation further in a paper that CCA released last

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1 year. It was co-authored by a member of our Board,
2 Mitali Nagrecha, and she's going to speak on the next
3 panel. So I'll let her say more about that paper.

4 But I just want to quickly touch on the
5 area of child support. Even though it is slightly
6 off topic, it's certainly impacted by the criminal
7 justice system and by these various other fees and
8 penalties that people face.

9 And so in 2011, CCA began a four year
10 program for non-custodial parents who owe child
11 support, were unemployed, and were considered hard to
12 employ. It was funded by the U.S. Department of
13 Labor.

14 And the Department of Labor's criteria
15 for defining someone as hard to employ included
16 criminal justice system involvement because that's
17 such a barrier to employment. And so in that program,
18 it was a random assignment program.

19 And we over a two year recruitment period
20 enrolled 1,016 people in the study, 512 were in the
21 program group. And of those 512 people in the
22 program, 87 percent had some type of criminal history
23 record.

24 This was not a program for people with
25 criminal justice system involvement. This was a

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1 program for non-custodial parents who owed child
2 support. But 87 percent had some type of criminal
3 history record.

4 More than 90 percent were men, and this
5 was in Syracuse, New York where 30 percent of the
6 residents are black, but 79 of the program
7 participants were black. Ninety percent of them owed
8 arrears, meaning only ten percent were up to date on
9 their child support obligations.

10 And they routinely owed amounts of five
11 or six figures. The average amount of arrears owed
12 at the time of their enrollment in the program was
13 \$14,420. And in New York State with an interest rate
14 at nine percent, the average participant accumulated
15 additional debt of almost \$1,300 a year.

16 Most of this was accumulating during
17 periods of incarceration or during periods that they
18 were out of work due to their criminal history record.
19 And so I think we really have to recognize the way
20 that those things are intertwined. And I'll save the
21 rest of my comments for discussion.

22 QUESTIONS FOR COMMISSIONERS

23 CHAIRMAN CASTRO: Thank you. I'm going
24 to take the prerogative and ask a first couple
25 questions and then I'll open it to my Commissioners.

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1 I see Commissioner Achtenberg is raising a hand.
2 Commissioner, just let me know and I'll put you on
3 the list.

4 I believe it was Ms. Foster who talked
5 about tribal jurisdictions. Could you speak a little
6 bit to this issue as it relates to the native tribes?
7 We're also doing another, a report on the conditions
8 of Native American Tribes.

9 MS. FOSTER: Our grant is available to
10 tribal jurisdictions. We actually don't have a very
11 good handle frankly on the extent of the problem in
12 tribal jurisdictions.

13 Our experience, and I think the
14 experience of advocates, is that this is less of a
15 problem in tribal courts than it is in state and local
16 courts. But I can't say that with any certainty.

17 We haven't heard of that many, of many
18 problems at all in the tribal courts. But our grant's
19 available to them should they want to participate in
20 making changes.

21 CHAIRMAN CASTRO: So none of the
22 information --

23 MS. FOSTER: As I said, I can't say --

24 CHAIRMAN CASTRO: You don't know.

25 MS. FOSTER: -- with certainty. We

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1 haven't either been informed about any or heard about
2 reports through the media or through the advocacy
3 community. Nor have we investigated the tribal
4 jurisdictions in this --

5 CHAIRMAN CASTRO: But what I was going
6 to ask is none of them have asked for grant money?

7 MS. FOSTER: The grant just was released
8 on Monday.

9 CHAIRMAN CASTRO: Okay.

10 MS. FOSTER: And so --

11 CHAIRMAN CASTRO: Oh, so it's too soon
12 to tell.

13 MS. FOSTER: Yes, applications won't come
14 in until the end of March.

15 CHAIRMAN CASTRO: And what sort of
16 solicitation or information are you giving to the
17 tribes in particular about the availability of these
18 resources?

19 MS. FOSTER: Precisely the same thing we
20 do for everybody else. That is we post the
21 solicitation. We have a webinar on March 28th that
22 is widely broadcast to anyone who wants to
23 participate. And the information about it is in
24 various locations.

25 So we hope we will hear from some tribal

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1 jurisdictions.

2 CHAIRMAN CASTRO: Great, thank you. And
3 for anyone on the panel, I think Mr. Reddy had talked
4 about the percentage of Chicago's budget that comes
5 from fees and fines. Well, I'm a Chicagoan. And one
6 of the issues that we've had for the last few years
7 is the issue of red light cameras, the placement some
8 folks say in communities of color or less affluent
9 communities and then issues of due process.

10 Do you know anything about, have you
11 addressed, looked at the issue of specifically red
12 light cameras in Chicago and how they may be part of
13 the structure of what we're looking at here in terms
14 of fees and fines?

15 MR. REDDY: Well, I don't know that I
16 would have much to say that would go beyond, I don't
17 have much to say that would go beyond your instincts
18 on the matter which is that they operate in the same
19 way these counterproductive fees and fines operate in
20 any other sphere.

21 You know, people get caught up in this
22 awful cycle. They catch one fine because they ran a
23 red light. It's difficult to pay that one. They
24 accumulate another, maybe they have to do jail time.
25 And a number of the people on this panel have

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1 mentioned today that that kind of a problem has a
2 particular impact in poorer communities.

3 And I think it's pretty clear that the
4 red light cameras would have the same impact in those
5 communities also.

6 CHAIRMAN CASTRO: Ms. Choudhury?

7 MS. CHOUDHURY: Just to address that
8 question, we have had reports from the St. Louis area,
9 of red light cameras and due process problems where
10 fines and fees, people are supposedly notified that
11 they've incurred a ticket for running a red light,
12 assess fines and fees.

13 And in one jurisdiction we know of an
14 incident where somebody was arrested for not being
15 able to pay that fine and fee without procedural
16 protections. So all of the problems can arise when
17 there isn't a hearing before a judge to assess whether
18 someone can pay that fine or fee, or contest the
19 charge itself.

20 CHAIRMAN CASTRO: Right. Ms. Foster,
21 would that, for example if someone wanted that issue
22 in Chicago to be investigated by the Justice
23 Department, is that something your office handles?

24 MS. FOSTER: Our Civil Rights division
25 is the place that would conduct any investigation. I

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1 will say that our approach at this point is to try to
2 work with state and local courts.

3 As I outlined in the meeting, there are
4 so many places in the country where these problems
5 are pervasive that to try to enforce or litigate our
6 way to a solution to this problem is likely to be
7 unsuccessful. We want to educate local courts, we
8 want to work with them and make changes.

9 Obviously, if there's a particular
10 problem in a community, our doors are open and we
11 have a lot of complaints that have been filed with
12 respect to these kinds of issues, and we take all of
13 them seriously.

14 I will say something about the red light
15 situation, and that is what everyone else has said.
16 The way it works is really no different than any other
17 traffic violation. And in many places, the fine
18 itself may be \$100. But on top of that fine, local
19 jurisdictions are, and many states, are assessing
20 fees for a variety of things and they have nothing to
21 do with the violation.

22 So there may be a DNA fee when no one's
23 taking DNA from traffic violators. There may be a
24 fee for court improvements. There may be a fee for
25 something unrelated, a drug rehabilitation program.

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1 And things that really, that legislators, state and
2 local have looked at the justice system as a way to
3 raise money.

4 And so on top of that fine are additional
5 fees such that in some places, California's a great
6 example, a \$50 ticket for running a stop sign, if
7 that's the fine, \$50, but the total amount you owe is
8 \$225 because of additional fees that the
9 legislature's imposed.

10 And if you're poor, you're not going to
11 be able to make, you may be able to make the original
12 fine, but you certainly can't make the original fee,
13 and suffer the consequences.

14 CHAIRMAN CASTRO: Right. Thank you.
15 Commissioner Achtenberg and then Commissioner Yaki,
16 could you mute your phone please? And after that,
17 we'll have the Vice Chair ask questions.
18 Commissioner Achtenberg? You have the floor.

19 COMMISSIONER ACHTENBERG: Thank you, Mr.
20 Chairman. This is quite a devastating topic. And
21 I'm, although I'm quite interested in what violent
22 agreement we are all in, so this kind of thing doesn't
23 usually happen so I wanted to take a moment to
24 acknowledge.

25 Mr. Reddy, I'm quite interested in

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1 whether or not you've examined any racial component
2 to all of this that you can validate exists or may or
3 may not exist in the view of your organization?

4 MR. REDDY: Well, I suppose I would say
5 two things about that. First of all, there's
6 obviously a racial dimension. It would be naive to
7 think otherwise.

8 As I just mentioned to the Chairman,
9 these problems tend to hit impoverished communities
10 harder than they would hit affluent communities and
11 you have more of those problems in many black and
12 brown communities, south United States.

13 Now having said that, I also think that
14 if we focus exclusively on that, and that's the way
15 a lot of the dialogue has taken place in the country,
16 it's an inadequate understanding. It occurs to me
17 that I'm sure in a number of jurisdictions across the
18 country, probably in rural Appalachia for example
19 these kinds of problems exist too.

20 To me the fundamental issue is not the
21 racial one which is not to say that the racial
22 disparity issue isn't important and isn't a
23 profoundly significant component of this, but it's
24 the broader question of political philosophy.

25 It's government powers and government

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1 abuse of power, conflict of interest within
2 government institutions and the kinds of things that
3 political philosophers have been debating, as I said,
4 for centuries.

5 That I think has been our focus research
6 wise. But I do want to say that that doesn't mean
7 the racial disparity issue is irrelevant. Certainly
8 not.

9 COMMISSIONER ACHTENBERG: And do you have
10 any information or material that measures the extent
11 of the disparity in terms of, in racial terms?

12 MR. REDDY: I didn't include any of that
13 in my testimony, either oral or written simply because
14 I didn't think it was, to use the economic term, my
15 comparative advantage. I assumed there would be many
16 people discussing that issue today.

17 I will tell you that in my footnotes,
18 there are a number of papers cited that do get into
19 the issue. I would be happy, you know, to talk about
20 it at a later juncture. It's not something I focused
21 on for my remarks today.

22 COMMISSIONER ACHTENBERG: Sure. I can
23 understand that, and I appreciate the clarity of your
24 response.

25 MR. REDDY: Sure.

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1 MS. CHOUDHURY: If I could --

2 COMMISSIONER ACHTENBERG: Please.

3 MS. CHOUDHURY: -- have a follow up
4 comment on that. The ACLU's racial justice program
5 --

6 CHAIRMAN CASTRO: Is your mic on?

7 MS. CHOUDHURY: It is. Oh, there we go.
8 The ACLU's racial justice program has been focused on
9 this issue for years precisely because of the racial
10 disparities that are involved.

11 And I think in the list of states that
12 we're working on, there are states like Maine and New
13 Hampshire, Washington where the racial disparities
14 aren't as prevalent simply because of the demographic
15 realities of those locations.

16 The reason we've litigated in places like
17 DeKalb County, Georgia, in places like Biloxi,
18 Mississippi is because the racial disparities were so
19 stark in relatively diverse areas that it really
20 underscored a larger problem.

21 Ferguson was not the first instance in
22 which the racial wealth gap, racialized policing, and
23 revenue generation combusted to create a situation
24 where a city's low income African-American community
25 was being trapped in a cycle of poverty and justice

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1 system involvement.

2 And we have specifically targeted certain
3 locations to make that point clear. While race may
4 be part of the discussion more now following the
5 Department of Justice's powerful and insightful
6 report, before that report it was not.

7 I think this conversation focused more on
8 resources being wasted, which they are, on due process
9 problems, fairness issues which are issues. But the
10 racial dimension is huge, and I think we would be
11 remiss to ignore that in communities that are very
12 diverse.

13 DeKalb County is the home of Emory
14 University. It is the second wealthiest county in
15 the State of Georgia. And when you have a debtor's
16 prison in an affluent, racially diverse community
17 like that, it says something about how justice is
18 working, or not working.

19 CHAIRMAN CASTRO: Madam Vice Chair?

20 VICE CHAIR TIMMONS-GOODSON: Thank you
21 very much, Mr. Chair. And this question is for all
22 of you. In doing our research, we ran across the
23 general argument that we must pay for these services
24 and that it's not unreasonable to call upon those
25 that are using the services to pay for them. How

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1 would you respond to such an argument?

2 MS. FOSTER: Let me start. And I'm going
3 to cite the conference on State Court Administrators
4 who years ago, and their policy paper is included in
5 our resource guide, wrote a policy paper entitled
6 Courts Are Not Revenue Centers.

7 And what they said, and their consistent
8 view is that courts should be funded out of general
9 funds. Justice is not, it is a vital government
10 service, and our courts are a vital government
11 service.

12 And if we're going to have them, and we
13 obviously have to have them and need them and want
14 them, we should pay for them and they should be paid
15 for out of general funds. The idea that courts have
16 to pay for themselves is part of what has gotten us
17 into this problem.

18 CHAIRMAN CASTRO: Anybody else?

19 MR. REDDY: I put a lot of thought into
20 that very question. And the way I thought about it
21 was I looked at the phrase excessive fee, fee or fine,
22 excessive fee.

23 And I have some sympathy with the
24 argument that it's not unreasonable to expect people
25 using the services to pay for the services, especially

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1 because I can imagine scenarios, extremely wealthy,
2 affluent white collar sorts of folks for example. I
3 just don't think it would be unreasonable to expect
4 them to contribute something.

5 It would be hard to draw that line,
6 however, between the person who's in a position to
7 contribute and who's not. That makes things very
8 difficult. So what I think is that you look at that
9 phrase excessive fee, I don't think the fee or the
10 fine is intrinsically illegitimate.

11 I think it is the excessive part that we
12 need to worry about. I think that at a certain point,
13 it does become illegitimate. I think that point,
14 this is a rough heuristic, but I think that point is
15 the point that goes beyond whatever is needed to
16 restore victims and whatever additional amount
17 satisfies retribution.

18 I think beyond that point if you start
19 going too far ahead, you become excessive which is
20 the word we're using today. And I think it does
21 become illegitimate. I think it's unconstitutional.
22 I think you get into a lot of problems. So I'm not
23 instinctively averse to it, but I'm reticent.

24 MS. CHOUDHURY: Just to add to these
25 points, two points. One is that fees are excessively

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1 high, not just to pay for the cost of the criminal
2 justice system but to raise general revenue. And
3 we've provided two examples of this in our written
4 statement.

5 The first is a woman in Mississippi who
6 should have been fined \$25 for driving with a defaced
7 tag. She was unrepresented at sentencing and was
8 ultimately assessed more than \$260 for a low level
9 offense.

10 And that extra money went to a local
11 assessment. What is that assessment for? Who knows.
12 What is it paying for? Is it going to the general
13 coffer or is it actually paying for some kind of
14 justice system cost? How much is it costing the
15 justice system for a woman who had a defaced tag that
16 simply needed to be made more clear that would justify
17 such a high fee?

18 Second is that in 2014, the year before
19 Kevin Thompson was jailed for fines and fees he
20 couldn't pay, the DeKalb County recorder's court, the
21 court that handled his traffic case made seven times
22 as much as its general operating funds.

23 Now there was a line item in the DeKalb
24 County budget for the court itself. But what we saw
25 was that the costs of running the court was \$3.8

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1 million. The court collected in fines and fees with
2 the assistance of this for-profit company and
3 violations of people's constitutional rights \$30
4 million.

5 That money went into the general revenue
6 stream. If that's not an incentive to impose fines
7 and fees people can't pay, I don't know what is. And
8 so it's not paying for the cost of the general court
9 system, it's paying for the costs of the county.

10 COMMISSIONER ACHTENBERG: Ms. Napier,
11 you want to add something?

12 MS. NAPIER: Thank you. I would, I'm
13 sorry that I don't have data on this. But I think
14 an important question to ask is, you know, how much
15 of the projected revenue was actually being collected
16 since we are trying to extract that from people who
17 cannot pay it. Right?

18 And also what is the additional cost then
19 of dragging people back into court and locking people
20 up for non-payment. Right? We're actually accruing
21 additional costs then with our enforcement mechanisms
22 which is counterproductive.

23 And then also that a lot of this really
24 is the function and, you know, Mr. Reddy eluded to
25 this earlier, of an overgrown criminal justice

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1 system. Right? And so the reason it costs so much
2 to run our criminal justice system is because it is
3 so blown out of proportion at this point to the actual
4 problem of crime in our communities, right.

5 And we're dealing with crime in frankly
6 the wrong way many times. And so I think, you know,
7 central to any resolution on this issue is the notion
8 of ending mass incarceration and ending mass
9 criminalization, not just incarceration.

10 MS. FOSTER: Let me add one point that I
11 think is important. When we talk about fines and
12 fees, we are, from the Department's perspective, we
13 are not talking about restitution to a victim.

14 So they're very separate things, and no
15 one is suggesting that restitution should be lumped
16 together with fines and fees. When a victim has been
17 injured, courts do and state law requires and federal
18 law requires that there be restitution and that's
19 important.

20 With respect to the amount of a fine and
21 fee, similarly from the Department's perspective,
22 we're not suggesting that poor people not be subject
23 to fines or somehow be able to escape responsibility
24 for illegal behavior. That, I don't think anybody
25 is suggesting that.

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1 But what we have is a system that has, if
2 we think about a pendulum, has swung so far in one
3 direction that it has resulted in the criminalization
4 of poverty and in the consequences that many of the
5 people on this panel have spoken so eloquently about.

6 VICE CHAIR TIMMONS-GOODSON: If I might,
7 Mr. Chair, one more question.

8 CHAIRMAN CASTRO: Go ahead.

9 VICE CHAIR TIMMONS-GOODSON: You know,
10 in order to get to the fine and the fee stage, one
11 must be charged or brought before the courts. And
12 one is more likely to observe violations of the law
13 if law enforcement is in place and ceased.

14 And so we've not said a word about
15 targeting or law enforcement efforts. I just wish
16 to hear something, you know, about that.

17 MS. FOSTER: I can give you the
18 statistics from Ferguson which I think are
19 symptomatic. So Ferguson has an African-American
20 population of 67 percent of the city's population.

21 But they were 80 that African-Americans
22 represent 85 percent of the stops by law enforcement,
23 90 percent of the citations, and 93 percent of the
24 arrests. That's a fairly stark disparity.

25 This statistic is true in Ferguson and

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1 it's actually true for the most part across the
2 country. African-Americans are two times more likely
3 to be searched by law enforcement and 26 percent less
4 likely to be found with contraband, 26 percent less
5 likely to be found with contraband. Two times more
6 likely to be searched.

7 VICE CHAIR TIMMONS-GOODSON: Mr. Reddy,
8 you want to weigh in? You don't have to, I'm just -
9 -

10 MR. REDDY: I'll tell you what. If you
11 don't mind, I would like to tell a quick anecdote
12 that I think sort of gets at the problem that I think
13 your question is targeting.

14 It's an anecdote about how these things
15 get passed in the first place and how well intentioned
16 people trying to address real problems end up doing
17 very counterproductive things and how I think they
18 very frequently target minority and poverty
19 communities in particular.

20 When I was in Texas I was involved with
21 some work in the Texas legislature. And there was a
22 state representative who came from a black community
23 in Houston. He himself was African-American.

24 And there had been a serious problem in
25 this community with littering. And he was very

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1 passionate about it. He talked to me about it and
2 he said look, I live in this community. It is out
3 of control, you have no idea how bad it is.

4 He cared deeply and I understood his
5 passion. He drafted this bill that suggested; right
6 now I think the fine for littering in Texas is around
7 \$300. This was going to ratchet the fines up into
8 the thousands of dollars. It also was going to
9 require 12 days jail time for people who were caught
10 littering.

11 And I understood why he cared so much
12 about it. One of the most successful marketing
13 campaigns ever is Don't Mess with Texas, it's a
14 littering campaign. I grew up with that campaign.

15 However, it occurred to me as he was
16 talking to me about this and as he presented this
17 bill to the legislators in the relevant Texas
18 committee that he was opening a terrible Pandora's
19 Box here because the police officers were going to
20 start enforcing this law, they were going to start
21 roping in a whole bunch of young men who are going to
22 start to resent them for it, they were going to get
23 caught in the very cycle of criminalization and
24 poverty that we're discussing today.

25 And what's so interesting about it is

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1 that every stage, people are well intentioned. The
2 legislator meant well, the police officers are just
3 doing their jobs, the voters that vote for the
4 legislator care obviously about littering in their
5 community.

6 And yet you have these insidious
7 consequences. I'm happy to say that bill was
8 defeated, but I think it's a good example of this
9 sort of problem we're dealing with because very, very
10 frequently bills like that are not defeated. They
11 pass because somebody says we want to get tough on
12 littering. And I hope that gets somewhat to the
13 question you're asking.

14 VICE CHAIR TIMMONS-GOODSON: Thank you.

15 MS. CHOUDHURY: Just a brief comment on
16 this as well. The targeting of low income
17 communities for relatively low level offenses
18 absolutely contributes to the problems that we're
19 discussing today.

20 And I think it's clear now based on the
21 data that from New York, the New York Police
22 Department data, Boston Police Department data,
23 Philadelphia Police Department data all secured
24 through racial profiling litigation or advocacy by
25 the ACLU and other advocates shows that sophisticated

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1 regression analysis has been able to identify and
2 isolate the role of race of a community and the race
3 of a subject in driving the number of police
4 encounters in that location and a person's likelihood
5 of being stopped.

6 And as we've heard already as well, the
7 likelihood of someone actually being found with
8 contraband or a weapon is lower if one is African-
9 American than if one is white and lower if one is
10 Latino than one is white. And that is robust data
11 from three major cities, New York, Boston, and
12 Philadelphia.

13 So what that suggests is that policing
14 even for low level offenses the kinds of behaviors
15 that many people from many communities are engaging
16 in is driving police activity against certain racial
17 and socioeconomic communities with detrimental
18 effects, kind of funneling them into the practices
19 we're talking about today.

20 The second and last point I'll make is
21 that just to provide a very clear, specific example
22 of this is the finding of the ACLU and a recent report
23 from 2013 that although all racial and ethnic
24 communities engage in marijuana use at comparable
25 rates as measured by the federal government, a black

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1 person in the United States was 3.8 times more likely
2 to be arrested for simple marijuana possession.

3 And that disparity grew up to six times
4 in certain cities. The City of Milwaukee around
5 seven times, Brooklyn around nine times, D.C. also
6 very high. So what this shows is that the way
7 policing is carried out absolutely contributes to
8 this cycle of poverty in criminal justice
9 involvement.

10 CHAIRMAN CASTRO: Commissioner Narasaki
11 and then Commissioner Kladney. And let the record
12 reflect that Commissioner Kirsanow now has joined us.

13 COMMISSIONER NARASAKI: I thought Dave
14 was before me.

15 CHAIRMAN CASTRO: No, I have you first.

16 COMMISSIONER NARASAKI: Okay. Thank
17 you, Mr. Chair. I have a series of relatively short
18 questions. So what has struck me in all the reading
19 that we've done to prepare for the hearing is the
20 role of judges in the system.

21 And I was struck, Ms. Foster, by this
22 notion that a significant percentage of the people
23 running these courts are not required to be lawyers.
24 And I'm wondering what recommendations there are for
25 addressing that problem as well as I understand that

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1 your, the Department's first goal is to do education
2 and outreach.

3 But it seemed to me in some of the
4 readings that we've done that some of the judges are
5 quite woefully ignoring the constitution. And so
6 what are the recommendations to try to hold judges
7 accountable when they are not paying attention to the
8 constitutional obligations?

9 MS. FOSTER: It's hard to know exactly
10 how many judges are not lawyers. And I'm not entirely
11 sure that's the full extent of the problem. As you
12 pointed out, there appear to be some judges who are
13 lawyers who do not --

14 COMMISSIONER NARASAKI: There are smart
15 non-lawyers and there are some not smart lawyers.

16 MS. FOSTER: Precisely. From the
17 Department's perspective, obviously it's the state
18 courts that have to determine, and state legislatures
19 that have to determine standards for municipal court
20 judges.

21 The Council on Chiefs and the Council of
22 State Court Administrators task force that met for
23 the first time this week, one of the things that they
24 are going to make recommendations about are how to
25 select judges, what kinds of educational requirements

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1 there should be both with respect to whether they
2 should be lawyers or not and what kinds of additional
3 judicial training needs to be done.

4 I think everyone recognizes that there is
5 a need for judicial training in this arena. For a
6 lot of reasons, and I can say this with some
7 experience because I served as a state court judge
8 for ten years, judges operate in institutions.

9 And those institutions have been doing
10 this now for since probably the '80s when, as
11 everyone's indicated, this wave of new fees and fines
12 and enforcement came into being in conjunction with
13 changes in our criminal justice system.

14 So a lot of judges aren't really aware
15 that what they're doing violates the Constitution. I
16 can tell you anecdotally that the Chief Justice of
17 Texas who is a member of the national task force met
18 with his judges including all of his municipal court
19 judges and said that the vast majority of them were
20 chagrined and completely embarrassed to realize that
21 what they were doing was unconstitutional.

22 And so a huge part of this is awareness.
23 In the instances where someone is knowingly violating
24 the Constitution, obviously there are two ways that
25 that can be resolved, maybe three. One is through

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1 appellate courts, although that is difficult in this
2 arena, and that's because nobody has lawyers for the
3 most part in these proceedings.

4 There are very few places where there are
5 public defenders involved even though people are
6 facing incarceration. But that is one avenue. And
7 then there have been notable examples of where courts
8 of appeals have told judges that they have to stop.

9 The second is through judicial
10 performance commissions, or in most states, every
11 state has some form of public commission that is
12 responsible for disciplining judges who behave
13 illegally or extra judicially or violate the canon
14 of ethics.

15 I will tell you there is some concern in
16 some states as to whether the cannons of ethics apply
17 to municipal court judges. Again, the task force,
18 one of the things it will be doing is making
19 recommendations that cannons of ethics apply and that
20 all municipal court judges are subject to whatever
21 the state's disciplinary proceedings are.

22 Finally, of course the Department could
23 in the case of a judge who was knowingly violating
24 civil rights, prosecute that judge. That would be
25 our least favorite way of resolving this issue. But

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1 we have received some complaints with respect to
2 conduct in individual cases, and we are looking at
3 those as seriously as we look at everything else.

4 COMMISSIONER NARASAKI: Does anyone else
5 want to add?

6 MS. CHOUDHURY: Yes, just to add to that,
7 just last week the Macomb County Circuit Court in
8 Michigan granted a motion by the ACLU to exert super
9 intending control over the courtroom of the 38th
10 Judicial District.

11 So this was a judge who the presiding
12 judge of the District who kept imposing pay or stay
13 sentences. The ACLU has alerted this judge that
14 these practices were illegal. In 2011, the ACLU had
15 represented seven people in high profile criminal
16 appeals of their pay or stay sentences.

17 And this judge kept doing it. And
18 through a kind of interesting legal mechanism, we
19 were able to ask a higher court to literally order
20 this judge to follow the law, and that order did come
21 down.

22 I think those fact patterns are hard to
23 prove. We can't be in every single judge all the
24 time. And so the approach of creating a system change
25 where the culture changes, where the procedures

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1 change and better, more equitable de facto procedures
2 are in place has the best potential of achieving
3 meaningful, systemic reform.

4 But let's be clear, we have no belief
5 that enforcement will not become necessary one day.
6 There must continue to be enforcement because the
7 specific litigation against jurisdictions that are
8 violating the law both highlights exactly where these
9 fissures are occurring, where structures aren't
10 working, and also the threat of enforcement brings,
11 we believe, other jurisdictions in line.

12 COMMISSIONER NARASAKI: Great, thank
13 you.

14 CHAIRMAN CASTRO: One more?

15 COMMISSIONER NARASAKI: Yes. So Mr.
16 Reddy, you were talking about the notion of excessive
17 fees. And so one of the remedies that has been put
18 on the table is looking at proportional fees.

19 So looking at someone's income, gauging
20 some percentage so that it wouldn't be a set fee
21 regardless of who you are but allowing some punishment
22 of some kind. So I wanted to know what you were,
23 what your institute supports in terms of
24 alternatives.

25 And the second issue is it seems to me

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1 that there's a difference between some of the
2 penalties versus these surcharges. So is anyone
3 putting out, since you mentioned Alec in your written
4 testimony, is anyone putting out some kind of
5 guidelines as to what is appropriate and not
6 appropriate in that arena because it seems to me that
7 that is also a huge problem.

8 MR. REDDY: Sure. Well, with regard to
9 the surcharges, you know, I agree completely. And I
10 like Ms. Foster's example of California where, so the
11 initial ticket is what the ticket costs but then there
12 are all of these bizarre fees and fines that get
13 attached to it, court improvement fees I think she
14 mentioned, other things like this that are not
15 associated.

16 I'm not familiar with anybody who's
17 putting out something like that right now other than
18 DOJ. But I think that those resources sound like
19 they would be a really useful contribution to the
20 dialogue.

21 The first question was concerning, it's
22 slipping my mind now, first question that you asked
23 me?

24 COMMISSIONER NARASAKI: Proportional --

25 MR. REDDY: Oh, proportional fees. I

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1 don't know that we have an institutional position on
2 that. But I certainly know that it's worth
3 experimenting with and looking into.

4 I wouldn't want that to replace the first
5 recommendation I made today which is finding a way to
6 cap the percentage of a locality's budget that can
7 come from criminal justice fees and fines.

8 As Ms. Choudhury mentioned, we have a
9 real problem with these fees and fines going into
10 paying not just for criminal justice functions.
11 That's debatable. But going into the general revenue
12 and paying for all the locality's functions that I
13 think is beyond the pale.

14 COMMISSIONER NARASAKI: Can I just ask
15 what, it's a factual thing. Are you aware of any
16 major legislation that Congress is moving on this
17 topic, and has there been any hearings?

18 MS. CHOUDHURY: There is a bill right
19 now, and I'm not sure what the status is, about ending
20 for-profit probation. And basically, withholding
21 federal funds from municipalities and I believe also
22 state government actors that employ these companies
23 to collect fines and fees because the profit incentive
24 is so distorting to the administration of justice.

25 MS. FOSTER: Let me just add that there

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1 are federalism issues in this arena. These are state
2 and local fines and fees. And there is a limit to
3 what the Congress can do in this arena to tell a state
4 how to operate their state court system and their
5 kinds of funds and fees to impose.

6 With respect to day finds which is the
7 term that's used, and I do not know where the term
8 day comes from with respect to proportional fines, I
9 think it's in your resource guide. The Department
10 of Justice through the Bureau of Justice Systems or
11 the National Institute of Justice did a study in three
12 jurisdictions some time ago about day finds.

13 It is the system that's in place in Europe
14 for the most part. They are proportional fines, and
15 if you think about the deterrent effect of a fine,
16 there's some logic to it, that it's of greater
17 deterrence if I'm speeding if my income is
18 substantially higher than it might be to assess a fee
19 that's proportional to my income than it is if I'm a
20 low income person and it's proportional to my income.

21 The Department doesn't have a position to
22 be sure on the issue. But there was a study done,
23 and it's probably worth taking a look at. I believe
24 it was three different American cities that
25 experimented with it.

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1 CHAIRMAN CASTRO: Commissioner Kladney,
2 you have the last ten minutes.

3 COMMISSIONER KLADNEY: Ten minutes?

4 CHAIRMAN CASTRO: Yes.

5 COMMISSIONER KLADNEY: Thank you Mr.
6 Chair.

7 CHAIRMAN CASTRO: Oh, you want one
8 minute? Okay, so I'll give you nine. Commissioner
9 Heriot wants a minute.

10 COMMISSIONER KLADNEY: Ms. Choudhury, I
11 found the settlement very interesting from Biloxi.
12 If I read it correctly, at arraignment there's rights
13 given and someone has to acknowledge a waiver of an
14 attorney, things like that. Then at sentencing, you
15 do it again, is that correct?

16 MS. CHOUDHURY: That's correct.

17 COMMISSIONER KLADNEY: And then if
18 there's a failure to pay, there's a 30 day notice
19 sent by regular mail. And then again you give rights,
20 is that correct?

21 MS. CHOUDHURY: Exactly.

22 COMMISSIONER KLADNEY: Okay. I did not
23 notice, maybe I did notice. But the attorney is
24 free, is that correct?

25 MS. CHOUDHURY: So the court now has an

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1 affidavit of indigence that it will present at the
2 initial appearance and determine whether counsel is
3 required at no cost. And then because people's
4 financial circumstances can change, if the person
5 comes back, if the initial appearance doesn't include
6 a guilty plea on the spot and the person comes back
7 for trial, again that form is used to make sure that
8 the person is afforded counsel if required. And if
9 later in the process, and it could be months later -
10 -

11 COMMISSIONER KLADNEY: Right.

12 MS. CHOUDHURY: -- a person's charged
13 with non-payment, again that form is used to assess
14 whether counsel is required.

15 COMMISSIONER KLADNEY: And then when a
16 counsel is provided, it is free, correct?

17 MS. CHOUDHURY: It is free.

18 COMMISSIONER KLADNEY: In many
19 jurisdictions in these muni courts, having the honor
20 to have practiced in them, they actually charge you
21 for your defense lawyer as part of the fee. I know
22 in my jurisdiction it's \$350.

23 And the only time you get counsel in our
24 jurisdiction is when you're facing jail. Under this,
25 anyone who faces jail or not faces jail has a right

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1 to counsel, is that right?

2 MS. CHOUDHURY: Absolutely. Yes, anyone
3 who's charged with non-payment has a right, is
4 informed of their right to secure legal counsel or to
5 request court appointment of counsel. And people who
6 are determined indigent will be afforded counsel at
7 no cost.

8 COMMISSIONER KLADNEY: And then the bench
9 card acts as a checklist for the judge, is that
10 required? Is there a checklist that's supposed to
11 be provided in every file? And, you know, they all
12 keep files on each case. Is there a checklist that
13 has to be completed by the court for those files?

14 MS. CHOUDHURY: So the person who's
15 charged with non-payment and that person's attorney
16 have what is also in the papers, an LFO, inability to
17 pay guide, a guide that helps the attorney walk the
18 defendant through what are my sources of income, what
19 assets do I have, what are my liabilities, what are
20 my monthly and annual expenses to help present that
21 court the information.

22 The form itself is not provided to the
23 court. But it helps the person who's charged with
24 non-payment put together the information to present
25 it in a way that the court can digest during the

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1 hearing itself.

2 This bench card is kept on the bench to
3 help the judge at every stage of the process. And
4 it's organized to address initial appearance,
5 sentencing, compliance hearings, and even post
6 compliance hearing actions like sending a case to
7 third party collection by a private debt collector or
8 reporting purposes for driver's license suspensions.

9 COMMISSIONER KLADNEY: And this also gets
10 rid of the standard fine sheet, is that correct?

11 MS. CHOUDHURY: Exactly.

12 COMMISSIONER KLADNEY: And I also noticed
13 a unique provision in there about the FTA, that the
14 bench warrant's to be served during the day, business
15 hours and that the person is not to be taken to jail
16 but be taken directly to the muni court which means
17 the muni court has to be staffed so many hours a day,
18 is that correct?

19 MS. CHOUDHURY: That is correct. And
20 we've noticed is that in certain jurisdictions
21 failure to appears are often used as kind of a back
22 door to this phenomenon of modern day debtors prisons
23 where people don't know they have a right to request
24 an attorney, they don't know that they can make their
25 case to a judge who could reduce or waive their fines.

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1 And the way we try to address that in
2 this settlement is to both advise people of their
3 rights at sentencing, so they know early in the
4 process that they have a right to counsel if they're
5 charged with non-payment, that their ability to pay
6 is a critical issue at all stages, and so they know
7 that the system is there to actually work with them.

8 And then later if someone does not appear
9 in court, the goal is to prevent preventative
10 detention so that those failure to appear warrants
11 are executed, the court is empowered to charge people
12 with failure to appear, but that the goal is to bring
13 them before a judge as soon as possible and only to
14 detain people who actually pose a flight risk.

15 COMMISSIONER KLADNEY: Well, I think it's
16 an excellent settlement. And I know you had said
17 that it should be used as a model probably throughout
18 the country. How long did it take to get to that?

19 MS. CHOUDHURY: We filed the suit on
20 October 21st of last year and entered settlement
21 negotiations --

22 COMMISSIONER KLADNEY: So they folded
23 pretty quick?

24 MS. CHOUDHURY: Yes. They called us
25 within 48 hours to negotiate. And I think in the

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1 city's credit, they saw that they had a problem. They
2 saw that they had a massive problem and we were able
3 to show that 415 people were jailed on these failures
4 to pay warrants who couldn't pay and were stuck in
5 jail for days. And they took it seriously and we
6 worked very hard for about five months to bring this
7 about.

8 COMMISSIONER KLADNEY: Commissioner
9 Narasaki had talked about what kind of fees there are
10 besides fines. I mean, a fine is a fine. And I want
11 to list a few that I know of. And if any of you can
12 chime in, I think a laundry list would be helpful.

13 I know that in our municipal court you
14 have administrative court fees. I mean, that's like
15 \$150 a case. I know that you have domestic abuse
16 fee, you have a DUI court fee, you have a mental
17 health court fee, you have attorney's fees. You have
18 fees for if you don't want to go to jail you can get
19 an anklet and pay for that.

20 Those are the fees that come to my mind
21 and I would appreciate if you all not list it here or
22 tell me now, but if somebody could submit a list of
23 the kinds of fees that you know of, I think that would
24 be helpful for our report.

25 And the other thing I would like to say

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1 is that I don't think going after individual judges
2 really makes much of a difference. One, they're very
3 hard to prove those cases. If you try to do ethical
4 disciplinary case, you got to be able to kill the
5 guy. Otherwise, you're not going to prevail.

6 And you're only fixing one problem. So
7 I think the cultural thing is a correct response. I
8 would like you to talk about court staff and the
9 problems with communicating and having defendants try
10 to pay fines, try to get information out of court
11 staff and the treatment of the people by the court
12 staff that you may have run into during your
13 investigations of this matter. Thank you.

14 MS. FOSTER: Let me start with what staff
15 -- because so many of these courts are small and part
16 time --

17 COMMISSIONER KLADNEY: We can't hear you.

18 MS. FOSTER: Because so many of these
19 courts are small and part time, the staff are also
20 often part time. In Ferguson, and this is true
21 throughout the municipal court system in Missouri and
22 true in other places as well, in Ferguson the court
23 was under the authority of the city's financial
24 officer.

25 And it was located in the police

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1 department. Many of these municipal courts are
2 housed in police departments. You literally walk in
3 the police department door to go to the court.

4 The clerk is a part time clerk. There
5 are part time office hours. Many of these courts do
6 not have websites. You cannot find out when court
7 is in session. You can't find out if your ticket
8 requires a court appearance.

9 You can't find out what the fine is unless
10 you actually go to court. And court is held sometimes
11 in a school gymnasium, sometimes as I said in a police
12 department building. It varies enormously.

13 So part of what is in the Justice
14 Department's settlement consent agreement with the
15 City of Ferguson is measures to create some
16 independence for court staff as well as judges. The
17 problem of judges is equally fraught with conflicts
18 in, again, Ferguson is a great example. The judge
19 is part time, typically a lawyer in a law firm.

20 That judge may also be the prosecutor in
21 the next county and a judge in a different county,
22 and maybe the city count that the city attorney in a
23 fourth city. So there are problems with independence
24 of court officials.

25 I expect that again, coming out of this

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1 national task force will be recommendations about
2 court administrators and court staff including
3 educating court staff and providing technology to
4 courts so that they can actually enter the 21st
5 Century and begin to make this easier for people.

6 Even if you could afford to pay or can
7 afford to pay these fees, it's not easy to do it.
8 And making changes that will simplify courts, provide
9 better notice is a start.

10 CHAIRMAN CASTRO: Thank you.
11 Commissioner Kladney, I'm going to go to Commissioner
12 Heriot now to finish off the questions.

13 COMMISSIONER HERIOT: Thank you.

14 CHAIRMAN CASTRO: Thank you.

15 COMMISSIONER HERIOT: Ms. Foster, this
16 is probably something I can get from the Colleague
17 Letter, but I haven't read it yet. And I promise to
18 read it, but you were talking about some of the
19 federalism aspects of all this.

20 And you said there's a limit to what
21 Congress can do. And of course, there's also a limit
22 to what the Department of Justice can do.

23 MS. FOSTER: Absolutely.

24 COMMISSIONER HERIOT: You have
25 separation of powers issues there in addition. What

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1 statute does the dear, what statute if any does the
2 Dear Colleague letter rely upon or is it relying upon
3 just a straight constitutional argument or just a
4 straight argument about we think this is better
5 policy?

6 MS. FOSTER: So the answer is the
7 Constitution principally, that is we view our, one of
8 our obligations to make sure that the United States
9 Constitution is upheld throughout the country whether
10 it's a federal court, a state court, or a local court.

11 So we attempted to set out what are, in
12 our view, black letter constitutional principles,
13 first. To the extent the Department has enforcement
14 authority in this arena, it is either through Title
15 VI if there is a disparate impact to the conduct.

16 Or depending on the nature of that court,
17 if there are children involved, and unfortunately in
18 a lot of these circumstances there are children
19 involved because children can drive, that is people
20 under the age of 18 and are subject to these kinds of
21 tickets.

22 There are, I hasten to add, fines and
23 fees imposed against juveniles in juvenile courts,
24 justice involve children against the child and often
25 jointly and separately the child's parents.

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1 And third, kids are subject to municipal
2 code violations or violations like jaywalking. So
3 to the extent there are children, our jurisdiction
4 comes under 18 USC 1441.

5 Similarly, as was the case in Ferguson
6 where the police department is so integral to the
7 conduct that's involved, we have jurisdiction over
8 1441, 14141, I'm sorry.

9 COMMISSIONER HERIOT: How come when our
10 Dear Colleague letters that proceed just under a
11 constitutional argument? I mean, I'm always being
12 told how the Department of Justice doesn't enforce
13 the Constitution, they enforce statutes.

14 And there may be tons of these letters,
15 but how come when you get a letter that it simply
16 makes a constitutional argument rather than a
17 statutory argument?

18 MS. FOSTER: It actually is not terribly
19 common which I think underscores the seriousness with
20 which the Department takes this issue.

21 COMMISSIONER HERIOT: Are there any other
22 precedents at all?

23 MS. FOSTER: I can't answer that. The
24 last one that I know we did was a statutory letter.
25 And that involved language access.

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1 COMMISSIONER HERIOT: Okay.

2 CHAIRMAN CASTRO: Thank you. That
3 concludes the first panel. I want to thank all of
4 you for participating. And hopefully you'll be
5 sticking around for the rest, but if not we want to
6 thank you for your participation today.

7 We'll ask Panel 2 to begin to move to the
8 front to take your seats so that we could continue.

9 (Whereupon, the above-entitled matter
10 went off the record at 10:33 a.m. and resumed at 10:34
11 a.m.)

12 CHAIRMAN CASTRO: Okay, can we get order?
13 We're going to begin the second panel.

14 PANEL 2 - COMMUNITY LEADERS AND ADVOCATES

15 CHAIRMAN CASTRO: Thank you. Let me
16 first introduce the panelists to you all.

17 Our first panelist is Thomas Harvey,
18 Executive Director of Arch City Defenders.

19 Our second panelist is Starsky Wilson,
20 co-chair of the Ferguson Commission.

21 Our third panelist is Dr. Natasha
22 Goodley, first Vice President of the NAACP,
23 Hillsborough County Branch.

24 And our fourth panelist is Mitali
25 Nagrecha, Board Member of the Center for Community

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1 Alternatives and a former fellow at the Brethren
2 Justice Center.

3 I will ask all the panelists to please
4 raise your right hand and swear or affirm that the
5 information you are about to provide us is true and
6 accurate to the best of your knowledge and belief, is
7 that correct?

8 (Chorus of yes.)

9 CHAIRMAN CASTRO: Okay, thank you. Mr.
10 Harvey, you have the floor for seven minutes and
11 following the system of red lights.

12 MR. HARVEY: Thank you so much for
13 inviting me to testify today. It's quite an honor.

14 My name is Thomas Harvey, I'm the
15 cofounder of Arch City Defenders. It's a 501(c)3
16 nonprofit civil rights law firm providing holistic
17 legal advocacy to the poor and homeless in the St.
18 Louis region and beyond.

19 We use direct services, impact
20 litigation, policy and immediate advocacy as our
21 primary tools to promote justice, protect civil and
22 human rights. And attempt to bring about systemic
23 change on behalf of the poor and communities of color
24 directly impacted by the abuses of the legal system.

25 I had, you have a copy of my written

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1 statement, and I'm going to deviate from that based
2 on the first panel. I wanted to, I jotted down some
3 notes here and I'm just going to speak
4 extemporaneously about what my reflections are.

5 One, I just want to, I would forefront
6 race in all of the analysis of the municipal court
7 practices and procedures and the systemic violations
8 of the constitution that you've heard about and read
9 about.

10 I would say that this is obviously not
11 new, it's more widespread than we image. It's
12 clearly not just about money, although in some
13 jurisdictions that has become, that has taken its
14 primary purpose.

15 I would say that in our, in the courts
16 attempt or mindset, this seems to be about punishment,
17 even when the people who are before the court are no
18 more criminals than those free Black men in post-
19 reconstruction American who are arrested on vagrancy
20 charges, loitering charges and other Black Code
21 cases.

22 I would say that at odds with the instinct
23 to punish in those courts, even heard here reflected
24 on the earlier panel, is the instinct not to punish
25 those who are running those courts. You heard that

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1 the folks running those courts, judges, prosecutors,
2 had been systematically violating the constitution
3 for quite some time. Have admitted it.

4 And when those folks are, when that's
5 brought to the attention of the authorities, the
6 response is, they need some more education, they maybe
7 need a cheat sheet on what the constitution is. But
8 never, or almost never, is the idea of punishing them
9 for their illegal acts forefront.

10 And I would urge this Commission to hold
11 another hearing, to explore ways in which judges and
12 prosecutors who willfully, or otherwise violate the
13 constitution, can be held accountable for that.

14 I think that it's absurd that people who
15 are among the most well educated in this country, who
16 have gone to at least four years of college, three
17 years of law school, taken the bar examine,
18 undoubtable gone through continuing legal education
19 classes and seminars, can somehow pretend as if they
20 don't understand the most basic tenants of the United
21 States Constitution.

22 And with that, I'd like to read something
23 that I've read recently. It's a quote from Douglas
24 Blackman, Slavery by Another Name. And it's in the
25 introduction. If you're not familiar with it, it's

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1 a fantastic book.

2 He says, the records demonstrate the
3 capture and imprisonment of thousands of random
4 indigent Black citizens, almost always under the
5 thinnest chimera of probable cause or judicial
6 process. Instead of evidence showing Black crime
7 waves, the original records of county jails indicated
8 thousands of arrests for inconsequential charges or
9 for violations of law specifically written to
10 intimidate Blacks.

11 Changing employers without permission,
12 vagrancy, riding freight cars without a ticket,
13 engaging in sexual activity or loud talk with White
14 women.

15 The record is replete with episodes in
16 which public leaders face the true choice between a
17 path towards complete racial oppression or some
18 degree of modest, civil, equality and emphatically
19 chose the former. This was not the unavoidable event
20 caught driven by invisible forces of tradition.

21 Sentences in these courts are handed down
22 by provincial judges, local mayors and justice of the
23 peace.

24 Dockets and trial records were
25 inconsistently maintained. Attorneys were rarely

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1 involved in the sides of Blacks and the revenues were
2 in the tens of millions.

3 Now, that was 1903. That was 1903. One
4 hundred and 11 years later, 116 years later, 15 years
5 later, we're having the same conversation. We're
6 having exactly the same conversation.

7 This is well worn. Everybody knows it's
8 happening. I shouldn't say everybody. To some folks
9 who don't have to go into these courts, they may not
10 be aware.

11 But for poor people and Black people in
12 St. Louis County, and across the United States, this
13 isn't new. Department of Justice didn't tell the
14 anything that they didn't know already. They don't
15 need any further study of it. They need something
16 done.

17 And we've already tried to sit down to
18 talk to people about what could be done and how they
19 could be better education in addition to their
20 undergraduate degree and their laws school and
21 passing the bar, and they're either, it's not getting
22 through or they don't care.

23 And I would suggest that many of the
24 people in these courts do not care about poor people.
25 They do not care about Black people. And when you

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1 combine those two things, no one, judges,
2 prosecutors, local NAACP, National NAACP, Department
3 of Justice, no one listens to them.

4 I'm glad that we're having this
5 conversation. I'm hopeful that something productive
6 will come of it. I feel, I hope that we're not having
7 a similar hearing 111 years from now. Thank you very
8 much for your time.

9 CHAIRMAN CASTRO: Thank you, Mr. Harvey.
10 Mr. Wilson, you have the floor.

11 MR. WILSON: Mr. Chair, Commissioners,
12 thank you very much for the opportunity to share today
13 a bit of our experience and findings from the Ferguson
14 Commission and the St. Louis Metropolitan Community.

15 My name is Starsky Wilson. I serve as
16 President and CEO of Deaconess Foundation. The
17 Health Conversion Foundation, focus on child well-
18 being in the St. Louis Metropolitan community related
19 to United Church of Christ. Also served as Pastor
20 of St. Johns Church, the beloved community in North
21 St. Louis City.

22 And as noted before, from November of
23 2014 through December of 2015, I served as Chairman
24 of the Ferguson Commission. Currently an
25 incorporator for Forward Through Ferguson

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1 Incorporated, a nonprofit entity established to
2 continue evaluation, measurement and communication,
3 related to the 189 calls to action in the Forward
4 Through Ferguson Report found at
5 forwardthroughferguson.org.

6 You received in your briefing materials
7 a 17 page document that shared a bit about the process
8 of the Ferguson Commission. How it worked, the folks
9 that it engaged and some of its findings.

10 Which included the integration of several
11 of the reports that have been referenced in the first
12 panel, the Department of Justice Report, from March
13 of 2015, the Arch City Defenders White Paper on the
14 municipal courts in the St. Louis Metropolitan
15 community and several different reports on the
16 operations and the footnotes. Operations of things
17 like the Municipal Court Improvement Community that
18 was working there.

19 I will also seek to give some context to
20 the recent report of the Missouri Supreme Court panel,
21 which was appointed to study these issues throughout
22 the State of Missouri, who took into consideration
23 some of the Commission's report.

24 I will, more than anything else, I want
25 to read, not read back to you, a lot of which you

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1 got, expect for the portion that notes, the
2 amplification of voices who are affected by this work.

3 To speak of the Commission itself and its
4 process over the course of just under a year and a
5 half, there were some 70 public meetings held that
6 engaged 3,000 citizens of the St. Louis Metropolitan
7 Community. And the marshaling of some 30,000
8 volunteer service hours in order to produce these
9 findings. Studying a wide range of issues that were
10 exposed, clearly did not begin, but were exposed with
11 the August 9th, 2014 murder of Michael Brown, Jr. by
12 Officer Darren Wilson.

13 As we begin to study these things, we
14 begin to recognize that the disproportionate contact,
15 with the young Black and poor people particularly in
16 North St. Louis County, by police, was driven by the
17 need for the courts to serve as an ATM for a system
18 of municipal fragmentation that racialized and
19 embedded racial segregation in our region. Because
20 it quite frankly began with racial segregation in our
21 region.

22 To provide a bit of context, some of these
23 small municipalities, 91 of which exist in St. Louis
24 Metropolitan, St. Louis County, were created through
25 racialized covenants, from people who are fleeing the

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1 city. Primarily beginning with the East St. Louis
2 race rights in 1918.

3 What they did was created municipalities
4 that were not large enough to actually support
5 themselves. And because they can't support
6 themselves, they use the courts to do that.

7 Unfortunately, what we continue to find
8 is that in some of those cases, more than 60 percent
9 of the city's revenues, so not just the courts, but
10 the city's total revenue, came from the courts. And
11 this, because of the disproportionate contact with
12 young Black and poor people going through these
13 communities.

14 As we note, the commissions process
15 included the participation of grass roots, sitting
16 municipal court judges, prosecutors and mayors in the
17 process. And as you have seen throughout this, they
18 have come up with several recommendations.

19 I'll just say this for the sake of those
20 recommendations. There is a call and a need for
21 federal intervention and action in the State of
22 Missouri, as it relates to this.

23 And I'll point to this on two levels.
24 First, while we were doing our work, there was also
25 the assignment of what was called the municipal court

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1 improvement committee that was the same judges, the
2 same prosecutors giving the appearance that they
3 wanted to do something about these issues. But they
4 operated in secret. They documented meetings where
5 they kept community members out and they sought to
6 preserve the status quo.

7 Recently, the Missouri Supreme Court
8 panel that was appointed here, that included judges,
9 former judges, attorneys, also came back noting the
10 issues. Noting that they couldn't really dispute
11 their challenges, but saying that the courts didn't
12 have the authority.

13 The Missouri Supreme Court didn't have
14 the authority to intervene, even though there was
15 some responsibility for supervision and oversight.
16 And they clearly noted these issues of a lack of
17 oversight.

18 Particularly in St. Louis County. Which
19 has twice, I think maybe three times as many courts
20 under appropriate supervision, then the nearest
21 county in our state.

22 So they're clearly supervisory issues.
23 But those with the most immediate responsibility have
24 shown a desire to either protect the system or to
25 look like they're doing something even when they're

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1 not. And usually that's unfortunately through
2 panels, commissions and the like. I'll say that with
3 some concern about that with our own work.

4 And then finally this issue that
5 education doesn't change behavior. I noted that I
6 work in a Health Convergent Foundation. One of the
7 things that we found, particularly with this
8 challenging issue of smoking cessation, that
9 education absolutely, absolutely, absolutely never
10 worked.

11 The only thing that stopped people from
12 smoking, even the voices of their daughters, I'll say
13 this as one who lost a father-in-law to lung cancer,
14 even the voice of his daughter, the voice who is in
15 the medical profession, his wife who's in the medical
16 professions who deeply cared and loved him, never
17 stopped him from smoking. The one thing that stopped
18 people from smoking is taxing cigarettes.

19 So I say it to say, education,
20 particularly in the places that we call upon to give
21 us enforcement, like the Department of Justice, will
22 absolutely not resolve this issue, rather enforcement
23 must. And it must for the sake of Dawn.

24 Dawn, as spoke into your materials, is a
25 resident of North St. Louis County whose story is

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1 chronicle in the report platform at
2 forwardthroughferguson.com.

3 forwardthroughferguson.org.

4 She is a student at a University in North
5 County. She says this, simply going to school can
6 be scary because you don't want to get pulled over.
7 You know you won't be able to pay the ticket and so
8 you take the chance and hope you don't get pulled
9 over, but it's scary.

10 It's scary that day after day, just
11 trying to go to school, to be worried about, will
12 this be the day I get pulled over, will this be the
13 day I get caught.

14 At one point I had four warrants because
15 I couldn't afford to get car insurance, I couldn't
16 afford to get my car registration and pay my property
17 taxes. So I would end up having to drive illegally
18 because my plates would be expired.

19 I couldn't do anything about it so I would
20 get pulled over. And I would explain this to the
21 cops always, because you would hope that the cop would
22 be understanding. But they would always give you a
23 ticket.

24 You can't afford to pay the ticket
25 because if you could, you would have gotten your car

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1 taken care of. So you end up not being able to pay
2 the ticket and then you get a warrant.

3 Once you get into that cycle, it's
4 really, really hard to get out of because there are
5 a lot of fees. You can try to get a lawyer, you can
6 post bond. If you get pulled over and you can't post
7 bond, you just do the time served.

8 This is absolutely not about justice.
9 Clearly it is a cycle. A perverse and pervasive
10 cycle of getting people into debt as prisoners and
11 quite frankly, not serving or pursuing public safety
12 either.

13 This is what we have found time and time
14 again. We look forward to fielding your questions
15 and providing more context as we have the occasion.

16 CHAIRMAN CASTRO: Thank you, Mr. Wilson.
17 Ms. Goodley, you have the floor.

18 MS. GOODLEY: Good morning. Thank you.

19 CHAIRMAN CASTRO: Good morning.

20 MS. GOODLEY: Thank you for this
21 opportunity to represent the residents of Tampa,
22 Florida.

23 About a year ago, one of our local
24 newspapers, The Tampa Bay Times, which is one the top
25 ten newspapers in the country, did an article. And

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1 the article stated that the Tampa Police Department
2 wrote more tickets last year than the Sheriffs'
3 offices in Hillsborough, Pinellas and Pasco Counties
4 combined.

5 And more capita than cops in
6 Jacksonville, Miami, St. Petersburg and Orlando. The
7 States four largest, other largest cities.

8 And no other law enforcement agency in
9 the state arrests more people than the Tampa Police
10 Department. The Tampa police wrote more tickets for
11 bicycle offenses than any other law enforcement
12 agency in the state. And that eight of the ten
13 cyclists were Black, according to an investigation by
14 the newspaper.

15 The Hillsborough County branch, NAACP,
16 has approached the police department, the mayor, the
17 city on several occasions regarding these statistics.
18 One, Pinellas County, all the counties are in Tampa
19 Bay. Pinellas County is our neighboring county.

20 Pinellas County has the largest
21 population pro rata in the state. But yet we write
22 more tickets than Pinellas, Hillsborough and Pasco
23 County sheriffs' offices combined.

24 After the article we demanded an
25 investigation into the Tampa Police Department

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1 through the chief of, the then chief of police, Jane
2 Castor. TBD launched an investigation through their
3 cop's division, which we were later advised it should
4 have been through the civil rights division and not
5 the cops. And ironically, the former chief of
6 police, Jane Castor, now serves on the cop's division
7 as well.

8 They came to Tampa. They did an open
9 forum with the community. And for months sought the
10 communities direct input on issues with TPD. The
11 community was advised that a report would be issued
12 at the end of the year. December 2015 no report was
13 given.

14 When we followed up with the department,
15 we were told it would be January 2016. January came
16 and went, no report was given. And as of today, when
17 we inquire as to what the findings were, we're told
18 not to inquire anymore, they would let us know.

19 This is a huge issue in Tampa as far as
20 the bicycle stops are concerned. In urban
21 communities, individuals are stopped for riding their
22 bicycle without having a bike light. Or they're
23 stopped because they're riding on the sidewalk.

24 But they're only stopped in the urban
25 communities. They're not stopped in the more fluent

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1 neighborhoods.

2 Individuals who ride, we have a pathway
3 along the river called Bayshore Boulevard.
4 Individuals are not stopped on Bayshore Boulevard for
5 riding their bicycle without having bike lights.

6 We've noticed an increase in a number of
7 Black individuals being stopped for bicycle arrests.
8 Once they're stopped they're frisked, they're
9 searched and they're ran through the system to see if
10 they have any warrants. And this only occurs in the
11 urban communities.

12 One of the individuals stated, when I see
13 TPD on the street, I do get nervous. I don't get
14 nervous because I'm up to no good, but because of who
15 they are and what they represent in our community.

16 We've worked hard to try to get TPD to
17 rethink the process of the bicycle stops. It's not
18 that, I understand if you stop individuals and they
19 have warrants or whatnot, then of course what happens,
20 happens. But when you only stop Black individuals
21 in urban communities, there is a problem.

22 We do have a bicycle share program within
23 the city where you can rent a bicycle and ride it
24 through the city and return the bicycle, with using
25 your credit card. Initially those bicycles did not

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1 have bike lights anywhere on the bicycle.

2 And so individuals could rent the bicycle
3 that the city provided, with no bike light, and not
4 be stopped. But if you were riding your own bicycle
5 with no bike light, you were stopped.

6 Also, with the bicycles that they
7 implemented, after this went through the news and
8 everything happened, they quietly placed lights on
9 the front, but not the back. Although their
10 requirements are that they're on the front and the
11 back of the bicycles.

12 Our police officers also, our law
13 enforcement, have a Bill of Rights written into the
14 State Constitution. And it literally gives the
15 enforcement officers more rights than normal
16 citizens.

17 We've been working to also encounter that
18 through amendment. It protects law enforcement
19 officers in a legal construct that even the citizens
20 of Tampa do not have.

21 Case in point, we had a police officer
22 who went to the strip club, got drunk, crashed into
23 the car in front of him. He was placed on leave and
24 quietly rehired in six months. You know that would
25 never happen to any of the citizens in Tampa.

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1 So we've worked with other organizations
2 to devise an amendment to change the City constitution
3 to allow police officers to have the same rights as
4 normal citizens and not be, and not have more rights
5 than we have.

6 We asked, in doing this, we asked the
7 mayor and the chief of police to institute a citizen's
8 review board. That was our solution.

9 The citizen's review board would have
10 subpoena power, have a budget and operate to review
11 the police department. We went through a lot of
12 clash, we clashed back and forth with the mayor and
13 he finally instituted a citizen's review board with
14 no subpoena power, no power. And he appointed nine
15 of the 11 people on the board.

16 So we, again, have an amendment that
17 we're pushing to have a new board created that has
18 power. So that we can review the cases that come
19 before the police department and bring some
20 transparency to the Tampa Police Department.

21 Unbeknownst to the residents, across the
22 nation, people believe that Tampa Police Department
23 and the residents of Tampa have a wonderful
24 relationship and that community policing is
25 instituted. And unfortunately it is not.

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1 That's not the case. The officers do not
2 know the community. Community policing is not
3 instituted. And it amazes us how the front can be
4 placed across the nation that we operate this way
5 when in actuality, we do not.

6 And so we're hoping that we can do
7 something soon, before an episode like Ferguson or in
8 other cities, occurs. Thank you.

9 MS. NAGRECHA: Thank you for having me.
10 Today I will speak primarily about the Commission's
11 question as to how these fees and fines impact
12 American society at large.

13 I'll note that I have also been a co-
14 author on a paper that surveyed these practices in 15
15 seats and can answer more general questions later.

16 But I will speak today about a paper that
17 I released that argues that these fees and fines harm
18 the indebted individual's family and friends. As
19 these individuals are made to rely on their networks
20 of support to help them pay.

21 And so family and friends often, also
22 from low-income communities, band together to support
23 their loved ones so that their loved ones can avoid
24 the severe consequences of nonpayment.

25 And so what we find is that we are

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1 inadvertently basing these fees and fines, not on the
2 individual's ability to pay, but on their families
3 attempts to help them pay. And that we are, in broad
4 scale, impacting, negatively impacting, communities
5 of color.

6 We based the conclusions in the paper on
7 40 interviews. And before I turn to the details of
8 that paper, I will note sort of where this project
9 came from.

10 And so one, we were often asked, by
11 legislators, and we haven't talked that too much yet
12 today on the role of legislators, but a lot of these
13 additional surge charges that others have mentioned,
14 are statutorily passed.

15 And so we heard from legislators who were
16 sympathetic to push back on fees and fines that they
17 wanted to know more about family impact. And they
18 saw it as a way to counter the "make the offender
19 pay" logic.

20 We also, around the time we were
21 researching this paper, we had been in touch with a
22 jurisdiction in Massachusetts where they had been
23 levying a jail fee. And that jail fee was found to
24 have been improperly collected from the individuals.

25 And what we found is that the

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1 individual's family members were the ones to call to
2 get that money back because they had been the ones to
3 pay in the first place.

4 Finally, in my research I have found that
5 the kind of default policy position is to say that,
6 we should just tailor the fees to an individual's
7 ability to pay.

8 But as we thought about it more, we
9 wanted, we started to reflect on what exactly should
10 be taken into account and how accurate can we be.
11 And what did returning individual's financial
12 situations look like.

13 And really, were we ignoring the reality
14 that we in fact know that most people in the criminal
15 justice system come from indigent communities.

16 For this paper we conducted 40 in depth
17 interviews with individuals that had fees and fines.
18 And we asked them detailed questions about their
19 financial situations. Most, I'll note most of the
20 people were post-incarceration, and so they had had
21 some criminal justice system involvement.

22 And we asked individuals about their
23 criminal justice debt. Their fees and fines. We
24 asked them about their other debts. We asked them
25 generally about their current income, their prospects

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1 of income. So their level of education, their
2 likelihood to find a job.

3 We asked them about all of their
4 expenses. We asked about their public assistance,
5 if any. And then we asked in detailed, about what
6 supports they were getting from their community and
7 their family.

8 We asked them where they were living.
9 And we were trying to get a real sense of their
10 ability to pay and their networks of supports.

11 We also asked folks about their
12 experiences with the collection mechanisms. Such as
13 wage garnishment, driver's license revocation,
14 arrests and incarceration.

15 And what we found is that, well, our
16 primary finding was that as we suspected, individuals
17 are getting by through a reliance on their networks
18 of support.

19 Of the individuals we interviewed, 70
20 percent spoke to that and spoke to how they were
21 surviving financially, because of the fees and fines,
22 by relying on their family.

23 Thirty percent spoke specifically to
24 getting cash assistance from family. Forty percent
25 lived with a family member and paid little to no rent.

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1 We had seven people say that they were relying on
2 their family to be able to eat.

3 And to be clear, these questions were
4 answered in the context of asking folks about their
5 fees and fines. It was that that was pointed to as
6 a destabilizing factor.

7 I will tell a story, and I will try to
8 tell it quickly. I will tell the story of Monk, who
9 when he spent a few years in prison, and a child
10 support order had gone into effect when he was
11 incarcerated. And Monk had tried to communicate to
12 the family court that he was in prison, but came out
13 to understand that that debt had continued to accrue
14 while he was incarcerated.

15 Monk also then had a number of fees
16 related to driving offenses. And again, this is
17 something we've heard about and is featured in the
18 Ferguson Report.

19 And so he immediately started owing on
20 these debts, including the child support. And that
21 one in particular, he was given two months to find a
22 job.

23 As we know, there are many barriers to
24 individuals finding employment with a criminal
25 justice record, and he was unable to start paying

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1 right away. And so Monk speaks very clearly about
2 the ways in which he relied on his family.

3 So he said he would borrow \$25 here and
4 there to make payments wherever he thought he might
5 see a warrant. And so he would try to, you know, he
6 hoped that that goodwill gesture would at least put
7 off the possibility of incarceration.

8 He did in fact become incarcerated and
9 had to borrow money to secure his release. And he
10 spoke of how this impacted his childcare
11 responsibilities.

12 He spoke about how he lived with his
13 girlfriend. Because that helped them make it
14 financially.

15 And he also spoke very clearly about the
16 emotional support that he received from his family.
17 And the emotional support they provided during these
18 stressful times.

19 And so I'm going to skip the quote by
20 Monk, that I think actually does a great job of sort
21 of tying it up, and --

22 CHAIRMAN CASTRO: Well go ahead.

23 MS. NAGRECHA: Okay. So Monk says, when
24 you come home, you might still have fines from the
25 DMV. Lots of jobs need a driver's license now, so

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1 if your driver's license got suspended you have
2 surcharges. You have to deal with that on top of
3 finding a job.

4 So in my situation, you have to get your
5 driver's license back together, pay rent, pay fines,
6 so no warrant, pay child support, so no warrants, and
7 now everything is falling short in the house. You
8 want to take care of your kid, but you're taking care
9 of all these fines.

10 As a grown man, you don't want to be
11 laying in your family house. You're a grown man, you
12 need your own.

13 You come home from prison with more
14 problems than you went in with. It doesn't stop
15 because you got locked up.

16 And I will just make a quick point. I
17 think that recently, and as I wrote my testimony for
18 today, I've really come to see this as one more way
19 in which our criminal justice system has become
20 disproportionate. And so now not only do you have
21 the offense related penalties over incarceration, you
22 have these fines that you follow you for a long time
23 after.

24 And now we know that those fines impact
25 your family and your community. And I think we've

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1 gone clearly too far.

2 And I think that if we also mentally
3 picture this happening in an affluent White
4 community, I think you would, I think we'd see that,
5 I don't think those communities would let this go on.
6 And I think that, you know, I feel it's important to
7 reiterate there is a racial component here.

8 CHAIRMAN CASTRO: Thank you. I'll open
9 up with the first couple questions and my
10 Commissioners can indicate to me their interest in
11 asking as Commissioner Achtenberg.

12 I want to commend, on the record, the
13 work that our Missouri State Advisor Committee did.
14 And has been doing on the issue of what happened in
15 Ferguson.

16 I attended their first hearing on the
17 issue, as it relates to the killing of Michael Brown.
18 And it was at that hearing where I first heard about
19 this issue of municipal fees and fines. So it was
20 before the DOJ even issued its report.

21 And even then, you know, with the very
22 limited knowledge that we had at that hearing, it
23 seemed to me that it was outlandish that folks were
24 being, in essence, put in prison for debts. The
25 committee did not go in depth into this issue, and

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1 obviously we are.

2 But one of the things that came out on
3 the police force side of that testimony that day was
4 a small municipality. I believe its name was Ana or
5 Santa Ana or something like that.

6 MR. WILSON: St. Ann.

7 CHAIRMAN CASTRO: St. Ann. That was, it
8 was testimony from a member of the public, Hispanic
9 woman, limited English proficient, that that
10 particular jurisdiction was being abusive of Latinos.

11 And I'm wondering, in any of your focus
12 on the issue of fines and fees, have you seen the
13 Hispanic community, or other limited English
14 proficient communities, also being victimized by
15 this? And if so, if you could talk to that.

16 MR. WILSON: So I'll speak to the, where
17 we saw really not as much from a data standpoint, but
18 a narrative standpoint. Specifically, with St. Ann.

19 So yes, because this is North St. Louis
20 County, we did see that. We also note here that the
21 practices go beyond the ethnic group.

22 So I had the occasion, in early October,
23 to visit the St. Ann Police Department. Because it
24 is also, as we talk about profitability, St. Ann is
25 one of the large municipalities and has the capacity

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1 to have a larger jail, a larger courthouse. And thus
2 has a contractual agreement to house people who have
3 been arrested in other places.

4 And so I visited and spoke with the chief
5 of police, who happens to be Hispanic, in St. Ann.
6 The relatively new chief of police there happened to
7 be Hispanic.

8 Because all of the people who were
9 arrested in Ferguson protesting, including the 13
10 people who had been arrested the night before for a
11 noise ordinance violation in front of the Ferguson
12 Police Department, largely young people, were housed
13 at St. Ann. Because Ferguson was building a bigger,
14 nicer, newer jail. And so they couldn't actually
15 house the people that they were arresting.

16 And so we found ourselves there. And had
17 the occasion to talk to the police chief about this.
18 Specifically this issue. Because he bore the burden
19 of being a Hispanic chief of police having to respond
20 to these same kind of issues.

21 And so what it had to do with, quite
22 frankly, is some of the work that was growing in the
23 area. And the same need to traverse through an area
24 that has racialized policing.

25 And so, yes, they absolutely found it in

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1 the Hispanic community. It's one of the growing
2 communities, but quite frankly, one of the less
3 visibly communities in St. Louis. North St. Louis
4 County and in St. Charles.

5 While the demographics are about the same
6 as the nation, you don't have any that I, any Hispanic
7 elected officials in St. Louis City or in St. Louis
8 County, who are at large. And so you do see that in
9 that community.

10 Where we didn't see it is in areas where
11 there are model minority communities. We do not see
12 disparities in the Asian-American population or even
13 with us. We have us a large and growing Bosnian
14 population in the St. Louis metropolitan community.
15 One of the largest in the nation.

16 While we saw it in the Hispanic
17 community, while we saw it in the African-American
18 community, we didn't see it in the numbers as it
19 relate, or the narratives related to "model minority
20 communities."

21 MS. NAGRECHA: That's interesting.
22 Anybody else? Yes, Mr. Harvey. Oh, I'm sorry, Ms.
23 Goodley.

24 MS. GOODLEY: Yes, as you know, Tampa,
25 Florida has a very high Hispanic population. So

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1 we've noticed the trend in the Hispanic communities
2 as well as the Black communities. And so we partnered
3 with several organizations, Hispanic organizations as
4 well, to put an end to the bicycle stops, the
5 targeting of the minority communities, for fines and
6 fees as well.

7 CHAIRMAN CASTRO: Thank you. Mr.
8 Harvey.

9 MR. HARVEY: So St. Ann, so first of all,
10 the City of Missouri keeps statistics on disparity in
11 traffic stops and they have since 2000, as a result
12 of allegations of racial profiling and traffic stops.

13 CHAIRMAN CASTRO: Okay.

14 MR. HARVEY: So there's a brief
15 digression on that. There used to be a press
16 conference every year to tout the findings. But the
17 numbers keep getting worse so press, the document is
18 released, but there's no longer a press conference on
19 this.

20 In St. Ann, it relates to this issue of
21 revenue and who you arrest in order to raise the
22 revenue through the incarceration of people. In St.
23 Ann, in 2011, Latinos were 11 times more likely to be
24 arrested than White people living in St. Ann.

25 St. Ann is situated on Highway 70, a major

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1 East/West highway. And this has to do with what
2 Reverend Wilson was saying about the jail they built.
3 That's another revenue source. Because they contract
4 with 24 towns in our region that are too small to
5 have their own jail, and then they hold people at a
6 daily rate.

7 They also contract with immigration
8 detention. So when they pulled over this 11 times
9 more Latinos on Highway 70, which they say is a drug
10 corridor, it gives them reason to stop these folks.

11 It's kind of a win-win, sarcastically,
12 win-win situation for them. In that, if they have a
13 warrant for their arrest and want municipality, they
14 jail them, they charge that municipality, X amount of
15 dollars a day to hold them.

16 If they don't, and they have a problem
17 with their immigration status, they send them briefly
18 off to immigration detention before they are then
19 returned to St. Ann's jail where they are held at an
20 even higher dollar daily rate. So it's all
21 interrelated.

22 MS. NAGRECHA: You know, and I don't have
23 sort of anecdotes in my mind, but I think it's
24 definitely an important question because I think
25 also, in ACLU's example, I believe that jurisdiction

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1 did in fact provide counsel at any point where
2 incarceration was an issue.

3 But in many of the jurisdictions we had
4 looked at in the Brennan Center report, the failure
5 to appear or the failure to pay a fine, was handled
6 through a civil contempt procedure that didn't always
7 have counsel associated with it even if incarceration
8 was on the table.

9 And so I think there may be situations in
10 which individuals, with limited English proficiency,
11 for example, would face incarceration on these
12 matters without the assistance of counsel.

13 CHAIRMAN CASTRO: One last question for
14 Mr. Wilson, and I'll give it to Commissioner
15 Achtenberg.

16 In reading your materials, it indicates,
17 I believe, that your Commission has not expired yet,
18 is that right? Or has it already?

19 MR. WILSON: The Commission expired
20 December 31, 2015.

21 CHAIRMAN CASTRO: Okay.

22 MR. WILSON: What we did was setup a
23 successor entity with some of the initial staff from
24 the Commission. So three staff members from the
25 Commission and five Commissioners, three

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1 incorporators.

2 So five Commissioners are serving an
3 organizing board. The three of us, as incorporators,
4 are also supporting that work to assure translation
5 and the accountability around some of the
6 Commissioner findings.

7 CHAIRMAN CASTRO: So it's now a non-
8 profit? Is that it?

9 MR. WILSON: Yes.

10 CHAIRMAN CASTRO: And so it's going to
11 continue to do some work or?

12 MR. WILSON: It continues to do work.
13 It's currently convening to do education around the
14 racial equity lens. And also to support folks who
15 have taken up some of these costs to action in
16 different areas.

17 So a case in point, there's a Cradle to
18 Career initiative that has taken the section on
19 policies related to young people and youth at the
20 center. That is seeking to drive those, and so forth,
21 through Ferguson, is providing support to them.

22 There's also continued conversation about
23 some of these findings, particularly related to
24 municipal courts. And so we're still in conversation
25 about weighing into the public dialogue to pressure

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1 the Missouri Supreme Court to take actions, related
2 to some of the reform.

3 So that staff is helping to do that. And
4 also helping organizationers to assess their
5 alignment with the commissions' findings. So it
6 created tools to assess organizations and their work
7 on how they are aligned and how they could be better
8 aligned.

9 And so that's part of the work in the
10 non-profits.

11 CHAIRMAN CASTRO: So will it focus just
12 on Ferguson or on the St. Louis County and its
13 counties?

14 MR. WILSON: Yes. Although not
15 appropriately named, the Ferguson Commission has
16 always had a regional lens on its work. And so all
17 of the findings, and even our meetings, we're very
18 clear to have, through half the St. Louis region, to
19 make sure to have input from citizens near to where
20 they are. So we'll always have, and always has, had
21 a regional frame.

22 CHAIRMAN CASTRO: And do you think it
23 will continue to look at some of these Hispanic
24 community issues?

25 MR. WILSON: Absolutely.

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1 CHAIRMAN CASTRO: Okay.

2 MR. WILSON: No, we continue to do that.
3 Our most significant input, quite frankly from the
4 Hispanic community, had to do with the Hispanic
5 chamber, the Mosaic project, which is another project
6 related to immigration in St. Louis, in the economic
7 and equities area. But there are ways they we need
8 to translate it into others.

9 CHAIRMAN CASTRO: All right, thank you.
10 Commissioner Achtenberg.

11 COMMISSIONER ACHTENBERG: Thank you, Mr.
12 Chairman. To Mr. Wilson and Mr. Harvey.

13 Could you talk again? You said that the
14 fragmentation is essentially an artifact of racial
15 history that the creation of 189, however many
16 municipalities there are in this region, essentially
17 is an artifact of racial history.

18 And the fact that these municipalities
19 are not sustainable on their own because they're so
20 small. They have to pursue tactics like the tactics
21 being pursued here in order to sustain themselves
22 economically.

23 I'm wondering if you could elaborate on
24 that. And then talk about whether or not things like
25 consolidation, restructuring of these municipal

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1 entities is anything that is being considered at any
2 level, in terms of a possible way of getting at the
3 sustainability issue. I mean 189 municipal functions
4 are having to be supported. It seems to me to be
5 mind boggling.

6 And I didn't realize the relationship
7 between that and the racial history of the area. But
8 now that you say that, something has to explain how
9 this came to be. It certainly didn't come to be by
10 accident.

11 MR. WILSON: Sure.

12 COMMISSIONER ACHTENBERG: If you could.

13 MR. WILSON: Sure. And I'll make one
14 correction. The 189 is the number of caused to action
15 that came out of the report.

16 COMMISSIONER ACHTENBERG: I beg your
17 pardon. I really missed --

18 MR. WILSON: The number of
19 municipalities, I'm sure will give you great, will
20 harden you even more. There are only 91 --

21 COMMISSIONER ACHTENBERG: Oh, well
22 terrific.

23 MR. WILSON: -- in this metropolitan area
24 of 2.8 million people.

25 COMMISSIONER ACHTENBERG: My mistake.

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1 Okay.

2 MR. WILSON: But I said that to say, and
3 Thomas and I were talking about this before, Dr. Todd
4 Swanstrom, who does place based research on
5 communities out of the University of Missouri St.
6 Louis, notes two significant indicators of racial
7 segregation in the metropolitan area.

8 One of them is the number of
9 municipalities per 100,000 people. Another is the
10 number of school districts per 100,000 people. St.
11 Louis is the only metropolitan area that ranks in the
12 top three, actually we're third in both of those
13 categories, across the nation.

14 And so that is, that speaks to the kind
15 of structural racialized element of this and how it's
16 embedded in our governmental realities.

17 As we talk about the proliferation of
18 fragmentation, yes it is connected to a racialized
19 history.

20 So there is another report called, The
21 Making of Ferguson. I forget the authors name.

22 And it speaks to the housing approaches
23 over the years that have led to this kind of
24 segregation, that literally goes back a hundred
25 years.

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1 And some of it has to do with people, how
2 we're migration, White flight and the establishment
3 of not just communities, but based upon the history
4 of racial neighborhood and racialized covenants in
5 the City of St. Louis. Where one would make an
6 agreement that I will not sell my house to people of
7 a different color and make that agreement with people
8 in my neighborhood.

9 Once we move to Ferguson or to Florissant
10 into North County, rather than setting such a
11 covenant, we just incorporate. And we determine who
12 lives in our neighborhood.

13 And so there's some municipalities,
14 literally, with less than six, 700 people. But
15 there's a mayor and there's a board and in some cases,
16 a police department that's that small.

17 And so here we get to the same
18 sustainability issue. And where we see a
19 proliferation of, it's not just a number of elected
20 officials, but the number of municipalities, the
21 number of courts, the number of police departments.
22 And so the capacity to hold these things accountable
23 is a critical issue.

24 Consolidation has been a long-standing
25 conversation in the St. Louis community. It is

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1 larger than a conversation about city-county merger,
2 because the city is essentially also a county in our
3 governmental polity.

4 The conversation has shifted somewhat to
5 one of municipal consolidation. And so you see in
6 our calls, not a call from municipal consolidation,
7 but municipal court consolidation for the sake of
8 supervision and to take the economic incentive out of
9 the courts.

10 In the DOJ report, I believe it is
11 documented. The direct connection between the city
12 manager and a police chief asking for the writing of
13 more tickets in order to make the budget, well, that
14 all comes through the courts, of course for the sake
15 of enforcement.

16 And so part of what we suggest is, if you
17 have the capacity to consolidate where these courts
18 are not directly tied to these small municipalities,
19 you don't have the economic incentive driving that on
20 the municipal level. But we clearly see that that
21 is necessary now in order to pay the salaries for the
22 part-time counselors, the part-time mayors, the part-
23 time city clerks.

24 The one other thing that's pointed out in
25 another report, I'll just note really quickly, From

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1 Better Together. An organization that's been driving
2 a lot of our municipal conversation, our regional
3 conversation, about consolidation and governmental
4 restructuring.

5 Is the small number of law firms who if
6 you map back, all of these courts, all of these city
7 counselors, there's a handful of law firms that are
8 providing all those counseling services.

9 And so getting beyond, and as we talk
10 about the conflicts, we can talk about someone being
11 a judge in one place and a prosecutor in another and
12 the city counselor in another, but the reality is,
13 there's a handful of law firms who are providing all
14 of these services to all of these municipalities.

15 And when we start appointing panels to
16 look at these things, we're appointing judges and
17 people who are former judges, who are partners in
18 these law firms, to study these things. And so we
19 have inherent conflicts and reform there.

20 So this is just, I'll stop there. But
21 yes, that's something that's being looked at.

22 The one thing I will say really quickly
23 is that we're able to push and pass with grass roots,
24 grass tops working together. A bill called Senate
25 Bill 5 in the State of Missouri that put a further

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1 cap, there was already a cap on the amount of revenue
2 that could come from minor traffic violations and
3 fines from municipality at 30 percent, is now brought
4 down to 20 percent. And 15, 12 and a half in St.
5 Louis County. Where it was most egregious.

6 And that was able to pass within one
7 legislative session. We've seen a couple of
8 responses.

9 Number one, the municipalities have filed
10 suit to block that legislation. And number two, we
11 have seen an increase, because this focuses on traffic
12 fines, we've now seen an increase in some areas and
13 some municipalities, as much as 50 percent within a
14 year, of them writing now housing code violations to
15 make up the gap.

16 So it's the same economic incentive and
17 now they're just trying to find a way around it.

18 COMMISSIONER ACHTENBERG: And has this
19 court consolidation gave any traction?

20 MR. WILSON: Maybe Thomas can speak to
21 that.

22 MR. HARVEY: No. Because, I mean, well
23 so has it gained traction? Yes. Every single entity
24 that has taken a position on this, that does not
25 involve municipal court judges and prosecutors, says

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1 that we ought to consolidate these courts.

2 But unfortunately, the municipal and
3 judges and prosecutors have much larger sway with the
4 folks who are going to make those decisions. So the
5 Ferguson Commission made it its number one overall
6 recommendation with respect to the justice for all
7 category.

8 We recommended it. A local law school
9 recommended it. Better Together recommended it.

10 I mean you can just line up every
11 community organization in the region, and the people
12 in those communities who've been directly impacted by
13 these courts and they say, I don't want 81 courts in
14 90 towns. I'd like to have fewer courts. And I'd
15 like to have fewer police officers on the streets
16 pulling me over because I'm too poor to pay a traffic
17 ticket.

18 But, there's a lot of resistance. And
19 one of the things that Reverend Wilson alluded to
20 early was the, I found this like an incredibly
21 insulting thing, is after the Ferguson Commission
22 met, concluded its meetings, its public meetings, its
23 working group meetings, made all these
24 recommendations, the public participated, within a
25 week, the Missouri Supreme Court said they were going

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1 to appoint a committee to examine the problems in the
2 municipal courts. As if to say, thank you very much
3 general public, that's really cute that you came up
4 with some suggestions, but now the adults in the room
5 are going to say what's possible.

6 And then these folks went out, they
7 didn't actually set foot in these municipal courts to
8 observe what happens, but they made recommendations
9 and said, they don't have the authority to or the
10 Supreme Court doesn't have the authority to order the
11 consolidation of the courts. And they also said, if
12 this is something that needs to be done, it would
13 have to come through the legislature.

14 So you ended up with one would be powerful
15 organization telling another would be powerful
16 organization, you have to do it.

17 COMMISSIONER ACHTENBERG: I didn't see
18 in the materials whether or not the justice, the
19 United States Justice Department, has expressed any
20 opinion on the consolidation issue. I understand
21 they wouldn't have, or they probably wouldn't have
22 direct jurisdiction to, but perhaps they've opined?
23 I don't know the answer to that question.

24 MR. HARVEY: No, I don't believe so. And
25 I think that, I mean of course they're limited to

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1 Ferguson and Ferguson is just one of 91 towns in the
2 region. So Ferguson can become a shining city on a
3 hill for racial justice in America, and it won't
4 impact the other 90 towns in the region.

5 The hope is they'll be some dominion
6 effect. But folks are pretty resistant to making
7 these changes.

8 COMMISSIONER ACHTENBERG: Thank you.
9 Thank you, Mr. Chairman.

10 CHAIRMAN CASTRO: We're going to go to
11 Commissioner Kirsanow. Commissioner Kirsanow
12 followed by Commissioner Narasaki and then
13 Commissioner Kladney.

14 COMMISSIONER KIRSANOW: Thank you, Mr.
15 Chairman.

16 CHAIRMAN CASTRO: You're welcome. Is
17 your mic on, Commissioner?

18 COMMISSIONER KIRSANOW: I don't know.

19 CHAIRMAN CASTRO: There, it is now. It
20 is. Okay.

21 COMMISSIONER KIRSANOW: Thanks, Mr.
22 Chair and to the Panelists also. Question for all
23 of you, anyone who wants to chime in.

24 Are these fees and fines themselves
25 intrinsically bad or is it the offenses to which they

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1 are levied, upon which they are levied, or is it the
2 level of fines is too expensive? Or is it all three?

3 And should we eliminate these fines,
4 lower them, what's your opinion?

5 MS. NAGRECHA: I can jump in. I think
6 it's all three. And so I think, one, there's the
7 fine itself that's the punishment for the offense.
8 And I, there too the amounts have increased.

9 I think the real issue is around all of
10 the fees and surcharges that are attached on top of
11 that. And so there was references on the first panel,
12 and I think there are many examples.

13 But in Texas, at least at the time of my
14 research, and I think there have been some efforts
15 there to reform, judges would have a full list of 30
16 surcharges that the legislature, at the state level
17 only, had added on that would be assessed on top of
18 a criminal's violation.

19 And I think it's important to also note
20 that, so that would be at the state level. And then
21 each county or town may have added additional fees.

22 The jail itself might have additional
23 fees. If the person ended up on any type of
24 supervisor, that would have separate fees. And so
25 the number of those types of charges have added up.

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1 And I think in a place like New Orleans,
2 for example, if you look at the list of all the
3 surcharges and fees, it's almost a little bit comical.
4 It really is. There's a few for kind of every cause
5 that exists in a state.

6 And then I think, you know, the research
7 has also shown that the amount per fee has also
8 increased. And so, when I started this research in
9 2010, I would always say that we should tailor the
10 fees to people's ability to pay.

11 But as a practical matter, one, that's
12 just not very possible because the fees attach at
13 some many different places. And individuals are not
14 on notice and there's no sort of cumulative invoice
15 that says everything.

16 But, two, I just, you know, I more believe
17 that most of them just should not exist at all.
18 There's really no justification for them. And the
19 process of trying to assess a poor, obviously a poor
20 person's ability to pay is a silly one.

21 COMMISSIONER KIRSANOW: Follow up
22 question. If there aren't these fees or fines for
23 these particular lines of offenses or if the fines
24 should be lowered, has there ever been a study --
25 strike that.

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1 I live in inner City Cleveland. Have
2 lived in the same house for 32 years. And there are
3 sometimes unintended consequences. In other words,
4 eliminating certain things, such as a fine, doesn't
5 necessarily have a linear of consequence.

6 In my neighborhood, for example, when we
7 didn't have a, there was a speed trap, which I hate.
8 But when that speed trap was there, we found a lot of
9 things happen in our neighborhood.

10 One is, a decrease in littering, a
11 decrease in vandalism, a decrease in speeding. And
12 yes, people were fined.

13 When that was eliminated, there was a lot
14 more littering, a lot more vandalism, property values
15 started to get lowered. When you lower the property
16 values, what happened is the tax base shrinks, people
17 start moving out, the schools suffer.

18 And I wonder if anyone has studied the
19 dollar value of not having fees and fines for certain
20 offenses.

21 Because a number of my neighbors moved
22 out. The schools were getting bad, liter all over
23 the place, the property value was falling. Some of
24 them were losing, \$10, \$15, \$30,000 off the property
25 value.

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1 I understand the fees are \$2, \$3, \$50,
2 \$100, \$300. But property values are something too.

3 And also the safety of your children.
4 The kids in the neighborhood would cross the streets
5 with people flying by at 50 miles an hour. That
6 stopped when we had fees and fines attached to it
7 with the traffic stop.

8 So has anyone studied that? The
9 unattended affect, the residual effect of eliminating
10 or lowering the deterrent value of fees and fines?
11 Black people suffer from that too.

12 MR. HARVEY: I mean I don't know of any
13 study examining that issue. But I would suggest that
14 there is no deterrent effect to assess a fine when
15 somebody is too poor to pay it.

16 So at the time of Mike Brown's murder, in
17 a region of 1.2 million people, there was 700,000
18 warrants for arrest in St. Louis County and City
19 combined. People spend weeks on end in jail because
20 they can't make the payment.

21 If their car can't be repaired, if
22 they're getting a ticket because their car, they
23 haven't registered their vehicle because the vehicle
24 can't, they can't pay for a repair on the vehicle,
25 fining them doesn't help them fix the car. If we

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1 want to help them fix their car, let's help them fix
2 their car.

3 And the same would go to their driver's
4 license suspension and the issue of car insurance.
5 The most common violations that we saw for our
6 homeless clients, who have literally been made
7 homeless as a result of their contact with this legal
8 system is, no proof of insurance, failure to appear,
9 driving while suspended and failure to register their
10 vehicle. Every one of those ordinance violations is
11 as a result of their poverty.

12 And so to, I understand what you are
13 saying, there may be some unintended consequences of
14 removing the deterrent effect, but there is no
15 deterrent to someone who is unable to pay.

16 Now on the flip side, if you are able to
17 pay, you suffer no consequences. You can get a lawyer
18 in St. Louis County to handle your traffic ticket for
19 \$39. And you pay that lawyer \$39, you never go to
20 court, the lawyer probably never goes to court and
21 you then pay a fine to the city.

22 So that's not a consequence to people of
23 means. That's not a deterrent to people of means.
24 They don't suffer the additional impacts of their
25 driving violations because they're able to get their

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1 moving violation turned into a non-moving violation
2 with a quid pro quo of a payment to the municipality.
3 So their license never gets suspended, their
4 insurance costs never go up.

5 So they're able to actually avoid the
6 responsibility for their traffic infractions. So I
7 understand what you're saying, but I don't know of
8 another study like that and I would suggest that it's
9 not a deterrent.

10 COMMISSIONER KIRSANOW: The deterrents
11 of infractions though, I mean there is a reason why
12 we don't want people driving without insurance.
13 There's a reason why we want people to have
14 functioning tail lights.

15 Again, the little kids in my
16 neighborhood, we need those functioning tail lights
17 because you don't people to get rear-ended, when that
18 hits the kid who's crossing the streets. There are
19 reasons for that.

20 So what do you do if you don't impose
21 fines and penalties? What is the deterrent if people
22 without, with no means, aren't deterred by this?

23 MR. HARVEY: This imaginary, like
24 indigent scofflaw, who has the means --

25 COMMISSIONER KIRSANOW: It's not

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1 imaginary in my neighborhood.

2 MR. HARVEY: -- who has the means to fix
3 their car, get their license reinstated, pay for their
4 insurance, I would say, I mean we can talk to the
5 social scientists in the room and they can tell us if
6 there is a statistically significant enough
7 percentage of people in the country who have the money
8 to fix their car and just refuse to do it.

9 In our case, again, we work with a fairly
10 narrow percentage of the population because they're
11 all homeless folks and people who are on their way in
12 to homelessness. And so those people don't, I mean
13 I sit down and do a budget with them. They don't
14 have the money to make the repair. They're not
15 choosing --

16 COMMISSIONER KIRSANOW: If they're
17 homeless, why do they have a car?

18 MR. HARVEY: This is how, so of course -
19 -

20 MR. WILSON: Maybe they live in their
21 car.

22 MR. HARVEY: -- they live in their car.

23 COMMISSIONER KIRSANOW: What is striking
24 to me here is this idea that there are no consequences
25 to behavior whatsoever.

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1 MR. HARVEY: Respectively, it's not that
2 there's no consequences. I would urge you to
3 consider that the clients that I represent have
4 already faced the most serious possible consequences
5 for their poverty.

6 They're already living in the car that
7 when they are arrested, gets impounded, and all their
8 -- I mean effectively they've just now been evicted
9 or had their house repossessed as a result of, I think
10 what is very likely racial profiling.

11 And to discuss whether or not there's
12 going to be some consequence for them is absurd. They
13 have already suffered the most serious consequences
14 possible.

15 MR. WILSON: So with respect to the
16 Commissioner's question, first question, I think it
17 is important for us to remember that we're having a
18 discussion about structures and not about individual
19 responsibility.

20 Because, as has been noted by my
21 colleague, the exact same infractions could come upon
22 two equal citizens in our community. And there are
23 disparate impacts based upon how much money they make.
24 Or how much access they have to people with certain
25 educational credentials. And that is inherently un-

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1 American. It is wonderfully capitalists, but it is
2 inherently un-American.

3 So as we consider the structure, while I
4 don't know of the circumstance of the narrative that
5 you speak of in the neighborhood, I do know that
6 structurally, in Missouri, in particularly in St.
7 Louis County, if wanted to equalize the options for
8 deterrents for these two people, then what we'll be
9 talking about is things that have equal value.

10 And so one of the things that the
11 Commissioner findings suggested was the consideration
12 of a community service option for people. The
13 understanding that people don't have the same access
14 to literacy and so they may not even know what their
15 rights are in this situation. So educating them on
16 options and their rights.

17 But also assessing their capacity to pay.
18 Respectfully to the other panelists, assessing their
19 capacity to pay and offering alternatives that don't
20 have to do with how much money they have. But there
21 may be other things that they have to give, as it
22 relates to community service.

23 So that's one of the things. And it gets
24 to your first question about whether the fees and the
25 fines are an issue. I think the fees and the fines

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1 are an issue because they rely only on someone's
2 position within a capitalist system to know whether
3 they can get justice.

4 And so if we add community service as an
5 option and begin to assess ability to be pay, and be
6 thoughtful about the question of how does this amount
7 of money or this amount of service drive public
8 safety, then we get to a more equitable assessment.

9 On the issue of the offenses, absolutely
10 yes there are some offenses. Like, I don't know,
11 failure to appear.

12 That people get higher fines for a
13 failure to appear and they have the capacity for that
14 to be stacked. So when we talk about the amount of
15 these offenses, to the third part of your question,
16 that is a problem as well.

17 So I can get one ticket and end up with
18 four violations, based upon failures to appear, and
19 get warrants for the failures to appear. Not just a
20 failure to appear, which has its own cost, but a
21 warrant for not appearing.

22 And one of the reasons why I may not
23 appear is because of the limited number of court
24 hours, because you have part-time courts, part-time
25 judges. Some courts that are only opened twice a

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1 month.

2 And guess what? If you're Starsky Wilson
3 and you work in an office downtown and you work for
4 a salary not a wage, you can schedule time to be off.
5 If you are, I don't know, Darryl Wilson, who works on
6 a wage job, then you don't have those same privileges.

7 So what we're suggesting is that we are
8 treating people differently based upon their position
9 in society, based on their position economically or
10 educationally. And that is what must be meted out
11 as it relates to the civil rights and human rights
12 issues that we're seeing in our courts.

13 CHAIRMAN CASTRO: Thank you,
14 Commissioner Kirsanow. We're now going to move on
15 to Commissioner Narasaki followed by Commissioner
16 Kladney.

17 COMMISSIONER NARASAKI: Thank you, Mr.
18 Chair. So several of you on the Panel, in your
19 opening statements, made it pretty clear that you
20 feel that the federal government needs to be doing
21 more than what they're talking about doing. And also
22 that something needs to be done about judges.

23 If you were here for the earlier Panel,
24 you heard that Commissioner Kladney and I have a
25 slight disagreement about the extent to which you

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1 should look beyond education and look to, how do you
2 enforce against judges who are, in my opinion,
3 willingly ignoring the constitution. So I would love
4 to hear your opinions on that. So I mean --

5 MR. HARVEY: Yes, I definitely agree that
6 there should be some consequence. It's an odd
7 transition.

8 There should be some consequence for the
9 group of people who, as I said, have gone to law
10 school, went to undergraduate school, went to law
11 school, passed the bar and are willfully ignoring
12 that.

13 COMMISSIONER NARASAKI: Well we heard
14 today that some of them actually aren't even lawyers.

15 MR. HARVEY: Yes, that's true.

16 COMMISSIONER NARASAKI: So you can't even
17 disbar them because they don't have a license to begin
18 with.

19 MR. HARVEY: So there's a, I was in
20 Washington, D.C. at the DOJ's convening in December
21 and the chief judge in Ohio was talking about the
22 bench card that they created after, I think the local
23 branch at the ACLU, brought it to her attention that
24 judges were systematically violating the
25 constitution.

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1 And I asked her if anybody in Ohio had
2 admitted they had been jailing people illegally, had
3 suffered any consequences, and she said no. And her
4 question was, I can see if after we had told them
5 they were doing this wrong they kept doing it, we
6 ought to punish them.

7 And it struck me that when my clients go
8 into, when my homeless clients, going into a casino
9 in the middle of winter to get out of the cold so
10 they don't die, no one says, here's a cheat sheet on
11 how you could get a blanket or go to a homeless
12 shelter, they take them to jail for trespassing.

13 And so what you're getting at is
14 something that frustrate me about this entire process
15 which is, powerful people get education and
16 vulnerable people get punishment. And the punishment
17 on the vulnerable people has much longer lasting
18 consequences than it would on the powerful people.

19 Now, that being said, I recognize there
20 are limited resources and spending those resources on
21 prosecuting judges across the country would be a
22 shocking number of judges you'd probably have to jail
23 for violating the constitution. And I'm just talking
24 about the ones who publically admit that they've done
25 it.

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1 But if you prosecuted, if the federal
2 government prosecuted one municipal court judge in
3 St. Louis County, that would change that dynamic
4 forever.

5 There are part-time jobs that are add-
6 ons. They make \$40 or \$50,000 extra bucks a year.
7 That pays for their kids to go to a private school in
8 St. Louis County so they don't have to be subject to
9 the failings of our public educational system in St.
10 Louis. And further isolates them from the problems
11 that they see every day as a judge.

12 But if one of those judges even faced
13 briefly, prosecution, I think it would have a long
14 range affects. And I think it's potentially ripe.

15 Some that we found through our
16 investigation, the warrants issued for people's
17 arrest, are automatically generated by a computer
18 software system. And if there's inactivity on a
19 file, a warrant is issued for someone's arrest.

20 In some towns, there's no authorizing
21 statute for the failure to appear, there's no
22 ordinance authorizing the offense of the failure to
23 appear. Yet thousands of people have been jailed and
24 lost their licenses and lost their jobs, et cetera.

25 So I would definitely encourage some

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1 prosecution. And I should say, I rarely encourage
2 prosecution of anyone.

3 MR. WILSON: So I begin this with a
4 confession that on August 10th, 2015 I was arrested
5 with 67 other people, largely clergy, in an action of
6 over 300 people trying to deliver to the U.S. Attorney
7 an invitation for the Department of the Justice to
8 act on the report that it made in Ferguson on March
9 of 2015. Because they knew about the issues and we
10 hadn't seen movement. Or on the report that they had
11 in Cincinnati or in Cleveland, related to the
12 policing.

13 And was remarkable shocked to find that
14 at the point that I began to be arrested by U.S.
15 Marshalls, at about the same time the Attorney General
16 was addressing the Fraternal Order of Police in
17 Pittsburgh, that I wanted her to do something about.

18 Those things being said, it's just
19 shocking to be thoughtful about the supports. I mean
20 this is where we're talking, standards and supports.

21 We're talking about providing supports to
22 people whom we believe are violating people's civil
23 rights. Rather than setting standards for these
24 people. And holding these people to the standards
25 that we know are already in place and imbedded with

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1 the law.

2 And so my invitation is to be thoughtful
3 about both, but to push beyond, quite frankly, the
4 individual accountability of a judge, who should have
5 never been on the bench anyway. But rather the
6 structural interventions, in the same way we do with
7 police departments.

8 So I wonder why the March 2015 report on
9 the City of Ferguson winked and nodded at what was
10 going on in the courts. Winked and nodded at what
11 was going on in Jennings just a municipality away.

12 I mean there's literal references that
13 this happens in other places, but we're not going to
14 do anything about it. We see it, but we're not going
15 to do anything about it.

16 And then we have this question about
17 individual judges without talking about structural
18 interventions in the courts in the same way we talk
19 about them in the police department.

20 So maybe I don't know enough about the
21 system. I understand federalism, and I heard that
22 invoked earlier. And quite frankly, what I'm also
23 hearing that is that, well, this is a state's right
24 issue. And that has all kind of historical
25 implications for me, as a Black man, in America.

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1 But I say that to say, I believe that the
2 appropriate standard setting and the holding of
3 standards has to do with the structures of the courts
4 and the municipalities. In the same way that we see
5 it in police departments.

6 But, it must come more swiftly, even then
7 we have seen in some of the police departments, when
8 we even have such documentation for this issues. And
9 we have a department of government that has clear
10 responsibility in as much as we have for policing,
11 also has it for the courts.

12 So maybe their elements, clearly their
13 elements are the law that I do not understand. But
14 when I see structural interventions through consent
15 decrees and whatnot with police departments, I wonder
16 why we're not doing the same with the court. And
17 maybe that's with the city, I'm not sure, the
18 municipal unit. But it seems that that structural
19 change can be brought to bear in those same, on
20 parallel tracks.

21 COMMISSIONER NARASAKI: Thanks, that was
22 very helpful. And I should note, as an Asian-
23 American woman, we're not too keen on being referred
24 to as the model minority.

25 MR. WILSON: My apologies.

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1 COMMISSIONER NARASAKI: My suggestion
2 would be to rethink that. We're proud of the
3 successes of our community, but we also have huge
4 issues. Including civil rights and discrimination
5 happening.

6 MR. WILSON: Yes, ma'am.

7 COMMISSIONER NARASAKI: So I want to get
8 at this whole notion of the fees and fines and
9 penalties. Because it is a conundrum, right?

10 We want people to have car insurance to
11 protect other people that they might encounter,
12 right? So there is a legitimate safety issue.

13 On the other hand, does it make sense to
14 jail someone who then cannot earn money, and takeaway
15 their car so they can't earn money, in order to ever
16 be able to actually pay that.

17 I feel like perhaps, in some areas, we
18 need to be focused on, how do we change that. What
19 kind of support.

20 Because even if you change the response
21 and say, okay, you're going to get community service
22 instead of having to pay, the person is taking time
23 to do the community service and still isn't getting
24 car insurance, right?

25 So I do think that there's a challenge

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1 there that as a society we need to figure out. I
2 just don't think that the system we have is clearly
3 going to lead to the result that we want.

4 It seems to me that one of the problems
5 is we're trying to fix the fees issue around the
6 edges. And the bigger issue, to me, seems to be that
7 municipalities are, because of unwillingness or
8 inability to raise funds through taxes, to actually
9 pay for all of the programs that these surcharges and
10 fees, which are all very well meaning, right?

11 Drug addiction, domestic violence,
12 improving the court system, we all want that. But
13 why should the poor people be the people who are
14 paying? It seems like it's just a regressive tax.

15 I'm just wondering if I am the only one
16 who feels that way or if there's been some thoughtful
17 announce on that?

18 And then my second question is just, is
19 there research sets that have been done to quantify?

20 So Commissioner Kirsanow wanted to
21 quantify, what's the damage in terms of not having
22 these fines?

23 I am interested in whether people are
24 trying to quantify, how much does it cost our society
25 to have this kind of structure, right? Because if

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1 you're trying to collect \$50, but then you're jailing
2 someone, and my understanding is it costs far more
3 than \$50 a day to jail someone. You know, at the end
4 of the day, are you actually raising the revenue you
5 mean to, and then you have the collateral
6 consequences.

7 So I'm wondering, what kind of research
8 is being done on that to show society that in fact,
9 this doesn't make, it doesn't make morale sense, but
10 it also doesn't make economic sense.

11 MS. GOODLEY: Well, I think for us, in
12 Tampa, Florida and in Florida, we have a lot of
13 privatized prisons. And so I think, when you look
14 at the whole spectrum, it does make sense.

15 Now granted, they're going to jail
16 initially, but then that, as time progresses, it then
17 turns into ending up in prison for a lot of them.
18 Because it's over a year. A year and a day.

19 But it makes sense, because they make
20 money from that. And so in Florida, we have the
21 issue of the school to prison pipeline, same thing,
22 in how that funds the state. And with privatized
23 prisons, it's still making money. So it's not
24 morally right, but it's financially right to do so.

25 I know for us, with the bicycle arrests,

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1 when a person is stopped, because they don't have a
2 bike light, the first thing they're asked is to
3 produce a receipt for the bicycle or that their
4 bicycle has been registered with the police
5 department. Which is not a requirement to have a
6 bicycle.

7 If you can't show that your bicycle has
8 been registered or that you own your bicycle, through
9 a receipt, your bicycle is confiscated. So now you
10 end up with no means of transportation, from what you
11 had. So again, the city is making money.

12 What happens to those bicycles? They go
13 into the little pound and for nine times out of ten,
14 they stay forever. Because if they don't have the
15 receipt on them, nine times out of ten they don't
16 have the receipt, period, any longer. I know I don't
17 have the receipt to my bicycle.

18 So I think it is making money. And I
19 think that's part of the reason.

20 CHAIRMAN CASTRO: I'm going to move on
21 now to Commissioner Kladney and then the Vice Chair.
22 We're supposed to end at 11:55 for a ten minute break.
23 I'm going to let it go a little longer so that you
24 all can get some questions in.

25 Okay. So we'll go to ten after to allow

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1 the three of you to ask questions, and then we'll
2 take a ten minute break.

3 COMMISSIONER KLADNEY: Thank you, Mr.
4 Chairman. Commissioner Kirsanow, I just want to tell
5 you I feel your pain.

6 COMMISSIONER KIRSANOW: Again?

7 COMMISSIONER KLADNEY: Again. I don't
8 live in the inner city, but I do live on a road where
9 people, in a residential place, where people used to
10 speed at 50 and 60 miles an hour past my house. And
11 we don't have photo speeding speed traps. So I have
12 a suggestion. Speed humps. They work very well.
13 Thank you.

14 But I would like you all to clarify, I
15 don't think, and I don't think Commissioner Kirsanow
16 was thinking this, but we're not talking about getting
17 rid of fines altogether and we're not talking getting
18 rid of some fees altogether, correct?

19 MR. WILSON: You're right.

20 COMMISSIONER KLADNEY: If someone gets a
21 DUI and they need to get a urinalysis once a month or
22 occasionally, they should pay for that. I mean what
23 we're talking about is generally, fees being
24 disproportionate to the offense. Is that correct?

25 MR. WILSON: Yes, sir.

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1 COMMISSIONER KLADNEY: And we're talking
2 about making fines that tell a person you shouldn't
3 be doing this, but scale it to their income and
4 ability to pay, is that correct?

5 MR. WILSON: Yes. Along with having
6 other options there for them. And supports.

7 COMMISSIONER KLADNEY: Right. Like
8 community service or things like that.

9 MR. WILSON: Yes, sir.

10 COMMISSIONER KLADNEY: Is that correct?

11 MR. WILSON: Yes, sir.

12 COMMISSIONER KLADNEY: I just want to
13 make that clear for the record.

14 MR. WILSON: Yes, sir.

15 MR. HARVEY: For people who are
16 determined to be indigent, no, I disagree with that.
17 And I tend to think giving community service,
18 depending on who those people are, is excessive.

19 So for example, we represent many mothers
20 with children who are at emergency homeless shelters.
21 And one of the reasons they got there is contact with
22 the courts.

23 And when we get involved, we do an
24 assessment and we go out to court. And now, after
25 everything we've been going through, the courts are

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1 more inclined to offer community service as an option.
2 They didn't use to offer that at all as an option.

3 But ironically, one time, they wanted to
4 assign our client to do community service at the very
5 shelter she was staying with her children. They
6 didn't know that she was staying there. And I think
7 there's something really problematic about that.

8 That woman doesn't need to be punished at
9 all for a driving violation that occurred, by the
10 time she was homeless, it occurred eight years ago.
11 This is way in the past.

12 To go do community service without a
13 vehicle, while their driver's license is suspended,
14 is exceptionally difficult. And she has to get
15 childcare.

16 So I think for people in that situation,
17 and I realize we're talking about a reactively small
18 percentage of people --

19 COMMISSIONER KLADNEY: Well that's what,
20 I would hope you point that out.

21 MR. HARVEY: Yes. I just want to make
22 sure that we, for the record, we carve out a place
23 for people who are truly indigent and don't have the
24 ability, community service is not a viable option
25 either.

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1 COMMISSIONER KLADNEY: Okay. Anybody
2 else like to respond? Yes, ma'am.

3 MS. NAGRECHA: Yes. To sort of follow
4 on Thomas' point. One, yes. I do believe that there
5 are a number of fines that will exist as a penalty
6 for the violation and that those fines should be
7 proportionate. And I think we've talked about that.

8 And I do see someplace for fees for people
9 who could afford it. So your example, for example,
10 about the urinalysis makes sense to me.

11 I guess I push back because again, if you
12 look at the list of these fees in any given
13 jurisdictions, there are dozens and dozens of them.
14 And I think that we are very far from a place of a
15 perfect procedural system in which we are assessing
16 people's abilities to pay up-front and having an
17 awareness of all the fees that might attach to them
18 through this court contact.

19 And therefore, I think we do need to
20 consider that having that many fees just does not
21 make sense. And that there isn't really a rational
22 for them.

23 And I think we also need to keep in mind
24 the reality of who touches our courts. And --

25 COMMISSIONER KLADNEY: So how do we do

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1 that? How do we decide what fees are rational and
2 what fees are not rational? I mean I think that's
3 an important aspect.

4 I mean we can say that generally. And
5 how do we find a rational basis for fees?

6 MS. NAGRECHA: Yes. You know, I think
7 one easy starting place is that fees that end up in
8 a general revenue fund are probably not very rational.

9 And I think from there, I do, I see that
10 it's a complicated question, I just, you know, in a
11 lot of places, for example, there will be a fee for
12 a DARE program or something of that nature. And I
13 think --

14 COMMISSIONER KLADNEY: Something
15 unrelated.

16 MS. NAGRECHA: Right, something
17 unrelated. And so I think while that's a rational
18 government function, that funds towards that type of
19 activity needs to be a portion through a normal kind
20 of budget process.

21 Where different needs are assessed
22 against each other. And we come to a conclusion
23 about what, as a community, can be afforded, in terms
24 of programming versus charging the program fees to
25 whoever happens to touch the court system. And those

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1 people are often poor.

2 COMMISSIONER KLADNEY: Right. I think
3 that's a very important point. Thank you.

4 MR. WILSON: Thanks, Mitali. I think to
5 this point, what we're speaking of, is the
6 insufficiency of many of courts who deal with the
7 realities that they find themselves in. So two
8 recommendations in the Ferguson Commission findings
9 get to this structurally.

10 Number one, you shouldn't be able to have
11 a part-time court. We're speaking to certain
12 capacities and competencies that are required in a
13 court, which require some scale.

14 So one of the things we call for is full-
15 service full-time courts. But this matter of
16 assessment, the people's capacity to pay, the peoples
17 need, is a case management issue. This is a social
18 work competency.

19 So what we call for is community justice
20 centers. Now particularly in places where we know
21 that there's desperate impact from poor people to the
22 courts.

23 Well, who has the capacity to deal with
24 them? Well, many times lawyers are not trained in
25 this manner, the judges who sit in these places,

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1 particularly even those who aren't lawyers, are not
2 trained in this manner.

3 And so one of the things that in your
4 detailed, kind of written statement from us, is a
5 description of the creation of community justice
6 system centers that have this social worker case
7 management capacity to actually bring this kind of
8 assessment to bear on someone's need. But also be
9 thoughtful about the supports that are required for
10 people, if these are about, again, public safety and
11 they're about public service as well, as courts are.

12 And they are, in many ways, people's
13 first contact with the systems and governance that
14 they have to trust. Then maybe we should be talking
15 about the things that those folks need as well. So
16 that's one thing I kind of suggest there as well.

17 MS. GOODLEY: If I might add also. It's
18 also, we shouldn't tie the number of tickets and fines
19 into an officer's pay or his productivity ratio. And
20 in Tampa that's the case.

21 The productivity ratio is calculated by
22 the number of hours worked, divided by the number of
23 tickets and arrests. Because then that allows the
24 officer to, or the department, to target areas to
25 increase their productivity.

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1 Which will increase their chances of them
2 being promoted and moving up within the force. I
3 think if we remove that aspect on the police officer's
4 yearly review, that would help.

5 COMMISSIONER KLADNEY: His bonus.

6 MS. GOODLEY: His bonus, yes.

7 COMMISSIONER KLADNEY: I have one last
8 question for the Reverend. You mentioned that the
9 jail is being expanded in county or somewhere, you
10 were giving an example.

11 MR. WILSON: Yes, sir.

12 COMMISSIONER KLADNEY: Do you know, a lot
13 of jails that are expanded and a lot of jails that
14 are built, new jails, especially in smaller
15 jurisdictions or even larger jurisdictions, doesn't
16 the money come, a lot of the money come from the
17 federal government? Do you know that?

18 MR. WILSON: Well, one of the things that
19 we saw to address, I'm not sure as much with this
20 specifically, so that I'm not sure of. But one of
21 the things that we noted a concern for is the amount
22 of resources that are coming into local police
23 departments and municipalities around any kind of
24 local oversight. Particularly for police.

25 So this was really in our area around

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1 police. Because it's becoming, maybe equipment, but
2 it's coming as a grant. Those kind of things come
3 from the federal government.

4 And we also note that some of these
5 smaller municipalities are actually engaging kind of
6 tax levies for the sake of this as well. So I'm not
7 sure in these cases specifically, but that's a concern
8 with like the policing. I'm not saying, I don't know
9 of the same as it relates to the court.

10 COMMISSIONER KLADNEY: Thank you.

11 CHAIRMAN CASTRO: Okay, Commissioner
12 Heriot?

13 COMMISSIONER HERIOT: Yes, I just had a
14 real quick question of Mr. Harvey. Exactly what
15 criminal charges --

16 CHAIRMAN CASTRO: Your microphone,
17 Commissioner. There you go. Start again.

18 COMMISSIONER HERIOT: Could you hear me?
19 I just wanted to ask. You were talking about criminal
20 charges, but exactly what charges would you regard as
21 appropriate?

22 MR. HARVEY: You mean for, do you mean
23 at the municipal ordinance level or just in general
24 in the world, in the span of human behavior?

25 COMMISSIONER HERIOT: In the span of your

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1 testimony, of course.

2 MR. HARVEY: Well, I mean, so to be clear
3 that the stuff that we're talking about in St. Louis
4 County, these are courts of limited jurisdictions.
5 They only have authority over their own ordinances.

6 And so there are assault ordinances in
7 those towns, right? You can be charged with assault.
8 It's a parallel ordinance to the misdemeanor, the
9 state level statute.

10 If there is a serious crime, what I would
11 actually call a crime, the state picks up those
12 charges. I would say 99 percent. I don't know the
13 number.

14 A vast majority of the cases that are
15 prosecuted in our municipal courts are not crimes.
16 By definition, they're not crimes.

17 COMMISSIONER HERIOT: I thought you were
18 talking about prosecuting people that are involved in
19 the court system?

20 MR. HARVEY: Oh, I'm so sorry. I'm
21 sorry, I apologize. I didn't understand that. Your
22 question.

23 There is a section in the federal code,
24 I don't know it off the top of my head, that allows
25 for the prosecution of judges and prosecutors who

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1 willfully violate the constitution. I can get you
2 the section of the code if you'd like.

3 COMMISSIONER HERIOT: If you could do
4 that, yes.

5 MR. HARVEY: Brandon Buskey wrote an
6 editorial in the New York Times about it, in November
7 I believe.

8 COMMISSIONER HERIOT: Are you thinking
9 of any other charges?

10 MR. HARVEY: Not at this time, ma'am.

11 CHAIRMAN CASTRO: Yes, if you could
12 provide us with that. Yes?

13 MR. WILSON: I was going to say, one
14 thing that gets to, and we see it as it relates to
15 prosecutors, is the kind of prosecutor's beliefs.
16 I'd imagine that this extends to judges as well. But
17 the protections we give people for offenses that occur
18 by virtue of them engaging in their office.

19 So if there is this kind of blanket
20 coverage of judges, if that extends the same to them
21 as it does for officers and it does to prosecutors,
22 the privileges that we give there, then you would
23 have a difficulty at getting it. That kind of
24 prosecution as well.

25 So it requires kind of an assessment of

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1 the license that we give to these officers who are at
2 large. And maybe points us to these structural
3 interventions.

4 MR. HARVEY: Yes, I'm sorry, real quick
5 I would just say that along with what Reverend Wilson
6 is alluding to, it's working around issues of
7 qualified immunity and the abstention doctrine that
8 prevents some of these prosecutions from going
9 forward in the federal courts. And it's very
10 important they go forward in the federal courts,
11 rather than state courts, because some many of these
12 relationships make it difficult for people to be
13 neutral.

14 CHAIRMAN CASTRO: Actually, Commissioner
15 of the Vice Chair has a question.

16 VICE CHAIR TIMMONS-GOODSON: And this is
17 a very quick one. More in the nature of a statement.

18 I want to thank each of you for taking
19 your time to come and be with us. We setup the first
20 panel in a way that we could receive testimony
21 regarding the pervasiveness of illegal enforcement of
22 fines and fees aimed at generating revenue.

23 And we put this Panel together so that we
24 could receive concrete evidence about the effect that
25 this action has on individuals. And I want to say

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1 that each of you, through your stories, have done a
2 very good job of that.

3 Ms. Foster, from our first panel, said
4 early on that this is a very complex issue. And I
5 haven't heard anything said here today that would
6 cause me to disagree with that.

7 I want to ask you, Mr. Harvey, because it
8 appears that at least one possible solution, to these
9 problems, is the reduction in the number of these
10 municipal courts. And if I understood you correctly,
11 Mr. Harvey, you said that the Supreme Court of
12 Missouri, after convening a hearing or working on
13 looking at this issue, came back and said that they
14 did not have the authority to reorganize the courts.

15 And you seem to disagree or to have a
16 problem with that. And I wanted you to share with
17 us, whether you take issue with that, and if so, why?

18 Because it seemed that the Supreme Court
19 was saying that this is something that the legislature
20 must deal with. This is dealing with the setup of
21 the courts and they're the ones, constitutionally,
22 that would have that authority.

23 Talk to me, if you will, about that issue.

24 MR. HARVEY: Certainly. I mean in part,
25 I would say even if, legal analysis is legal analysis.

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1 So they can come up with their report
2 that, with their conclusion, that they don't have the
3 authority to do it. Meaning there's nothing
4 explicitly written in the constitution that says the
5 Missouri Supreme Court has the right to order the
6 reorganization of the courts. I think, I mean that's
7 true, on its face.

8 There's also nothing that says they don't
9 have the authority to do that. Which is pointed out
10 in the decent by Professor Ken Norwood, of one of the
11 nine people who were on that working group.

12 And she believed that even if the panel,
13 even if they found that the Supreme Court locked a
14 specific provision entitling to do that, they ought
15 to advocate for it. Because it was such a clear need
16 in the community.

17 VICE CHAIR TIMMONS-GOODSON: Okay, and
18 that's different.

19 MR. HARVEY: Certainly.

20 VICE CHAIR TIMMONS-GOODSON: That's
21 absolutely different --

22 MR. HARVEY: That's different.

23 VICE CHAIR TIMMONS-GOODSON: -- from what
24 I thought I hear you saying.

25 So in affects, supervising their courts,

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1 which is of course within the authority of the Supreme
2 Court, some would argue that within that supervising
3 authority, is the right in the authority to
4 restructure.

5 MR. HARVEY: Yes. I believe that. I
6 believe that that's right. Because following the
7 Department of Justice's report on Ferguson, they
8 ordered appellant Court Judge Roy Richter, to sit.
9 They moved him from the appellant court to Ferguson's
10 municipal court to hear cases.

11 The presiding judge in St. Louis County
12 has the authority to reorganize those courts. She
13 has supervisory, superintending authority over those
14 courts.

15 I believe there are many ways in which
16 either body could assert that authority. And they
17 are just simply reluctant to do so.

18 Part of it is, I mean political pressure
19 is, but I believe that there's the legal mechanism
20 for them to do it through the existing provisions in
21 the Missouri constitution.

22 VICE CHAIR TIMMONS-GOODSON: Complicated
23 issue. Thank you very much.

24 MR. HARVEY: Thank you.

25 CHAIRMAN CASTRO: You know, Karen, I'm

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1 going to wrap it, we're already over.

2 COMMISSIONER NARASAKI: No it's fine. I
3 was going to say, I'll wait till the third panel.

4 CHAIRMAN CASTRO: Okay, great. I would
5 ask, on behalf of the Commissioners, if each of you
6 could send to us, submit to us, a list of
7 recommendations, in writing, that you would recommend
8 to us to deal with.

9 I know some of you may have already
10 touched on that in your written remarks, but if you
11 could elaborate that would be appreciated.

12 Thank you all, this was a great Panel.
13 We are now going to take a ten minute break and then
14 convene back for the third panel. Thank you.

15 (Whereupon, the above-entitled matter
16 went off the record at 12:08 p.m. and resumed at 12:18
17 p.m.)

18 CHAIRMAN CASTRO: Back on the record. So
19 we are now going to begin with our third panel of the
20 day.

21 I trust you were all here earlier to, how
22 the warning lights work. Green, go, you've got seven
23 minutes. Yellow, two minutes to wrap up. Red, time
24 to stop and we'll begin to ask you questions.

25 I'm going to introduce the panelists and

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1 then we are going to swear them in. Our first
2 panelist is Joshua House, attorney at the Institute
3 for Justice.

4 Our second panelist is Janene McCabe,
5 Steering Committee Member for the National
6 Association of Public Defense.

7 Our third panelist is Alexes Harris,
8 Associate Professor of Sociology at the University of
9 Washington.

10 And our fourth panelist is Karen Martin,
11 Assistant Professor of Public Management at John Jay
12 College of Criminal Justice.

13 I'll ask you all to raise your right hand
14 and be sworn, that you swear or affirm that the
15 information that you are about to provide to us is
16 true and accurate to the best of your knowledge and
17 belief, is that correct?

18 (Chorus of yes.)

19 CHAIRMAN CASTRO: Okay, great. Thanks.

20 CHAIRMAN CASTRO: Mr. House, you have the
21 floor.

22 MR. HOUSE: Thank you, Mr. Chair, for
23 having me to speak today.

24 CHAIRMAN CASTRO: You're welcome.

25 MR. HOUSE: My name is Josh House,

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1 attorney at the Institute for Justice, and the
2 Institute for Justice is a nationwide civil liberties
3 law firm, for those of you haven't heard of us, and
4 we recently filed a federal class action in the city
5 of Pagedale, Missouri, which is just a few miles down
6 the road from Ferguson.

7 We represent residents challenging the
8 city's unconstitutional ticketing scheme and my goal
9 today will just be to give you kind of a ground-level
10 view of what this challenge looks like and kind of
11 our experience in the Pagedale area.

12 In Pagedale over the past five years
13 municipal ticketing for non-traffic code violations
14 has increased nearly 500 percent.

15 Now that term "non-traffic" is key
16 because Missouri law already caps income that
17 municipalities can receive from traffic tickets, but
18 non-traffic tickets are not capped.

19 Municipalities can keep as much as they
20 want from property code violations or misdemeanors.
21 After investigating we found that Pagedale was
22 ticketing people for completely frivolous violations.

23 The city demanded that residents paint
24 the foundations of their home and their fences a
25 certain color. The city ticketed people for not

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1 having screen doors on the rear doors to their homes.
2 One resident was even ticketed for not having matching
3 curtains.

4 The Pagedale code is so byzantine that
5 completely normal neighborhood activities are
6 illegal. It is illegal to have a basketball hoop or
7 a wading pool or other children's toys in your front
8 yard.

9 Pagedale residents can only walk on the
10 left side of crosswalks. Young people may not have
11 saggy pants and residents can't have a barbeque in
12 their front yard unless it's a national holiday and
13 you can't have more than two people or any alcohol
14 around that grill.

15 Now many towns might have archaic codes,
16 but what sets Pagedale apart is its willingness to
17 ticket, fine, and even jail residents for these
18 violations, or at least threaten jail.

19 What also sets Pagedale apart is its
20 utter dependence on raising revenue through code
21 enforcement. Pagedale is a city of only about 3300
22 people, yet it receives over \$350,000 every year from
23 code enforcement, nearly 20 percent of its annual
24 budget.

25 At sessions of the Pagedale Municipal

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1 Court lines would extend out the door. One of our
2 clients tells us that Pagedale looks like a ghost
3 town on certain Thursday nights because that's when
4 Pagedale holds municipal court.

5 And once trapped inside the municipal
6 court system the residents are caught with a Catch
7 22, because many of them are ticketed because of the
8 condition of their homes but are unable to afford to
9 make the fixes demanded by the city because they are
10 too busy paying off tickets or, more likely, paying
11 off the fees stacked upon other court fees that are
12 attached to these tickets.

13 Our clients experiences are pretty
14 typical, and I'm going to kind of detail some of them
15 for you today. Our first two clients are a couple,
16 Valerie and Vincent, and they have accumulated over
17 \$2500 in fines.

18 Vincent has also spent time in Pagedale
19 Jail as a result of the fines, fees, as well as
20 failure to appear. Vincent lost his job from missing
21 work due to municipal court dates.

22 He and Valerie both work evenings.
23 Valerie works all evening, or all night, at a
24 children's hospital, and Vincent worked evenings at
25 a plastic manufacturing plants.

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1 But because of having to make that
2 constant choice between work and attending court he,
3 eventually after choosing court too many times, lost
4 his job, and after losing the job making payments is
5 pretty difficult.

6 He and Valerie took out payday loans with
7 an interest rate of about 100 percent in order to pay
8 some of these fines, but Valerie, touchingly, refer
9 to these loans as her Pagedale money.

10 Our third client, Mildred Bryant, is 84
11 years old and received a notice threatening legal
12 action if she didn't make a mess of modifications to
13 her home, including repainting the entire thing.

14 Some of the demands were absolutely
15 ridiculous. They wanted her to seal small, very
16 small cracks in the front cement walk leading up to
17 her house, and they also demanded that she have
18 "matching curtains or blinds."

19 Now our lawsuit against the city alleges
20 three main claims, and I'm going to just quickly
21 breeze through these, but I am happy to take any
22 questions on them.

23 First is basically what we call a TUMI
24 award claim based on two Supreme Court cases, and
25 that's that Pagedale is financially dependent on this

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1 municipal fines and that makes the entire municipal
2 ticketing scheme unconstitutional.

3 The Supreme Court has said over and over
4 again that courts may not have a financial interest
5 in convicting those who come before them.

6 Second, Pagedale's ticketing for
7 frivolous violations violates the 8th Amendment. We
8 have heard a lot this morning about excessive fines
9 and no fine, especially one of about \$500, is
10 proportional to the crime of having non-matching
11 curtains.

12 And, third, Pagedale simply can't
13 regulate these harmless activities and conditions.
14 We don't believe that it's within the legitimate
15 police powers of the State to regulate aesthetic non-
16 safety-related features of one's home.

17 Unfortunately, Pagedale is not a road
18 municipality on the margins. We heard about the DOJ
19 letter going out to courts across the country asking
20 for reform.

21 The Missouri legislature is aware of not
22 just Pagedale but other Missouri municipal courts and
23 has begun clamping down on raising revenue.

24 There is a bill making its way through
25 the Missouri House right now that would cap non-

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1 traffic tickets, it would cap all tickets, the revenue
2 at least that is received from these tickets.

3 This bill, although it's stalling
4 slightly in the House, has support from both Civil
5 Rights leaders as well as local police.

6 Civil Rights leaders want to avoid the
7 repeated, unnecessary, and dangerous confrontations
8 between residents and police and local police want to
9 be able to concentrate on their jobs and not act
10 basically, as we heard this morning, as tax
11 collectors.

12 Municipal ticketing abuse is not just a
13 problem in Missouri. In Mountain View, Colorado, a
14 town of about 500 residents, 43 percent of the town's
15 income comes from municipal fines and fees.

16 Indeed, upon a public records request,
17 the town admitted to us that in the past five years
18 this town of only 500 people has issued tens of
19 thousands of tickets.

20 Many municipalities in St. Louis County
21 and elsewhere have systemically abused their power in
22 order to generate revenue.

23 The question posed by today's panel,
24 which was is it for, is municipal ticketing for
25 justice or for revenue, I think has been clearly

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1 answered. It's clearly for revenue, at least in some
2 circumstances.

3 The remaining question is just to what
4 extent this problem exists. Thank you.

5 CHAIRMAN CASTRO: Okay.

6 MS. MCCABE: All right, thank you. My
7 name is Janene McCabe and I am a proud public
8 defender.

9 I am so happy to be here today because
10 too many times public defenders are not invited when
11 it comes to criminal justice reform. We are a voice
12 that is often unheard from, so I appreciate this
13 opportunity to be here today.

14 I also find it more significant so today
15 because it's the 53rd anniversary of Gideon vs.
16 Wainwright, the right to counsel, and as a proud
17 member of the National Association of Public Defense,
18 the steering committee, a volunteer organization of
19 public defenders across the country, we are very happy
20 that this Commission is addressing this issue because
21 quite frankly we first became involved when Thomas
22 Harvey reached out to us an organization and said can
23 you help.

24 We are trying -- They were in the midst
25 of trying to get some changes in the Missouri Supreme

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1 Court. They asked us to write a letter in support,
2 and we did, and then following that we also wrote
3 some op eds and we started to reach out to our members
4 to talk about this issue and what we found is the
5 striking prevalence across the country.

6 It is everywhere and we have known it for
7 years and we have brought it to the attention of the
8 courts for years and, frankly, maybe it is because we
9 are public defenders, because we are bleeding hearts
10 so many times for each and every client that we
11 represent, that too many times courts stopped
12 listening.

13 They stopped hearing the stories of pain
14 and heartache and what they were actually doing to
15 our clients and because they stopped listening we
16 felt like no matter what we did it wasn't going to
17 have an impact.

18 So we are grateful that this now such an
19 issue that it has reached a level of scrutiny so that
20 we can go back to the courts and say this is a national
21 issue, this isn't just about this person that's
22 standing here right in front of you, but they are
23 person who is going to be most affected, but it's
24 happening everywhere.

25 As public defenders we are in a unique

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1 position to see the effects on each client that we
2 represent, but I will tell you too many times we are
3 not there.

4 And the reason that we are not there is
5 there is no national mandate to require public
6 defenders to be present in municipal courts and too
7 many times what happens is the courts and the
8 prosecutors use the case law, and they use Alabama
9 vs. Shelton which specifically states that if the
10 court or the prosecution is not seeking a jail
11 sentence you don't have the right to a public
12 defender. It doesn't exist.

13 And the reason it doesn't exist is
14 because it's not taking away your liberty, it's only
15 the possibility of the imposition of a fine, and so
16 too many times clients will come in front of a
17 municipal court and they will say can I have a lawyer,
18 and I have provided transcripts in my materials that
19 I provided of some exchanges between a court and a
20 client who said to the judge can I get a lawyer and
21 the judge specifically says you are not entitled to
22 a lawyer because we are not seeking jail.

23 And then what happens? They say here is
24 your fine and the client can't pay the fine and then
25 they are arrested because they didn't pay the fine,

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1 and when they are arrested now the court has the
2 ability to put them in jail.

3 Well, why? Because it's no longer a
4 criminal offense, and when it's not a criminal offense
5 it's a quasi-civil offense because it's contempt of
6 court, and when it is a contempt of court issue then
7 you do not have the right to a lawyer.

8 So you are denied a lawyer when you are
9 entering the plea and then you are not eligible for
10 a lawyer when the court has you back in front of them
11 again and says you didn't pay.

12 This is something that happens across the
13 country and day in and day out we have judges who are
14 specifically humiliating our clients, saying things
15 to them like that's a nice pair of earrings, did you
16 try and pawn them, and if you didn't that demonstrates
17 an ability to pay.

18 Saying to other clients that's a nice
19 pair of Nike shoes, they look new, hand them over.
20 And that has actually happened, where clients have
21 been forced to remove their shoes to give it to the
22 court.

23 It is intentionally humiliating and
24 brutalizing our clients and this is done in a court
25 of law by a judge.

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1 This is what we are up against and this
2 is what we are facing and I echo the frustration of
3 Thomas Harvey when he says we keep talking about this
4 and no one listens, or more importantly, people keep
5 passing the buck and say I can't do anything about
6 that, that is not my responsibility.

7 I think that Thomas Harvey is right when
8 he says that it is important that we establish some
9 sort of safeguard on judges to say if you violate a
10 person's rights there will be repercussions.

11 And as a public defender I never advocate
12 bringing charges against people because, quite
13 frankly, that's not in the line of work that I do.
14 But there are times where, you know, my clients time
15 and again are faced with challenges because they are
16 told well, ignorance of the law is no excuse.

17 Well the same is true with a judge,
18 ignorance is not excuse and you cannot intentionally
19 deprive people of their constitutional rights when
20 you are supposed to be the very person enforcing them.

21 So as public defenders what do we want
22 and what do we think this Commission can do? Well
23 number one we think that first of all there should be
24 a mandate that public defenders should be required at
25 the first appearance in all municipal court cases all

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1 the time.

2 Why at the first appearance? Because at
3 the very first appearance sometimes these clients are
4 in jail and the court will say well, I'm not sure yet
5 whether we're going to seek jail sentence or not so
6 you may not be entitled to representation, but that
7 person is in custody, and if that person is in custody
8 they should be entitled to a lawyer.

9 Also, lawyers have the ability to tell
10 the client about how they can demonstrate an inability
11 to pay, because the onus is on the defendant to tell
12 the court I can't pay.

13 And too many times our clients don't
14 understand how that works, what they should actually
15 demonstrate to the court, what kind of proof should
16 they give, where a lawyer can help them, walk through
17 what a financial plan looks like and tell them this
18 is how you demonstrate to the court what your
19 inability to pay looks like and the courts need to
20 have a specific determination of what does it mean to
21 have an inability to pay.

22 Under Bearden the Supreme Court said
23 look, you cannot jail people simply because they don't
24 have an inability to pay, but they never defined what
25 that meant, and so day in and day out courts make it

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1 up as they go as to what it actually means on a case-
2 by-case basis.

3 We need a definition so that we can
4 actually say this client has met that definition and,
5 therefore, they cannot pay and they should not be
6 jailed. Thank you.

7 CHAIRMAN CASTRO: Thank you, Ms. McCabe.
8 Professor Harris.

9 MS. HARRIS: Hi. Thank you for the
10 opportunity to be here. I am a very literal person
11 so I chose to use my seven minutes to directly answer
12 some of the questions and subset of the questions
13 that were posed in the letter.

14 CHAIRMAN CASTRO: Okay.

15 MS. HARRIS: So will you please advance
16 then?

17 CHAIRMAN CASTRO: Sure.

18 MS. HARRIS: And I am smiling because a
19 lot of what I am saying will piggyback very nicely
20 with what Ms. McCabe just spoke about.

21 Very briefly -- Could you advance,
22 please? Thank you. In terms of the set of what
23 we've been talking about in terms of monetary
24 sanctions, we have been talking about all of these
25 different things, the fines, the user fees, the

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1 surcharges.

2 Collection costs and interests are one
3 thing that we haven't been talking about. Washington
4 State imposes a 12 percent interest on the day that
5 the amount of money is sentenced, even if someone is
6 going to be incarcerated.

7 We also impose \$100 annual collection
8 surcharge fee per open account, and then there is
9 restitution. The fine is the only piece of monetary
10 sanction that is imposed to be a punishment, the rest
11 are for -- except for restitution -- are for user
12 fees or some things related to the court and sometimes
13 not related to the court.

14 Arizona has an 83 percent surcharge. Ten
15 percent of that surcharge goes to a Clean Elections
16 Fund. So if you want to run for elections in Arizona
17 you can tap into that fund.

18 Ironically, if someone has a felony
19 conviction they pay for that money and they can't
20 vote for you. So there are hosts of, as everyone has
21 been saying, a host of these different types of fees
22 attached onto the initial fines for a conviction.

23 For example -- Could you advance? There
24 are several -- Oops, I took the one out that I wanted.
25 There are several layers of legal debt that we also

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1 talked about.

2 Today we have talked mostly about
3 misdemeanor, and I get that that's the focus, but
4 there are also the -- This is an example of the
5 misdemeanor cases that we've been talking about.

6 Actually a \$40 traffic fine turns into a
7 \$240 bill in California with all of the different
8 types of assessments and the fees that are added on
9 top of that, a night court fee, a DNA identification
10 fee, this is for a traffic fine.

11 And this is an example or an illustration
12 of what's happening nationally with different types
13 of penalties. Go to the next one. And there are
14 layers of this debt.

15 So we are focusing today on the
16 misdemeanor debt. There are juvenile monetary
17 sanctions that in some jurisdictions, Washington
18 State, we have mandatory juvenile fees upon
19 conviction and many times if the juvenile can't pay
20 the parents are assessed as having to pay those fees
21 and fines as well.

22 Felony monetary sanctions was, the bulk
23 of my research is at the felony level, and then there
24 are federal monetary sanctions that Professor Martin
25 will talk about. So there are several layers of this

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1 debt that are important for us to notice.

2 One question that you asked is if debtors
3 prisons is unconstitutional why does it happen in
4 some jurisdictions? Don't we have protections
5 against incarcerating?

6 And I'd like to just sort of explain how
7 this happens. Someone is assessed a fine or a fee,
8 they do not make a payment, they are issued a court
9 summons via mail, and many times people are homeless
10 or don't have a regular housing address and don't
11 receive those court summons.

12 Many time they are afraid that they are
13 going to be incarcerated so they don't have a
14 response. Warrants are then issued and then when
15 they make contact either if they are riding a bicycle
16 or they are walking the street they are picked up on
17 those warrants.

18 They go to the plea hearing, or the first
19 appearance hearing, and are assessed as willfully not
20 paying and are incarcerated. So that's sort of the
21 path.

22 Legally debtors can be held in contempt
23 of court. Williams vs. Illinois established this.
24 Incarceration is permitted if a person can be labeled
25 as a willful non-payer and then Bearden vs. Georgia

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1 established the precedent for willfulness.

2 But as Ms. McCabe pointed out there are
3 two sort of major points, problems, the first is at
4 sentencing, that there is really a lack of assessment
5 of the current ability to pay for individuals.

6 Most courts, I studied five counties in
7 Washington State, I did observations and interviews
8 and looked at statistical data as well, and many
9 courts don't determine whether or not, they don't do
10 an individualized assessment of each person's ability
11 to pay before the court.

12 They just have this normal culture of say
13 I'm going to give you the mandatory minimum of \$600
14 or \$1200. We do \$450 for the court-appointed
15 attorney, we do \$200 for court costs, we do, you know,
16 \$100 for collections.

17 They just have their normal amount that
18 they impose someone without doing an individualized
19 assessment.

20 Many times judges also, in our State
21 statute we have current or future ability to pay, so
22 many times judges will assess future ability to pay,
23 and I say that in interviews I have had judges tell
24 me I don't know if this guy's going to win the
25 lottery, or I don't know if they're going to get a

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1 settlement.

2 So even if they are homeless and sleeping
3 in their care or they are mentally ill they assess
4 based on future ability to pay the normal amount of
5 fines and fees that are available to assess those
6 individuals.

7 And there is a real lack of judicial
8 understanding of what indigence means, right, as Ms.
9 McCabe said, and this often happens in the assessment
10 of willfulness, if someone has tattoos, for example,
11 I've seen judges ask people how much did your tattoo
12 cost, that's money that could have been used.

13 They ask women about their manicures, how
14 much did you spend on your manicure. They ask people
15 about how much, many packs of cigarettes is a common
16 way to assess how much money they are wasting each
17 month that could be used towards their legal financial
18 obligations.

19 So in terms of the determination of
20 willful some jurisdictions are not holding hearings
21 at all, so people go directly go to jail if they are
22 found in violation of non-payment.

23 Many people do not have attorneys present
24 in these hearings and there is an assessment of
25 available income for payments, includes examination

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1 of conspicuous spending.

2 So whatever judges can assess that a
3 defendant has been spending their money on they judge
4 should be spent on their LFOs. So the practices
5 leading to incarceration vary across jurisdictions
6 that I studied in Washington State, although we have
7 seen examples of these nationally.

8 In Washington we had a practice called
9 Auto Jail where people would be picked up on non-
10 payment-related warrants, they would go to jail and
11 await a hearing.

12 What would happen is that the clerks who
13 in Washington are in charge of collecting the money
14 they would go to the courthouse and visit the person
15 without an attorney and ask them to sign an affidavit
16 agreeing to or stipulating that they would pay \$50 a
17 month on their legal financial obligation.

18 Even if they knew they couldn't pay it
19 they'd sign it. And I asked the public defender why
20 the heck would they sign this knowing that they would
21 have to automatically report to jail if they failed
22 to make a payment and she said that the clerks would
23 say well we're going to argue for a 60-day sanction
24 in jail.

25 So people want to get out of jail, they

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1 would sign these affidavits and then they'd have these
2 Auto Jail practices where they automatically are
3 supposed to report to jail.

4 There was a-- Washington vs. Mason
5 established that it was unconstitutional only because
6 it did not hold a hearing prior to incarceration.

7 There is pay or stay practices that
8 judges will pick up people and you'll see them on
9 their first appearance, they'll say do you have \$300?
10 You pay it now or someone come down and pay it. What
11 do you have in your wallet? Or you're going to stay
12 in jail for 60 days.

13 Pay and sit practices are when
14 jurisdictions are tired of people not making payments
15 and they'll give them a daily credit toward their
16 debt, so you'll sit in jail -- If I owe \$1000 I'll
17 get \$50 a day for sitting out my fines and fees.

18 It's ineffective in that the State or the
19 county is not receiving money and I am missing
20 employment and time with my kids. There are a lot
21 of different types of practices.

22 In terms of the next set questions were
23 about data availability and there is not a lot. One
24 question you asked are what data are being collected
25 to monitor whether communities of color are

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1 disproportionately incarcerated because of their
2 inability to pay court fines and fees.

3 It's really, really hard to find data at
4 the State level or nationally that allows us to answer
5 this question. We do know in a study I published in
6 2011 that individuals in Washington State at least
7 who had prior convictions, holding all convictions
8 statistically, controlling all prior convictions and
9 legal histories, Latinos were sentenced higher fines
10 and fees.

11 So being Latino, regardless of the types
12 of charges you had or the prior convictions, you
13 received higher fines and fees in Washington State.

14 Also, we know the racial and ethnic and
15 class disparities context nationally. We have over
16 2.25 million people living behind bars, we have over
17 7 million people on supervision, and we have this
18 occurring with a great amount of racial and ethnic
19 disproportionality.

20 One out of 87 white men is incarcerated,
21 one out of 36 Latino men is incarcerated, and one out
22 every 12 black men are incarcerated. Becky Pettit
23 and Bruce Western calculated a lifetime risk to
24 incarceration, so if you were born in this cohort,
25 1975 to 1979, and you are black man who dropped out

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1 you had a 68 percent chance of going to prison.

2 So if you know anyone born between 1975
3 and 1979 and they are a black man who dropped out, 68
4 percent chance that they are going to be incarcerated,
5 28 percent chance for white men, 20 percent chance
6 for Latinos.

7 It's a huge amount of disproportionality.
8 So given this context it's not hard to make that leap
9 to say that there is racial and ethnic
10 disproportionality in the ways, not just the ways
11 that the fines and fees are assessed, but in the ways
12 that they are experienced disproportionately by
13 communities of color.

14 And then we also have class
15 disproportionality. Between 30 to 36 percent of
16 people were unemployed prior to their arrest, these
17 are old data, we don't have new data on this, but of
18 those working 23 percent reported monthly earnings
19 of \$600 and 50 percent reported \$1200 or less.

20 CHAIRMAN CASTRO: Professor, I'm going
21 to have to --

22 MS. HARRIS: Oh, okay.

23 CHAIRMAN CASTRO: -- get a wrap-up, just
24 a little --

25 MS. HARRIS: Okay, wrap-up. And, you

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1 know, I can save the rest. You can kind of scroll
2 through. The rest are actually questions that we
3 just don't know.

4 There's questions, we don't know how much
5 is spent on monitoring and collecting, we don't know
6 how much is recouped. If you want to talk about some
7 recoupment in Washington we can do that next. We
8 also don't understand how the money is being
9 allocated. So I look forward to answering questions.

10 CHAIRMAN CASTRO: We'll definitely ask
11 you some questions.

12 MS. HARRIS: All right, thank you. Thank
13 you.

14 CHAIRMAN CASTRO: Professor Martin.

15 MS. MARTIN: Thank you very much for
16 having me. I am going to focus on three main points
17 that I think will do, I hope will do a good service
18 in time trying to summarize everything since I do
19 believe I am last.

20 One of my first points is that I think
21 criminal justice debt has become itself a de facto
22 form of punishment, so I am actually pausing that we
23 have incarceration, we have communities of vision,
24 and we're actually sentencing people to debt.

25 Second, I think that the current system

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1 of criminal justice financial obligations, fines,
2 fees, surcharges, is actually compelling law
3 enforcement to behave as debt collectors, and I want
4 to talk about the systemic pressure on them to do so.

5 And then, finally, that we need policy
6 and innovation to essentially stop it. If you just
7 look at the, we've talked a little bit about
8 increasing severity and I just have a few statistics.

9 So in California the fine statistics,
10 fines for things like red lights and stop signs and
11 speeding have gone up five fold since 1994 to 2012.

12 In Nevada the surcharge revenue has
13 doubled and it's interesting if you look at a graph
14 the anticipated versus received actually cross, so
15 it's like in the early 2000s Nevada realized hey,
16 we're getting money from this and decided they should
17 start budgeting for that money, so that just indicates
18 to you how a State can become dependent on these
19 surcharges.

20 And in the federal system we are now up
21 to the point where we assess \$14 billion a year in
22 monetary penalties. And I won't dwell too long, but
23 I am thinking of the criminal justice debt coming
24 from fines, surcharges, and restitution.

25 And I do want to say that restitution I

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1 think kind of stands out morally, ethically,
2 intuitively, because it's supposed to go to an
3 identifiable victim for a specific bodily or property
4 harm.

5 Nevertheless, it is a part of people's
6 criminal justice debt and so it contributes to the
7 burden, so I don't want to completely exclude it,
8 it's still a factor but it is somewhat different.

9 An example of how complex this world is,
10 in California, in Curran County, California, a base
11 fine immediately becomes 260 percent. So this
12 happens because a penalty assessment is implemented,
13 \$29 for every \$10 in the fine.

14 This is already confusing, right? So if
15 you have a \$100 fine that's ten increments of \$29
16 plus a 20 percent state surcharge. So if you start
17 with a base fine of \$100 it's immediately \$410.

18 And where this penalty assessment goes is
19 also quite complex. So \$10 goes to a State Penalty
20 Fund, \$7 goes to a County Penalty Fund, \$5 goes to a
21 State Court Facilities Penalty, \$5 penalty for DNA
22 fingerprint, unsolved crime, Innocence Protection
23 Act, and a \$2 penalty for a Maddy Medical Emergency
24 Services Fund.

25 And this is just in one county in one

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1 State, and so I just want you to imagine we have
2 thousands of counties, 50 States, so multiply this
3 times a large number.

4 All that being said I think that it is
5 important to keep in mind that there is a basic
6 rationale for using money in punishment. Sally
7 Hillsman outlined this back in 1990 that, you know,
8 it does serve a purpose if you can use a fine to
9 punish, it's definitely punitive.

10 It can be tailored, and we don't
11 necessarily to a good job at that, but it can be. It
12 can be coupled with other things, it can produce
13 revenue.

14 It does have these benefits that are
15 there. We are just not doing a very good job of
16 getting the benefits without also getting a lot of
17 harm.

18 So to talk about criminal justice debt as
19 punishment I think there is a few factors that brought
20 us here.

21 So one is that we have a massive amount
22 of criminal justice debt at the moment, and I'll give
23 you some statistics in just a second, but you have to
24 consider the inability of most to pay and then the
25 harm from the debt and the consequences for failure

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1 to pay are enormous.

2 So taking all of that together I am
3 pausing that criminal justice is a form of punishment.
4 To give you an example, so in the federal system right
5 now there is more than \$100 billion in outstanding
6 criminal debt.

7 The federal government collects less than
8 \$4 billion a year and as I already mentioned we are
9 still implementing \$14 billion each year in new
10 monetary penalties.

11 In just one federal district in New York
12 there is \$300 million outstanding for criminal debt,
13 criminal justice debt. A study of 11 States found
14 an average of about \$200 million in outstanding debt
15 and a recent study by a group of advocacy groups found
16 that the average debt for just correlated fines and
17 fees is about \$13,000.

18 So they went to various States, asked
19 people what their experience was and found an average
20 of \$13,000 in just court fees. Across the country
21 this is happening.

22 So in California there is more than \$10
23 billion in outstanding court-ordered debt. In
24 Florida people convicted of felonies owe more than
25 \$700 million.

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1 In Arizona it's \$830 million. In Iowa
2 it's \$533 million. In New Jersey there more than
3 half a million cases that are eligible for collection
4 representing \$250 million.

5 So these are huge numbers and so this is
6 why I am saying that the debt itself is a punishment.
7 It is not working in terms of bringing in money, what
8 we are doing is putting people in this position of
9 permanently owing the State money.

10 And the disproportionate harm has been
11 talked about. Briefly, imprisonment, if you are on
12 probation it can be extended or revoked. If you get
13 arrest warrants you can also be subject to liens,
14 wage garnishing, tax rebate interception.

15 Because a lot of these debts become a
16 civil judgment, it's then public information, which
17 then is available to credit agencies, which then can
18 affect your ability to get housing, transportation,
19 credit cards, loans, leases, et cetera, and, of
20 course, there is the issue of driver's license
21 suspension.

22 The question of how and whether law
23 enforcement are becoming debt collectors I think is
24 very important and in the larger context I want to
25 say is that the GAO had a recent report saying that

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1 State and Local Governments are currently operating
2 a negative balance that is equal to 2 percent of the
3 GDP, and that this trend is expected to persist for
4 the next 50 years, the gap between revenue and income.

5 And so given that context, of course,
6 public institutions are going to be in the position
7 of being both the originator and the recipient of
8 fines, fees, and surcharges.

9 This means the police are more likely to
10 pursue warrants for non-payment, to pursue fineable
11 infractions, and at stake is community policing
12 relationships, just generally complaining the
13 purposes of punishment, sorry, the purposes of
14 policing.

15 And I just want to tell, I'll give a brief
16 example, which is in Texas there is something called
17 a warrant redemption program.

18 House Bill 121 in 2015 allows credit card
19 readers to be put directly into patrol cars and at
20 the same time the government partnered with a company
21 called Vigilant Solutions, which is an automatic
22 license plate reading company, and so cruisers can
23 now cruise around and scan license plates
24 automatically.

25 If they get a hit, meaning somebody who

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1 owes money, they can stop that person. The company
2 gives the license plate readers to the city for free
3 and the company collects a 25 percent surcharge on
4 anything the collect.

5 It is defended by saying that people have
6 a choice, so they can either pay on the spot, you
7 know, a fine, \$500 plus the \$125 fee, they can pay
8 that on the spot with their credit card, or they can
9 be arrested, go to jail, daily impound fees, any lost
10 wages, and still have to pay the fine.

11 This is the "choice" that we are giving
12 people. Of course, this is a model based on debt.
13 There is zero incentive to reduce the number of
14 warrants and so this is the situation we are in.

15 Just a few quotes from people that I am
16 interviewing who have criminal justice debt. One
17 person, I mentioned this is my testimony, said stop
18 charging me for the sheets I am laying on, that I
19 laid on five years ago, and he meant literally the
20 bed sheets on which he laid in jail five years ago,
21 he is still paying that debt.

22 One person says I feel like I'm being
23 extorted by the system. You know, another person
24 says the criminal justice system is making money off
25 of dirt poor people.

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1 And then very quickly I'll conclude by
2 saying for policy, first of all, full stop, no
3 incarceration for unpaid debt period. End of story.

4 I don't think we need to go down the
5 complicated roads of determining ability to pay, just
6 if it is not a custodial offense, if it's not a
7 custodial offense ever period.

8 I do think there is something to be said
9 for proportionality. The European system does take
10 into account ability to pay and it's literally a
11 multiplication times the severity of the offense.

12 There is a way to do that in a revenue-
13 neutral way. I do think it's important to realize
14 we don't need to criminalize everything, we don't
15 need surcharges and fees for everything.

16 But, given that, we are in that
17 situation. We must have proportionality and,
18 finally, amnesty. I think we are -- It's high time
19 for just say across the board for certain types of
20 offenses, certain types of people, certain places,
21 amnesty, you don't owe any money, let's move on.
22 Thank you.

23 CHAIRMAN CASTRO: Thank you. I'll start
24 with an opening question then I'll ask my colleagues
25 to signal if they want to ask.

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1 You know, we talked about St. Louis
2 County having 90 municipalities, probably I think
3 most of them have this issue.

4 In your experience how many
5 municipalities across the country may be involved in
6 this sort of process with their citizenry? Is it
7 half of them? Is it a quarter? Do we have any
8 estimate as to how many of our municipalities are
9 engaging in this conduct?

10 MS. HARRIS: It would have to be an
11 educated guess, but I would say probably most of them.

12 CHAIRMAN CASTRO: Really?

13 MS. HARRIS: I mean this is how
14 municipalities generate money to function for
15 government.

16 FEMALE PARTICIPANT: Right.

17 MS. HARRIS: And so every municipality,
18 every county, has a system in which they can fine
19 individuals, traffic, for instance.

20 CHAIRMAN CASTRO: Yes, but I am talking
21 about the extreme, the excessive situation --

22 MS. HARRIS: Extreme, we don't know. We
23 don't know the extent of it.

24 CHAIRMAN CASTRO: -- where, you know,
25 where folks are being put in debtors prisons and --

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1 MS. HARRIS: Right.

2 CHAIRMAN CASTRO: -- as we said earlier
3 we're not going to eliminate fines, nor do we want
4 to, it's the excessive nature of them and the
5 excessive consequences.

6 MS. HARRIS: Right. Right, so the system
7 exists everywhere.

8 CHAIRMAN CASTRO: Yes.

9 MS. HARRIS: The extent to which it's
10 excessive we don't know where -- Right now the Arnold
11 Foundation funded and means to lead an 8-State study,
12 so where Karen is doing New York, we're in other
13 States trying to study this at the municipal and the
14 county level, so a couple years we'll have some data.

15 CHAIRMAN CASTRO: Understood.

16 MS. HARRIS: But, yes, we don't know the
17 extent right now.

18 CHAIRMAN CASTRO: Yes. I don't know if
19 you were here earlier, any of you, but after the first
20 panel I asked about a situation in Chicago with the
21 red light cameras, I don't know if any of you are
22 familiar with that and if so if you would like to
23 share some thoughts with how that fits in here, if at
24 all.

25 MS. MARTIN: I mean I think it certainly

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1 dovetails well with law enforcement being seen as,
2 functioning as debt collectors, and not just debt
3 collectors, but revenue producers, and I think that
4 it is, it's disturbing to the extent that it's
5 becoming an automated system so that people aren't
6 actually involved at all.

7 It's just the State, a computer, and a
8 person now is in debt.

9 MR. HOUSE: And to chime in on the kind
10 of number of municipalities, there are certain risk
11 factors that we have identified and we are trying to
12 come up with some way to quantify, you know, how many,
13 or what are the risk factors for where we can tell
14 these things are happening.

15 Home Rule States, so States that accord
16 basically the ability for municipalities to sometimes
17 even conflict with State statute within their
18 municipal codes, that seems to be a risk factor.

19 It gives the municipalities a lot of
20 leeway and it also, you know, if there is no cap or
21 if they can keep it, all the money goes directly to
22 the municipality instead of going straight to the
23 State Government, that also seems to be a risk factor.

24 Again, we don't know for sure, but this
25 is data that we are actually crunching at the moment.

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1 And, also, I just want everybody to be aware that
2 it's not sometimes simple revenue. In our own
3 research we have seen that sometimes there are other
4 kind of motivations here.

5 Sometimes they are using the police to
6 push people off their property for other reasons,
7 whether they want, they don't think that person's
8 property, you know, looks nice enough, they want to
9 take the house for development or something, and this
10 is something we have seen in our eminent domain work,
11 which we also do at the Institute for Justice.

12 So just be aware there are other
13 incentives, not just pure money straight into the
14 treasury that I think may play into a part.

15 CHAIRMAN CASTRO: Okay, thank you.
16 Commissioner Kladney, followed by Commissioner
17 Achtenberg.

18 COMMISSIONER KLADNEY: Thank you, Mr.
19 Chair.

20 CHAIRMAN CASTRO: And then the Vice
21 Chair, yes.

22 COMMISSIONER KLADNEY: Thank you, Mr.
23 Chairman.

24 CHAIRMAN CASTRO: You're welcome.

25 COMMISSIONER KLADNEY: I'd like probably

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1 Ms. McCabe or anybody else who wants to respond, we
2 have talked about fines, fees, things like that all
3 day today.

4 We really haven't talked about the
5 driver's license suspension and I would like you to
6 discuss how that works and what recommendations you
7 would have in place of that or to lessen that blow to
8 the defendant.

9 MS. MCCABE: That's a great question.
10 The fact of driver's license suspensions, in fact in
11 Colorado for a period of time if you were convicted
12 of a drug offense one of the collateral consequences
13 was you would lose your license.

14 And that didn't really help the
15 individual who needed to make probation appointments
16 or needed to make it to drug treatment, that they no
17 longer had transportation to get there.

18 And in my State in Colorado, you know, we
19 are a very -- We have small dense, I'm sorry, we have
20 large dense cities, but we don't have great public
21 transportation, and so to get around our State most
22 people have cars.

23 And so as you take away someone's license
24 you have taken away their livelihood, because a
25 reality is if you try and take public transportation

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1 in my State, in Colorado, and you are in the exact
2 same county where you have court and you live in
3 Aurora and court is in Adams County, Brighton,
4 Colorado, it's the same county, it may take you four
5 hours on the bus to get to court, and I'm not kidding.

6 You can Google that because judges get
7 upset with clients who show up to court late and then
8 the client will say I had to catch the bus at 4:00
9 a.m. this morning to try and make it to court at 8:30.

10 I mean --

11 COMMISSIONER KLADNEY: And this also
12 applies to misdemeanors as well, is that correct?

13 MS. MCCABE: That's correct.

14 COMMISSIONER KLADNEY: I mean I think we
15 are focusing on misdemeanors, so I just --

16 MS. MCCABE: That's correct, yes.
17 Misdemeanors, it can apply to so many things as many
18 States have collateral consequences and one of those
19 is losing your license.

20 Sometimes it's also just the driving
21 offense, multiple points, you know, that would be a
22 separate reason for losing your license, but the
23 collateral reasons for losing a license not related
24 to the crime that you committed, that is usually the
25 biggest problem for most of our clients in being able

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1 to pay their debt, do probation, be productive members
2 of the community.

3 COMMISSIONER KLADNEY: So would you say
4 that it should not be revoked at all or should it be
5 revoked in terms of to and from work or that kind of
6 thing or should there be no penalty at all in that
7 regard if it's unrelated to the offense?

8 MS. MCCABE: If it's unrelated to the
9 offense losing your license should never be a
10 collateral consequence.

11 If it's a driving offense then certainly
12 losing your license might be a consequence of the
13 conduct that you have done, but as a collateral
14 consequence it makes no sense.

15 And the reality is if you get a DUI, I
16 mean that is a driving offense, right, and that is
17 something that we are all very concerned about because
18 that can affect our loved ones throughout the State,
19 right, somebody being injured by a drunk driver.

20 But even if you get a DUI many times if
21 you have the money you can go to an administrative
22 judge, you can apply for a red license, right, a
23 temporary license that you can drive to and from work.
24 You can put a "blow and go," is what some people call
25 it, in your car so that you have to blow to prove

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1 that you are sober so that you can drive.

2 I mean if you have the means you can do
3 all of that, but if you don't have the means you are
4 explicitly limited because of your financial
5 situation.

6 COMMISSIONER KLADNEY: Ms. Harris, yes,
7 go ahead.

8 MS. HARRIS: Well I just wanted to add
9 that one of the reasons for one of the -- I can't, it
10 looks red to me -- The reasons the vast majority of
11 people who are incarcerated in municipal jails are
12 there for a DW LS3, driving with a license suspended
13 in the third degree, and those originate from an
14 unpaid traffic ticket.

15 It could be moving or it could just be a,
16 you know, you didn't pay for the spot that you are
17 in, and what happens is if someone doesn't pay they
18 receive a summons, they don't show up, and their
19 license is suspended, right.

20 COMMISSIONER KLADNEY: Right, FTA.

21 MS. HARRIS: Right. And then they are
22 incarcerated for essentially an inability to pay the
23 traffic ticket.

24 MS. MARTIN: Can I just --

25 COMMISSIONER KLADNEY: I --

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1 MS. MARTIN: One thing on the driver's
2 license suspension. There is a --

3 COMMISSIONER KLADNEY: I only have so
4 much time.

5 (Simultaneous speaking.)

6 MS. MARTIN: I'll be brief. There is a
7 report called "Not Just the Ferguson Problem" that a
8 group of lawyers in California did and they
9 essentially show that about one-sixth of drivers
10 licenses are suspended in California, a huge State
11 where everybody drives.

12 So I think I should -- If you don't have
13 it I'll be happy to send it.

14 COMMISSIONER KLADNEY: Thank you. Ms.
15 Harris, I was going to ask you, you obviously have
16 studied municipal courts --

17 MS. HARRIS: Superior.

18 COMMISSIONER KLADNEY: Superior Courts,
19 oh, that's --

20 MS. HARRIS: Right.

21 COMMISSIONER KLADNEY: Okay.

22 MS. HARRIS: We're in municipal now.

23 COMMISSIONER KLADNEY: But where do you
24 get your, or whoever does study municipal courts on
25 this panel, where do you get your facts and figures

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1 and what facts and figures do you research, do you
2 ask the municipalities for, the courts for, the
3 municipal court and I would assume the Supreme Court
4 or whoever the court runs the whole show?

5 FEMALE PARTICIPANT: State usually, yes.

6 COMMISSIONER KLADNEY: Which specific
7 facts and figures do you look at?

8 MS. HARRIS: So the data that I have for
9 Washington State --

10 COMMISSIONER KLADNEY: Yes, the data.

11 MS. HARRIS: -- or for the Administrative
12 Office of the Courts, every State has this AOC that
13 manages the data --

14 COMMISSIONER KLADNEY: Right.

15 MS. HARRIS: -- although we have found,
16 at least with our eight States that it's very hard to
17 access State-level data, that in some of our
18 jurisdictions we're going to have to go in and request
19 the data at the city level or the county level and
20 aggregate it out to the State as possible data.

21 So in Washington we are lucky, we can get
22 the data, you know, right now we are sitting on 20
23 years of data, conviction and all types of fines and
24 fees assessed.

25 COMMISSIONER KLADNEY: Can you --

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1 CHAIRMAN CASTRO: Last question,
2 Commissioner.

3 COMMISSIONER KLADNEY: Well this is the
4 last question.

5 CHAIRMAN CASTRO: Perfect timing.

6 COMMISSIONER KLADNEY: Can you provide
7 us with say a list of say your top five reports on
8 different jurisdictions that you know about dealing
9 with municipal courts? Can anybody do that?

10 MS. HARRIS: Do you know?

11 MS. MARTIN: No, it's in progress.

12 MS. HARRIS: Right.

13 MS. MARTIN: It's literally the research
14 that is being done right now.

15 MS. HARRIS: Right.

16 COMMISSIONER KLADNEY: Okay.

17 MS. MARTIN: So nobody has -- That report
18 is what we are trying to do and nobody has it as far
19 as we know.

20 COMMISSIONER KLADNEY: And how long do
21 you think it will be before you -- and this is not a
22 question.

23 MS. HARRIS: We'll have the --

24 CHAIRMAN CASTRO: Sounds like one.

25 MS. HARRIS: Yes, we'll have the first

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1 report that we'll issue this Summer to the Arnold
2 Foundation and it's going to be a White Paper on just
3 policies and practices of comparing statutes, case
4 law, within the eight jurisdictions this Summer.

5 COMMISSIONER KLADNEY: And you can
6 provide that to us because this report will not be
7 done by then? Are we --

8 MS. HARRIS: Oh, you're -- Oh, okay,
9 sure, sure. And then my book it looks at the county
10 levels and that will have data in that and that will
11 be available by June.

12 COMMISSIONER KLADNEY: By June?

13 MS. HARRIS: Yes.

14 COMMISSIONER KLADNEY: Does it have a
15 title?

16 MS. HARRIS: "Pound of Flesh: Monetary
17 Sanctions as a Permanent Punishment for the Poor.

18 COMMISSIONER KLADNEY: Thank you very
19 much.

20 MS. HARRIS: You can get it on Amazon.

21 (Laughter.)

22 (Simultaneous speaking.)

23 COMMISSIONER KLADNEY: Do you have a
24 website?

25 MS. HARRIS: I do, I do. You can pre-

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1 order it right now.

2 CHAIRMAN CASTRO: Commissioner
3 Achtenberg.

4 COMMISSIONER ACHTENBERG: Mr. Chairman,
5 my question is in two parts.

6 CHAIRMAN CASTRO: That's fine, go ahead.

7 COMMISSIONER ACHTENBERG: And I'm going
8 to limit it to that.

9 CHAIRMAN CASTRO: Okay.

10 COMMISSIONER ACHTENBERG: Ms. Martin,
11 you, the first question is you advocated amnesty in
12 certain circumstances, could you restate that and
13 also speculate how, what other forms of revenue might
14 substitute for the forms that would be foregone in
15 the event that a jurisdiction were to institute
16 amnesty?

17 MS. MARTIN: So I'll take the second part
18 first, which is I think it's very important to realize
19 that we do not have precise data about how much it
20 costs, our current system costs, but every indication
21 is that it is quite costly.

22 So, for example, in New York it costs
23 more than \$400 a day to put somebody in jail, so if
24 you put them in jail for a \$50, \$100, even \$400, if
25 they are in jail for days that math quickly does not

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1 add up.

2 And so I think it is, it's very tempting
3 to want to have an immediate short-term view that if
4 we fine somebody we will get money, but every
5 indication is that you are not getting money, as is
6 pointed to by all the statistics about the outstanding
7 debt.

8 If you do get money it is costing you a
9 lot to get that money and then you need to take into
10 account the cost of all the collateral damage of
11 having collected that money.

12 So all of that being said, amnesty, we
13 have used amnesty for things like jail fees, Governor
14 Brown is doing it in California right now for traffic,
15 so we have used amnesty for a variety of different
16 types of debt in society and I think that what I like
17 about amnesty is that it can be infinitely kind of
18 scaled and tailored to a specific situation and
19 jurisdiction.

20 So, you know, a city can decide we are
21 going to have amnesty for this type of traffic
22 violation for two months and what it does is it clears
23 the backlog, it lets people come in, it, you know, it
24 gets people drivers licenses back.

25 You can even have amnesty that people

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1 will pay, you know, 10 percent of the fine as opposed
2 to the entire fine, so just a way to get people back
3 into the system and clear their record so that they
4 can be a functioning and legal member of society.

5 COMMISSIONER ACHTENBERG: And it can, in
6 and of itself it can actually address the resource
7 gap that these jurisdictions are --

8 MS. MARTIN: Exactly, right.

9 COMMISSIONER ACHTENBERG: -- trying to
10 address in the first place --

11 (Simultaneous speaking.)

12 MS. MARTIN: Right, so if you give people
13 incentive and opportunity to actually come and pay
14 something then you at least have that. If nothing
15 else you are stopping, you are ending the costs that
16 you are using to pursue the debt endlessly.

17 COMMISSIONER ACHTENBERG: Very good.
18 Thank you very much. And the second question is we
19 heard in the first panel from a Mr. Vikrant Reddy who
20 represented the Charles Koch Institute and the thing
21 that was at least remarkable to me about his testimony
22 was how much in agreement on some of these top-level
23 issues the right and the left seem to be.

24 And there is -- And I am not trying to
25 overstate this as some kind of kumbaya situation

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1 (Simultaneous speaking.)

2 COMMISSIONER ACHTENBERG: Yes, exactly,
3 as some kind of kumbaya situation, but I do think
4 that that presents policy advocates with a kind of
5 opportunity and I am wondering if you could talk a
6 little bit about how that opportunity might be
7 pursued.

8 And the reason that I am asking is because
9 the virtue of this Commission is also its vice, which
10 is we have authority over nothing. I mean we have
11 no enforcement authority, we don't legislate, we
12 don't regulate --

13 CHAIRMAN CASTRO: Don't tell them that
14 then they're just going to get up and leave.

15 COMMISSIONER ACHTENBERG: Yes. We don't
16 legislate, we don't regulate, we don't adjudicate,
17 but we can argue and we can try to persuade to the
18 President and to the Congress that certain policies
19 might be preferable to other policies to the extent
20 that they have a salutary impact on the civil rights
21 of persons in the United States.

22 So I am wondering what kind of
23 opportunity you think that might present this
24 Commission? If anybody has thoughts on the matter
25 I'd appreciate hearing them.

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1 MR. HOUSE: Well from our perspective,
2 the Institute for Justice, we are a libertarian law
3 firm, I think we definitely, I mean we have already
4 reached out with many organizations who we would
5 consider are not, they are probably perhaps not on
6 our side with every issue that we litigate.

7 So we have already taken kind of steps on
8 our activism efforts in St. Louis County to work with
9 people, you know, telling people in the local area
10 what's going in.

11 I mean it's amazing, a lot of people are
12 learning about it across the country for the first
13 time, but a lot of people are learning about it even
14 within St. Louis County for the first time, so I think
15 just kind of an awareness issue.

16 And I also think the fact-finding
17 efforts, a lot of these studies we're seeing, you
18 know, I know that we were applying for grants to do
19 research from organizations that don't support us on
20 every issue that we normally litigate in order for us
21 to do research, so I am sure that goes for other
22 people.

23 I mean you have kind of pulled resources
24 for doing the research, for doing some of the data
25 crunching, you have organizations giving that

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1 wouldn't normally give to certain organizations, but
2 because we are coming together you can kind of share
3 resources and I think those are two points that
4 definitely benefitted from the kind of coming
5 together on this issue.

6 COMMISSIONER ACHTENBERG: Thanks. Ms.
7 McCabe, do you have any --

8 MS. MCCABE: I agree with that. As the
9 -- NAPD has sought different grants in different areas
10 to try and study the issue more because we know, we
11 have a lot of anecdotal information, right, but the
12 actual hard data is frankly a lot harder to come by.

13 But the fact that there are now more
14 entities willing to study it and offering grants so
15 that we can all kind of get involved I think is a
16 great moment for us to all work together.

17 COMMISSIONER ACHTENBERG: Yes, Ms.
18 Harris?

19 MS. HARRIS: I think studying the problem
20 -- You know, obviously, I am a researcher and we want
21 to study the problem and we want grants, but I think
22 it's also an opportunity to broaden the conversation
23 around punishment and what does punishment mean, what
24 are our aims around punishment.

25 In Washington State we have had so much

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1 research, we have been trying, advocates have been
2 pushing and trying to create legislation, but when it
3 comes down to it even when you have people from both
4 sides of the aisle in agreement that change needs to
5 happen the tension is about budget.

6 Last Spring we had Blazina, the
7 Washington State Supreme Court said that sentencing
8 judges must assess individualized ability to pay at
9 sentencing.

10 This was sort of a groundbreaking
11 decision and they said because poor people are being
12 assessed these monies we should not fund our justice
13 system on the backs of poor people.

14 Two months later they went into emergency
15 session, because the State Legislature did not fund
16 their Judicial Information System, JIS, they
17 effectively raised all traffic tickets by \$12.

18 Two months, right, and so they recognized
19 that this is wrong, but that we also need to generate
20 revenue. So I think that we need to have a broader
21 conversation and this is the perfect moment, like
22 what do we want for our systems of justice.

23 Can we think about how do we reduce the
24 cost of the system itself? Can we think about reentry
25 so we reduce recidivism? Can we think about

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1 diversion programs? Can we even talk about
2 decriminalization and not bringing these people into
3 the criminal justice system so that we have to find
4 the means to pay for it?

5 COMMISSIONER ACHTENBERG: Yes. Ms.
6 Martin?

7 MS. MARTIN: Yes, I would just add, too,
8 I would advocate strongly for not losing the
9 complexity of this problem as we all talk about it
10 with other people.

11 I think there is kind of, for better or
12 for worse, something in it for everybody. So if you
13 care about political philosophy, if you care about
14 indigence, if you care about racial justice, this
15 issue touches on all of those things if you care about
16 the size of the criminal justice system.

17 So I would just say maintain the
18 complexity at all times.

19 CHAIRMAN CASTRO: Okay, thank you.
20 Commissioner -- I mean Madam Vice Chair followed by
21 Commissioners Heriot and Narasaki.

22 VICE CHAIR TIMMONS-GOODSON: I'll let
23 Commissioner Heriot go please.

24 CHAIRMAN CASTRO: Okay.

25 COMMISSIONER HERIOT: Okay. I am really

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1 impressed by your unmatched curtain case. You know,
2 it seems like that's like a dead easy question on
3 just basic policy and you don't really want to have
4 rules against unmatched curtains.

5 But I am -- It's a constitutional case
6 though and that's what makes it really interesting
7 and I don't expect you to really be able to answer
8 this question right now.

9 In fact, if you could I would think you
10 are being too quick, it's actually a hard question.
11 My question is what's the difference for
12 constitutional purposes between a tax and a fine?

13 If this town in Missouri said it's not
14 really a fine, it's not something that's illegal or
15 we prohibit it to have unmatched curtains, we just
16 have like a \$75 tax on curtains that don't look good.

17 You know, what's the doctrine that
18 distinguishes fine from tax? Because usually the
19 answer to a tax question, you know, why did choose to
20 tax this, the answer is going to be because that's
21 where the money is, like Willie Sutton.

22 You know, why do we tax income? Because
23 that's where the money is, and it's not necessarily
24 a good match between the services that person is
25 getting and, you know, anything else.

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1 And you can respond hey, a person has
2 like a constitutional right to earn a living. In
3 fact, a lot of what the Institute for Justice does is
4 goes around saying a person has a constitutional right
5 to make a living and yet it's taxed.

6 Again, I don't expect you to answer this
7 question here, so don't look scared. But I am just
8 curious for, you know, your lawyers who -- I have a
9 lot of respect for the work the Institute for Justice
10 does.

11 What's the framework for analyzing this
12 as a tax and what's the framework for analyzing it as
13 a criminal prohibition? Just something to think
14 about and I guess something that I guess Chief Justice
15 Roberts has thought about when he decided that
16 Obamacare was a tax and that made a difference to
17 him.

18 MR. HOUSE: Yes. So for fear of wading
19 back into that argument, I think the simple
20 distinction is is it levied to generate revenue.
21 That's kind of the legal distinction going back and
22 then, you know, obviously, we saw how that debate
23 hashed out in the courts, but from a --

24 COMMISSIONER HERIOT: Because like you
25 are saying that this is to generate revenue and,

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1 therefore, if they just rename it a tax it's still
2 there and now it's constitutional.

3 MR. HOUSE: Like many things in the law
4 it really is fuzzy, but I actually think from a
5 practical standpoint there is a huge distinction
6 between levying a sales tax or an income tax on these
7 people and taxing them by citation, taxation by
8 citation.

9 And the distinction is, just as one
10 example, is in a lot of these municipalities the mayor
11 has the kind of pardon power. So do you think the
12 mayor's friends pay these taxes? Do you think they
13 are the ones who are ticketed? No.

14 COMMISSIONER HERIOT: Yes, but that's a
15 whole different issue now.

16 MR. HOUSE: It is, but --

17 COMMISSIONER HERIOT: That's true for any
18 kind of crime, anything, not just mismatched
19 curtains.

20 MR. HOUSE: Absolutely. Absolutely, but
21 I think one of the -- The reason this is such an
22 important distinction is that, you know, a sales tax
23 is a much, much, much fairer way than tying it to a
24 supposed punishment because it's just, it allows
25 much, much to discretion to the government officials

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1 involved to levy, to --

2 COMMISSIONER HERIOT: But you don't want
3 to go there, do you, and say that now they can make
4 it a tax on mismatched curtains, you don't want to
5 say that, do you?

6 MR. HOUSE: I mean I don't want to say
7 it. I mean, look, I don't think they should tax
8 curtains I guess specifically. That's not, you know,
9 the curtain lobby is probably, you know, watching
10 here.

11 I don't think that's the issue, right. I
12 mean the issue is that there are other ways that they
13 could be generating money. So this, the tickets,
14 fines, and fees, for example, in Pagedale is the
15 second highest level of income.

16 It's nearly tied with their sales tax,
17 but the sales tax is only about 1 percent.

18 COMMISSIONER HERIOT: But it seems like
19 you are talking yourself out of the constitutional
20 question now and you don't want to do that.

21 MR. HOUSE: Like I said, I agree with you
22 the constitutional question would be really, really,
23 it would be really, really difficult to get into, but
24 from a practical standpoint there is a very clear
25 distinction even if the law gets fuzzy at the ground

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1 level and how it affects these people's lives.

2 CHAIRMAN CASTRO: Commissioner Narasaki.

3 (Off microphone comment.)

4 CHAIRMAN CASTRO: I think she wants to
5 pass again.

6 COMMISSIONER NARASAKI: Okay, that's
7 fine. Thank you, Mr. Chair. So I have two
8 questions, but before I do that given the fact that,
9 Mr. Chair, we know that there is some data that's
10 going to be coming out in the next few months could
11 we keep the record open for longer than the usual
12 whatever, how many days we usually do?

13 CHAIRMAN CASTRO: Where is our general
14 counsel?

15 MS. RUDOLPH: Absolutely. You can vote
16 to extend the 30-day comment period. Yes,
17 Commissioners, you can vote to extend the 30-day
18 public comment period. You just need to do it as a
19 vote.

20 CHAIRMAN CASTRO: All right.

21 COMMISSIONER NARASAKI: Perhaps we could
22 put that in the business meeting?

23 CHAIRMAN CASTRO: We could do it now,
24 right?

25 COMMISSIONER NARASAKI: However you want

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1 to do this, Chair.

2 CHAIRMAN CASTRO: Make a motion.

3 COMMISSIONER NARASAKI: I move that we
4 extend the time period to keep the record open for
5 this hearing for, I don't know what, how much time
6 staff needs.

7 CHAIRMAN CASTRO: To 45 days?

8 COMMISSIONER NARASAKI: Sixty days.

9 CHAIRMAN CASTRO: How long? Is there a
10 particular -- 60 days? It's 60 days.

11 COMMISSIONER NARASAKI: Well they were
12 saying their stuff is coming out in June.

13 MS. HARRIS: Well what we're going to
14 have, well it's September, is the White Paper
15 regarding policy. So there will be no like
16 statistical data in that.

17 And then my book is about sort of county
18 level, what's happening. There are statistics in
19 that but it's at the county in Washington State, and
20 that's in June.

21 COMMISSIONER NARASAKI: Yes, but
22 presumably if you are actually selling it in June you
23 have the data before June because you have to print
24 it, right?

25 MS. HARRIS: Oh, yes, right. In

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1 particular what type of data do you want?

2 COMMISSIONER NARASAKI: I think one of
3 the things that we have been, staff has been, well
4 that I am interested in is, you know, how much is
5 this actually costing, right.

6 MS. HARRIS: Oh, okay.

7 COMMISSIONER NARASAKI: So this notion
8 of that but also what is the real extent of the
9 problem and how are the systems really working. So
10 I don't really know what your book covers, but maybe
11 we could at least say we could leave it open till the
12 end of, to June.

13 CHAIRMAN CASTRO: To the end of June?

14 COMMISSIONER NARASAKI: To June.

15 CHAIRMAN CASTRO: Till June 1?

16 COMMISSIONER NARASAKI: Yes.

17 CHAIRMAN CASTRO: Okay.

18 COMMISSIONER NARASAKI: And just see.

19 CHAIRMAN CASTRO: So that's your motion,
20 do we have a second?

21 VICE CHAIR TIMMONS-GOODSON: I'll
22 second, Mr. Chair.

23 CHAIRMAN CASTRO: Okay, any discussion?
24 (No audible response.)

25 CHAIRMAN CASTRO: None. All those in

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1 favor say aye.

2 (Chorus of aye.)

3 CHAIRMAN CASTRO: Any opposed?

4 (No audible response.)

5 CHAIRMAN CASTRO: Any abstentions?

6 (No audible response.)

7 CHAIRMAN CASTRO: Okay, motion passes.

8 Now your two questions.

9 COMMISSIONER NARASAKI: Yes. So my
10 questions are about data because our staff really
11 wants to be able to look at the data.

12 So one of the things we could be making
13 recommendations about is what kind of data should be
14 collected at the municipal level, at the State level,
15 at the federal level.

16 So what would you tell us that we should
17 be saying in terms of that question? What kind of
18 recommendation would we be making?

19 And the second is if, there may not be
20 time because we're already at time, but I know that
21 Ms. Harris didn't get a chance to go through the rest
22 of her testimony in terms of costs and recoupment and
23 I am kind of interested in hearing whatever hasn't
24 already come up through the question and answer.

25 MS. HARRIS: I'm just going to -- I know

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1 we're limited on time, but -- Sorry, I totally --
2 There we go. So this is just an example for
3 Washington State on fiscal recoupment so you can have
4 an idea.

5 The total amount collected in 2013 was
6 about \$30 million and it ranged in counties, King
7 County is the largest county in Washington State,
8 \$4.7 million, you can see Clark, Yakima is one of our
9 smaller and poorer counties, and this is just fines,
10 fees, and restitution.

11 The average amount of new debts, the
12 accounts that are created, to open accounts, is just
13 under 19,000, so annually 19,000 new open debt
14 accounts are created on the year.

15 Washington State debtors make an average
16 of \$113 per open account. Remember, per open account
17 is charged \$100 annually for collections, so
18 essentially they are generating \$13 per open account
19 each year.

20 King County had a total amount of
21 outstanding debt just under three-quarters of a
22 billion dollars. In the same year the average amount
23 owed per case was \$4000.

24 So this basically just says that an
25 average amount paid was \$36.

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1 COMMISSIONER NARASAKI: But this
2 includes restitution, which I consider a slightly
3 different --

4 MS. HARRIS: This does include
5 restitution in that.

6 COMMISSIONER NARASAKI: So do you have
7 data that you could submit to us --

8 MS. HARRIS: That separates out the
9 restitution?

10 COMMISSIONER NARASAKI: Yes.

11 MS. HARRIS: Not on this because the only
12 reason why I was able to get this -- The big problem,
13 too, is that the Clerk's Association in Washington
14 State does not share these data.

15 So the specific King County data I was
16 able to get was from a councilmember that requested
17 the data from his staff actually.

18 We do now have recently obtained data,
19 the 20-year data that I mentioned, and we are going
20 to go through that and start seeing what's happening
21 and take out restitution, but that, we haven't
22 analyzed that as of yet.

23 COMMISSIONER NARASAKI: Okay.

24 MS. HARRIS: Yes.

25 MS. MARTIN: Can I just add in looking

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1 at State level statistics of what is available it's
2 very low, so what I told you about Florida, people
3 who have been convicted of felonies owe \$709 million.
4 The State collects 4.5 percent of that debt.

5 I know in Vermont it's considered a very
6 high collection rate, and this is for restitution,
7 and it was in the 30 percent range, and so collection
8 rates across the country are quite low with
9 restitution and excluding restitution, so a very high
10 collection rate is 30, 40 percent.

11 COMMISSIONER NARASAKI: So what
12 recommendation would you say the Commission should be
13 making around that would make your jobs more
14 effective?

15 MS. HARRIS: Right. State court
16 administrators need to allow access to the data so we
17 can disaggregate it in terms of what the fines and
18 fees, breaking out restitution, the principle that
19 was assessed and the amount of interest and collection
20 charges that have accrued.

21 We need it at the individual level and be
22 able to identify the municipality and the county as
23 well.

24 MS. MARTIN: And we need to know what
25 happens to people who don't pay. We need to know how

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1 often it's failure to appear, how often it's an
2 inability, not paying, how often probation is revoked
3 and extended, because all of things cost money, and
4 so we need to know that as well.

5 MS. HARRIS: And we're trying to figure
6 out, we'd love to be able to say, I had a funder come
7 to me and they wanted to know what the payoff would
8 be if they invested in some of this research, which
9 I get, but we don't know, right.

10 I mean she wanted to be able to say what
11 percentage of people are sitting in jail right now
12 because of non-payment. And so we've started to do,
13 it was preliminary, but we are scraping the internet
14 of jail rosters to try and figure out reasons for why
15 people are sitting in jail. As far as I know it's
16 legal.

17 It is. That was a joke. But we are
18 looking at the daily rosters and the reasons why
19 people are incarcerated, but they don't say why they
20 are incarcerated.

21 MS. MARTIN: Right.

22 MS. HARRIS: Sometimes it will be for
23 non-payment of child support, but usually it's just
24 for a violation of court order. So we're trying to
25 figure out how we can specifically identify people

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1 who are sitting behind bars.

2 There is an estimate in one report for
3 Benton County, Washington, that it's 20 percent of
4 their daily jail roster are people who are there for
5 non-payment-related reasons.

6 MS. MCCABE: I think you want to know
7 specifically the fines that are assessed, what those
8 fines are for, how many fines are actually related to
9 the crime that is being charged and how many are not,
10 how many are there just to support the system itself.

11 I think you want to know how many times
12 a court determines that someone is indigent and
13 assesses no fine, because the reality is there is no
14 statistics on that.

15 We know that we have a population in this
16 country that is poor, we know we have a population
17 that is working poor, and there is no assessment, no
18 data collected about how often judges actually waive
19 fines and fees and determine that this person was
20 unable to pay.

21 In addition, you want to know if there
22 are in fact specific statutes that give monetary
23 incentive requiring courts to collect.

24 Specifically in North Carolina a judge
25 actually has to make a record every time they make a

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1 finding and determination of indigency as to why they
2 did, which doesn't really make any sense if really
3 the point is this person can't afford to pay.

4 And then there is also in Texas municipal
5 courts my understanding is that they actually get
6 incentive from the State that if they collect a
7 certain portion of their revenue from fines and fees
8 that they assessed that they will actually get
9 reimbursed some of that money from the State.

10 So there is an actual incentive by the
11 courts to do whatever it takes to collect, and I think
12 you need to know that.

13 CHAIRMAN CASTRO: Thanks.

14 COMMISSIONER NARASAKI: Thank you so
15 much.

16 CHAIRMAN CASTRO: Okay. Madame Vice
17 Chair?

18 VICE CHAIR TIMMONS-GOODSON: No, thank
19 you.

20 CHAIRMAN CASTRO: Commissioner Kirsanow
21 you'll have the last question. Commissioner
22 Kirsanow, you're --

23 COMMISSIONER KIRSANOW: Oh, I'm sorry.

24 CHAIRMAN CASTRO: Yes, you're up.

25 COMMISSIONER KIRSANOW: Thank you.

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1 Thanks, Mr. Chairman, and thanks to the panelists.

2 CHAIRMAN CASTRO: You're welcome.

3 COMMISSIONER KIRSANOW: As with
4 Commissioner Narasaki I am also interested in data
5 and I am also interested in jurisdiction also.

6 I am persuaded that a lot of these things
7 that are going on are, to put it bluntly, stupid,
8 especially with respect to non-safety violations, and
9 I am not sure why we would see it authority to any
10 jurisdiction to hit us with, you know, the blinds
11 issue and things of that nature.

12 Many of these fines appear to me to be
13 excessive, ridiculous, punitive, but by the same
14 token we have certain jurisdictional issues here and
15 we are charged with trying to determine whether or
16 not they are, for example, denials of equal protection
17 based on race or any other protected class or there
18 is some type of discrimination.

19 There seems to be at least a superficial
20 disparity and it may be a legitimate disparity based
21 on Dr. Harris's data. I think I saw that the
22 incarceration rates, for example, for black males,
23 the probability versus white males, and when I did
24 the quick math it looked like black males are seven
25 times more likely to be incarcerated than white males.

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1 But to the extent we have jurisdiction
2 we've got to observe the similarly situated protocols
3 that you see in Hazelwood vs. United States or
4 Washington vs. Davis and it's not really just -- We
5 have to be comparing apples to apples.

6 In Ferguson, for example, blacks are 17
7 times more likely to commit capital offenses and five
8 times more likely to commit property crimes. So is
9 there really -- Do we know of any stats that show
10 that we are truly comparing apples to apples in terms
11 of the disparity of these fines being levied on the
12 basis of race?

13 MS. MCCABE: Well I want to speak to that
14 on -- You know, Boulder County, Colorado, which is a
15 very liberal jurisdiction, commissioned a study of
16 their own police department to determine are they
17 racially profiling, are they using inappropriate race
18 in determinations of ticketing, right, for municipal
19 offenses.

20 And what they found is in Boulder,
21 Colorado, where black people make up 1 percent of the
22 population, they were ticketed at 2 percent of the
23 rate of all tickets, so they were twice as likely to
24 be ticketed.

25 And if you looked at Hispanics, Latinos,

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1 that was a little bit harder for them to make the
2 determination because quite frankly police officers
3 when they write down on a ticket what race a person
4 is they found that with Hispanics or Latinos unless
5 they had a Hispanic or a Latino surname they didn't
6 always check the right box, right, sometimes they
7 checked white as opposed to Hispanic.

8 But even accounting for that Hispanics
9 were more likely to be ticketed for these traffic
10 tickets. Now there is no evidence that black people
11 in Boulder, Colorado, drive at a higher speed, but
12 yet they were ticketed at more than twice what their
13 racial makeup was in the community.

14 COMMISSIONER KIRSANOW: Anybody else
15 know of any studies? For example, New Jersey and
16 Florida both have studies that show that actually
17 blacks do speed at twice the rate of whites and not
18 only just speed, but they speed even faster. I plead
19 guilty. You didn't hear that from me.

20 But are there any studies that can show
21 we are comparing apples to apples here for purposes
22 of the Commission's jurisdiction?

23 MS. HARRIS: Right. It's been firmly
24 established in criminological and sociological
25 literature that African Americans are

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1 disproportionately arrested, prosecuted, convicted,
2 and incarcerated compared to their counterparts, and
3 in many jurisdictions Latinos as well, so in that
4 realm.

5 When we are talking about monetary
6 sanctions the only study that I know of that's been
7 published is my study in 2011 in the American
8 Sociological Review that showed that Latinos in
9 Washington State, holding all prior legal
10 characteristics constant, statistically Latinos
11 received higher fines and fees in Washington State.

12 COMMISSIONER KIRSANOW: Is that
13 available on Amazon also?

14 MS. HARRIS: JSTOR.org.

15 COMMISSIONER KIRSANOW: Is there any
16 possible way you could forward that to me?

17 MS. HARRIS: I can, I can forward that
18 to you. And I wanted to make one more point, so
19 there are the racial disparities, but there is clearly
20 class-based disparities within the system.

21 The system is a two-tiered system of
22 justice that disproportionately treats poor people
23 very different than people with means.

24 It's very clear and that's been
25 established and we don't need any statistical

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1 analysis to understand that if you are poor and you
2 encounter the criminal justice system you are going
3 to be treated very differently than someone with
4 means.

5 CHAIRMAN CASTRO: You done?

6 COMMISSIONER KIRSANOW: Yes.

7 CHAIRMAN CASTRO: Great. Well, thank
8 you, that brings us to the conclusion of our Briefing.
9 I appreciate your insights and look forward to the
10 additional information that you are going send.

11 I want to thank our Commissioners, our
12 staff, for putting this together, and remind the
13 public, as you know we just voted that we will keep
14 the record of this Briefing open until June 1st.

15 If the public would like to submit or
16 anyone else would like to submit materials they can
17 do so by mailing them to the U.S. Commission on Civil
18 Rights, Office of the General Counsel, 1331
19 Pennsylvania Avenue NW, Suite 1150, Washington, DC
20 20425, or via email to municipalfees@usccr.gov.

21 It is now 1:28 and we're going to break
22 for one hour for lunch and be back here at 2:28.

23 (Whereupon, the above-entitled matter
24 went off the record at 1:28 p.m.)

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