U.S. COMMISSION ON CIVIL RIGHTS
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BRIEFING UNEDITED
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EXAMINING POLICE PRACTICES
AND USE OF FORCE
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Monday, April 20, 2015
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The Commission convened on the Second
Floor of John Jay College, 860 11th Avenue, New
York, New York at 9:03 a.m., Martin R. Castro,
Chair, presiding.

PRESENT:

MARTIN R. CASTRO, Chair
PATRICIA TIMMONS-GOODSON, Vice Chair
ROBERTA ACHTERNBERG, Commissioner
GAIL L. HERRON, Commissioner DAVID
KLABNEY, Commissioner KAREN K.
NARASAKI, Commissioner MICHAEL YAKI,
Commissioner

REPORTED BY: HOLLY VANPELT
LEX #109998

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COMMISSIONER ASSISTANTS PRESENT:

JUANA SILVERIO
ALEC DEULL
CLARISSA MULDER
ALISON SOMIN
KIMBERLY TOLHURST
AMY ROYCE
JASON LAGRIA
SHERYL COZART

STAFF PRESENT:

PAMELA DUNSTON
MICHELE YORKMAN
RAMEY ANGELA TREVINO
DARREN FERNANDEZ
ANGELA FRENCH-BELL
SEAN GOLIDAY LATRICE
FOSHEE
AGENDA:

I. Opening Remarks by Chairman

II. Panel I: Community Leaders, Civilian Review Boards and Police Organizations
Talila Lewis, Helping Educate to Advance the Rights of the Deaf
Richard Davis, The Arc, National Center on Criminal Justice and Disability
Montague Simmons, Organization for Black Struggle
Felix Vargas, Consejo Latino
Matthew Fogg, Law Enforcement Against Prohibition
Sean Smoot, Police Benevolent & Protective Association of Illinois
Questions from the Commissioners

III. Panel II: Law Enforcement Officials and Experts on Police Accountability and Use of Force
Cedrick Alexander, National Organization of Black Law Enforcement Officers
Bob Metzger, Pasco Police Department
Evan Bernick, The Institute for Justice
Pamela Meanes, National Bar Association
Questions from the Commissioners

IV. Break for Lunch

(Agenda continued on next page)
AGENDA:

V. Panel III: Court Officials and Experts on 176 Procedural Justice and Legal Reforms
   Hon. Lawrence K. Mark, NY Unified Court Systems
   Ezekiel Edwards, American Civil Liberties Union
   James Chanin, Law Office of James Chanin
   Delores Jones-Brown, John Jay College
   Jonathan Blanks, Cato Institute
   Questions from the Commissioners

VI. Panel IV: Federal Agencies and Federally-funded Initiatives
   Grande Lum, Department of Justice, Community Relations
   Service William Sabol, Department of Justice, Bureau of Justice Statistics
   Ellen Scrivner, the Police Foundation
   Questions from the Commissioners

VII. Panel V: Researchers and Data Collection
     Experts
     Heather MacDonald, Manhattan Institute
     Fritz Umbach, John Jay College
     David Klinger, University of Missouri St. Louis
     Jon Shane, John Jay College
     Sam Walker, University of Nebraska
     Questions from the Commissioners

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CHAIRMAN CASTRO: Good morning, everyone. My name is Marty Castro. I'm Chair of the U.S. Commission on Civil Rights. Good morning. We want to thank you all for being here and welcome you to the Commission's briefing on police practices and the use of deadly force. I'm going to go into some housekeeping matters, but before I get there, we have two presentations that we would like to share with you. First and foremost, we would like to invite to the podium to share welcoming remarks with us Jeremy Travis. Mr. Travis is the president of John Jay College of Criminal Justice, which is our host today. He is the fourth president of this university, but he also has a distinguished record, having served in the Clinton Administration and been very involved in issues involving anticrime efforts at the federal level, community policing and new law enforcement technologies, which are obviously at the heart of what we're trying to accomplish today, so President, would you please share with us a few welcoming remarks?

PRESIDENT JEREMY TRAVIS: Thank you very much, Chairman Castro and members of the Commission and other guests who are here today. It's a distinct

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pleasure to welcome all of you here today on behalf of
the faculty, students and alumni at John Jay College
of Criminal Justice. This is a fitting opportunity
for us to be reminded at the college of the fifty
years of our existence. When we started fifty years
ago, we were, Chairman, a small college, offering
liberal arts program in the police academy of the New
York City Police Department on the theory that an
educational opportunity for law enforcement officers
was something important to their professional
development. So here we are fifty years later
welcoming the Commission on Civil Rights to this
institution, and in an important way, I think,
reminding all of us once again how important it is to
bring new ideas, new thinking, new perspectives
performed by our law enforcement officers around the
country. Need not point out to the Commission this is
timely that you are having these discussions here
today, and my hope is that your deliberations will
shed light on new challenges that we're facing.

Finally, just let me note that how proud I
am to see that as I look at your agenda there are not
only a number of national experts testifying before
the Commission today, but included in those experts
are some John Jay faculty members, so thank you for

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reaching out to our expertise to help in the
discussions. So I wish you well and stand ready to
help the Commission in any way that we can throughout
the day and afterwards, and if it's -- if you see me
sitting in the back row, it's because I'm really,
really into what you're doing.

CHAIRMAN CASTRO: Okay, well, we're gonna
use the socratic method on you, so we'll let you
slide, but thank you, Mr. President, for your
hospitality today.

Next I would like to ask one of our
commissioners to give some opening remarks, and I
would like to ask Dave Kladney, our commissioner from
Nevada, to speak because he's really the person who's
been the driving force behind this hearing today, and
has worked extremely closely with our staff in our
Office of Civil Rights Evaluation and our staff who
actually put the logistics of this together, and I
think it's only appropriate to hear from him before we
really get started. Commission Kladney.

COMMISSIONER KLADNEY: Thank you, Mr.
Chairman.

There's really no better place to hold this
hearing on the issues of force than right here at John
Jay College for Criminal Justice, nor is it more

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timely. The name for the first Chief Justice of the United States, John Jay is the leading institution on higher education to prepare students for entering the criminal justice field. It is also the leading research institution of criminal justice. There are many people to thank for making our hearing possible today. First, a big thank you to President Jeremy Travis, and the Chief of Staff, Rulisa Galloway-Perry, for making the school available and working with our staff. We would also like to thank John Jay staff who have assisted in every way. We would also like to thank Angela French-Bell and new father, Sean Goliday, of the Commission's Office of Civil Rights Evaluation, who put forth extraordinary efforts to research the issues and identify the panelists who are here today. They have our deep appreciation, as does everyone on the Commission staff who worked so hard to make today happen. Most of all, I wish to thank Ms. Pam Dunston, our Division Chief of Administration in Clearinghouse Services. It is not an easy job to move the Commission's entire briefing apparatus from our permanent hearing site in Washington DC to a distant and unfamiliar place, needing to coordinate and resolve the smallest details to the largest issues necessary for us to conduct this important briefing.
Pam, thank you very much. Your work is much appreciated.

Our topic today is police practice and use of force. I always thought that America is a melting pot, and it's a place where people from different backgrounds come together to build a great nation, but are we a melting pot or are we different cultures and subcultures. Do we look upon each subculture from our own preconceived notion? Division of a melting pot seems far away when citizens of law enforcement have confrontations like we've seen in Los Angeles, in Cleveland, in Staten Island and most recently in North Charleston and Tulsa. These confrontations allegedly range from justified to accidental to intentional, yet each one of them plays into the narrative engrained in the communities that were historically targeted by law enforcement. They also play into the police culture narrative of guardians who are always in danger. When parts of our society feel they are automatically suspected and constantly under threat, it hurts us all. When there are a lack -- when there's a lack of respect in dialogue, it furthers these perceptions. Remember, perception is truth to those with preconceived notions. The lack of transparent investigations with police policing police and a legal
system that keeps the evidence secret feeds the
narrative impression of minority citizens. Law
enforcement is a tough job. A good majority of police
do it well. We should, and they should hold
themselves to the highest of standards. We trust them
to enforce our laws fairly while giving them a
monopoly on use of deadly force. It is not just a
job. They are professionals and they should be
treated that way. Efforts to improve the application
of use of force cannot come at the expense of officer
safety. Most police officers do their jobs well,
treating people they encounter with respect and using
methods they have learned to keep themselves and the
citizens safe. Police chiefs and sheriffs are tasked
with making sure their officers are well trained and
conduct themselves appropriately. Failure to monitor
officer conduct is a failure of supervision. Both
officer and citizen safety are of utmost importance,
but what should be done? This is the question we seek
to answer today. We know the best and safest policing
occurs when there is trust between police and the
communities they serve. It is always difficult when
cultures face change. Hopefully today we can
contribute to the idea of creating a better America.
There is a way forward. Thank you, Mr. Chairman.

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CHAIRMAN CASTRO: Thank you, Commissioner.

So this morning in terms of the
commissioners who are present, I am joined, obviously, by Commission Kladney, but also by our Vice Chair, Patricia Timmons-Goodson and Commissioners Narasaki, Achtenberg and Yaki. Commissioner Kirsanow could not be with us today, so he sends his regrets.

Now as you know the purpose of this hearing is very clear. We are going to discuss with some very distinguished panelists some important information about the happenings that we've seen across the country. As Commissioner Kladney said, a majority of police officers do an overwhelmingly good job. They do their job. They serve us. They protect us. They risk their lives every day. Yet a frightening number of our police officers do not, especially when it comes to interactions with communities of color, and that's why we're here today as the United States Commission on Civil Rights. As Justice Warren said, police must obey the law while they are enforcing the law and too many men of color are dying at the hands of police officers nationwide, whether it's Ferguson or Pasco, and many of these fatal interactions are now being caught on the technologies that we all carry with us, cellphones and cellphone cameras, so these
interactions cannot be covered up. They cannot be dismissed away. They must be addressed in the light of
day by organizations such as ours. And I say these are our police forces because they're made up of members
of our community. They're here to protect us. They're here to serve us, yet in communities of color they are
becoming judge, jury and unfortunately executioner.
Many of us, myself included, have been victims of police overreaching and misconduct that have not been addressed. So we've looked at this issue before. In Missouri they recently held a hearing in February in St. Louis County on what happened in Ferguson as well as other issues involving Missouri, and some of the work that we're going to do today is formed by their work and their initial investigation, and I thank them for providing us with a quick report, interim report, so that we had that in advance of today's hearing and we will expect a more full report from them. But we are not here today to accuse or indict. We're here to educate, learn, elucidate and come up with best practices from each and every one of you that we can then recommend to the President, Congress, to the country as a whole to hopefully, if not eliminate this, but substantially reduce this kind of violence and fatal interactions
we're seeing between our police officers and communities of color.

So today we have a distinguished panel, a number of panels made up of twenty-four speakers who are gonna provide us with their diverse array of views and perspectives. The speakers have been divided into five panels. Panel 1 will consist of community leaders, civilian review boards and police organizations. Panel 2 will consist of law enforcement officials and experts on police accountability and the use of force. Panel 3 will include court officials and experts on procedural justice and legal reforms. Panel 4 will discuss federal agencies and federally-funded initiatives, and panel 5 will conclude with researchers and data collection experts.

Each panelist during their presentation initially will have seven minutes to speak. You'll see a series of warning lights; green, of course, go, yellow, begin to wrap up and red I would ask that you stop. That doesn't mean that's all you're gonna say. We will then have the opportunity to have commissioners interchange and interact with you through questions and answers, and that is where we usually elicit most of the information that results in
what we consider to be a thoughtful dialogue on these topics. Commissioners will then have the opportunity to be selected by me to speak. I'm going to ask them, as we have in the past, to be mindful of the time as well as the ability to allow the other commissioners to ask questions. So with that done, what I would like to do is just inform everyone that once we're done here, we're going to keep this record open for the next thirty days. If the panelists or members of the public would like to add information, they can either do it by mailing it to U.S. Commission on Civil Rights, Office of Federal Civil Rights Evaluation, 1331 Pennsylvania Avenue, Northwest, Suite 1150, Washington DC 205 -- I'm sorry, 20425 or via e-mail at PUF briefedComments@USCCR.gov. That's PUF briefedComments@USCCR.gov.

With that housekeeping out of the way, I would like to now present our first panel. Our first panelist this morning is Ms. Talila Lewis with Helping Educate to Advance the Rights of the Deaf. Our second panelist is Mr. Richard Davis, with the Arc, the National Center on Criminal Justice and Disability. Our third panelist is Mr. Montague Simmons, with the Organization for Black Struggle. Our fourth panelist is Mr. Felix Vargas, with Consejo Latino, and our
fifth panelist is Mr. Matthew Fogg, with the Law Enforcement Against Prohibition, and our sixth and final panelist from this panel is Mr. Sean Smoot, with the Police Benevolent and Protective Association of Illinois.

I would now ask the panelists to raise your right hand and swear or affirm that the information that you are about to provide to us is true and accurate to the best of your knowledge and belief; is that correct?

MS. TALILA LEWIS: It is.
MR. RICHARD DAVIS: It is.
MR. MONTAGUE SIMMONS: It is.
MR. FELIX VARGAS: It is.
MR. MATHEW FOGG: It is.
MR. SEAN SMOOT: It is.
CHAIRMAN CASTRO: Thank you. Ms. Lewis, please proceed.

MS. TALILA LEWIS: Good morning.
CHAIRMAN CASTRO: Good morning.

MS. TALILA LEWIS: And thank you for this opportunity to share testimony. I begin with a grim reminder that more than half of the people killed angrily by law enforcement are people with disabilities. Michelle Cusseaux, Milton Hall, even
Eric Garner are some of the names you might recognize.

Individuals with many types of disabilities, including intellectual disabilities, psychiatric disabilities, diabetes, epilepsy and deafness face violent and often deadly consequences when law enforcement fails to follow federal disability rights, laws and nationally recognized best practices of policing, safe policing for people with disabilities.

People with disabilities who belong to multiple marginalized communities are assaulted and killed by law enforcement at disproportionately higher rates than their non-disabled peers, for example, for being a person of color with a disability and/or for being a person of a different class with a disability.

It's important to note that one in four people in the United States, at least one in four people in the United States are people with disabilities. People with disabilities also represent the largest, the largest minority group within our prison and jail system, most studies estimating that some 80 plus percent of our incarcerated population are people with one or more disabilities. Police officers also report spending disproportionate amounts of time and resources responding to calls involving people with mental illness and law enforcement's role in
responding to individuals with mental illness has increased over the past several decades, with some cities -- city police departments spending more time responding to calls involving mental illness than they do for investigation of serious crimes. Last year the Senate Judiciary Committee on the Constitution of Civil Rights and Human Rights convened in a bipartisan hearing to address these very issues. The discussion explored best practices, including the escalation in criminal intervention, which we'll discuss and my colleagues here also will discuss more in depth. The importance of the Americans with Disabilities Act as related to the enhancement of police procedures in interacting with people with disabilities, the need to forge partnerships between law enforcement and mental health and disability communities. The role of the United States Department of Justice in ensuring that enforcement of federal disability rights laws and acting in accordance with these laws and setting up procedures and national standards for the same. Despite the prevalence of police brutality against people with disabilities, police officers report feeling under prepared or unprepared to manage this special population. For example, California's police academy recruits spend a mere six hours out of 664
hours that are required for training with each police 
academy class. Upon graduation there's no requirement 
by law or even by the Commission that sets up training 
for periodic review of training or periodic updates to 
whatever they have learned in those six hours that 
they spent learning about disability. We've also seen 
an alarming increase that's worth noting in 
exoneration of people with disabilities, whether 
that's people who are deaf, people with mental 
disabilities. All of those included we're seeing a 
spike in exonerations of these groups, which really 
brings to bear questions about not just law 
enforcement's capability of managing and interacting 
with people with disabilities, but the entire justice 
system's ability to manage the same population.

There are some examples in my written 
comment about some of the miscommunications that 
occurred between people who are deaf, people with 
disabilities and law enforcement. I will fast forward 
through that so I can get to the recommendations.

There are -- there are safe ways to 
interact with people with disabilities, and -- and - 
and it's been proven time and time again throughout 
the nation. There are locations in the nation that 
are working to implement policies and procedures that
are safe in dealing with people with disabilities.
Some of these are crisis intervention, deescalation tools, including calm and diverse methods of communication, collaboration with mental health resources and disability rights, resources, physical containment of individuals from a distance and patience. Perhaps more -- most important is the fact that federal disability rights laws, including the Americans with Disabilities Act requires nondiscrimination and reasonable modification in all policing activities. Law enforcement compliance with the Americans with Disabilities Act is critical to promoting public safety and equal acts as to justice. The ADA has landmarked civil rights laws that, among other things, require police departments to take appropriate steps to guarantee that people with disabilities have equal access to programs, activities and services. It's an affirmative obligation that includes providing reasonable accommodations and modifications and adequate training for police officers working with the same population. Some of the recommendations that I've provided include an intentional infusion of diversity and to our justice system, and what that means is that the disabled should be working in tandem with as consultants for

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law enforcement across the nation. The Department of Justice should be establishing some minimum national standards and devising some sort of training that would be provided to police departments, sheriffs departments across the nation just so that there is a minimum standard in place. All police departments should be required to adopt general orders for safe and nondiscriminatory interactions with people with disabilities.

I'll skip through a couple. Mental health courts should be used as an alternative, a cost effective alternative, to incarceration for people with disabilities. Police departments should implement crisis intervention and deescalation strategies, including the use of time, communication, coordination and containment to reach nonlethal resolutions in conflict and confrontation. The Department of Justice should resolve to collect more complete and detailed information on, quote, unquote justifiable homicides and also provide statistics regarding disability status of each of the deceased persons in those cases. Officers who do not follow procedures as related to Federal Disability Rights laws should be held fully accountable and prosecuted where necessary. Mental health agencies should be

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assigned the ultimate responsibility for care for
people with mental illness in their communities and
held accountable. In addition to that and kind of in
tandem is that we want to see more community-based
care and funding thereof, and finally we'd like to see
legislatures ensuring that law enforcement receive
adequate training on individuals with disabilities and
mental health crisis intervention, cultural competency
and sensitivity, deescalation and intervention
training and funding of community-based mental health
community.

CHAIRMAN CASTRO: Thank you. I'm sorry, I
have to --

MS. TALILA LEWIS: No, thank you.
CHAIRMAN CASTRO: We have your written
statement as well, so all of these recommendations
you have there will also be part of our record. Mr.
Davis.

MR. RICHARD DAVIS: Thank you, Chairman
Castro, members of the Commission. My name is Richard
Davis. I'm the Director of Public Policy for the Arc
Maryland, and also the team leader for the state's
Disability Response Team with the National Center on
Criminal Justice and Disability.

The Arc's National Center on Criminal

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Justice and Disability or NCCJD is a training and technical assistance center, funded by the Department of Justice Bureau of Justice Assistance, and we're thankful for the opportunity to provide testimony for this briefing concerning people with intellectual and developmental disabilities or IDD in relation to police practices and use of force. The National Center is the first national effort to bring together both victim and suspect offender issues with involving people with IDD in one comprehensive effort to educate criminal justice professionals. The National Center partners with criminal justice professionals, including law enforcement and their respective national organizations, such as IACP, to create the pathways to justice training program, fact sheets, white papers and training materials as well as provide information, referral and technical assistance addressing public safety issues. NCCJD is accumulating a robust clearinghouse of information and has already begun investing promising practices regarding law enforcement training on disability issues from across the country. The National Center commends the U.S. Commission on Civil Rights on their recognition of this human rights issue at a time when increasing numbers of individuals with disabilities are transitioning from institutional to community living. Through NCCJD information or referral process
we've seen individuals with disabilities treated
unjustly in several intercepts of the criminal justice
system. Perhaps one of the most notorious and tragic
recent examples is the story of Ethan Saylor's first
contact with the criminal justice system. Ethan Saylor
was a young man with Down syndrome from Frederick,
Maryland. His first contact with police came when he
tried to stay in a movie theater to see a second
showing of Zero Dark Thirty. The theater manager
complained to three off duty officers working as
security and their arrival quickly escalated into a
violent confrontation. Despite requests from Ethan's
support staff, the way Ethan's mother was a phone call
and a short drive away, the officers tried to handle
the situation, the exact sequence of events is in
dispute, but before the evening ended Ethan was dead
due to asphyxiation when he was placed in prone
restraint. Ethan's case highlights the critical need
for law enforcement to have more meaningful, direct
experience with people with intellectual and
developmental disabilities and a willingness to use
less intrusive, nonlethal and nontraditional
approaches when interacting with citizens with

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disabilities. More than 54 million Americans have a
disability, comprising the largest minority group in
the country. Of those 54 million, roughly 2 to 3
percent have an intellectual disability. People with
intellectual and developmental disabilities, may have
familiar diagnoses, such as autism, Down syndrome or
fetal alcohol spectrum disorder or they may have no
particular diagnoses associated with their disability.

The National Center on Criminal Justice
and Disabilities identify three main challenges.
First is inconsistency in training. Despite efforts
of the Arc, other non-profits and police agencies
over the past twenty to twenty-five years, there
remains a lack of consistent, ongoing training for
all criminal justice professionals on intellectual
and developmental disabilities. Secondly is disparity
in training contents. There's considerably more law
enforcement training available on mental illness than
intellectual and developmental disability. People
with IDD have the safety both as suspect defenders
and victims, different from persons with mental
illness; therefore, specific training on IDD is
needed if officers don't feel confident when working
with this population. Third is an unusually high rate
of victimization. People with disabilities are
especially vulnerable to victimization or manipulation by others, sometimes leading to criminal activity or patterns of victimization. Among disability types measured, persons with cognitive disabilities have the highest rate of violent victimization, thirty per one thousand or 3 percent. People with cognitive disabilities, such as intellectual disabilities and developmental disabilities, such as cerebral palsy represented the largest group of victims. When police officers fail to handle emergency situations involving victims with intellectual and developmental disabilities appropriately, the chances of offenders remaining at large and re-offending greatly increases. To protect the public safety, law enforcement needs specialized training on effectively working with victims with disabilities. To foster better relationships between persons with disabilities and law enforcement, effective training needs to focus on relationship building. Training must not focus on law enforcement to diagnose disabilities, but on creating a better awareness about people with disabilities and assisting officers in creating an attitude of doing what it takes to ensure understanding of the citizens being served. Building principles of inclusion into the
training as well as how the training is incorporated into policing overall can help remedy misperceptions from both the officer and the person with the disability and avoid future tragedies from happening in our communities. The National Center's Disability Response Teams or DRTs offer an evidenced-based approach to this issue. When an individual who has different needs or communicates differently becomes involved in a complex system with many moving parts, tapping the expertise of multiple parties within the criminal justice system facilitates the smoothest possible outcome. Utilizing the promising practices seen across person centered planning and healthcare to develop personalized justice plans and also in the Office for Victims of Crime materials on assisting crime victims with disabilities, the National Center of Criminal Justice and Disabilities is supporting the evidence-based approach to training multidisciplinary disability response teams to bring together criminal justice professionals, including law enforcement, legal professionals and victim advocates, disability professionals, people with disabilities and their family members to share expertise on behalf of people with intellectual and developmental disabilities. NCCJD believes that criminal justice professionals who
develop personal relationships with people with disabilities in their own communities can make a positive impact that will reduce the number of miscommunications, needless arrests, overlooked victims and possibly deaths of people with disabilities.

In conclusion, to ultimate prioritize the safety of people with disabilities as well as officers, there are promising practices all along the spectrum of interactions between officers and people with IDD. Great thinkers have said that true peace is not really the absence of tension, but it is the presence of justice and that peace cannot be kept by force. It can only be achieved by understanding. It is with this in mind that hope to build a safer, more just and inclusive society for people with disabilities to live safely and peacefully with the men and women of law enforcement in their communities. Thank you very much for considering our views on this issue.

CHAIRMAN CASTRO: Thank you, Mr. Davis.

Mr. Simmons.

MR. MONTAGUE SIMMONS: First and foremost, thank you to members of the Commission and to our host here, John Jay. On behalf of the Organization for

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Black Struggle, the community organizers and activists
we've stood shoulder to shoulder with for years and
the national community of activists have actually come
to stand with us since August 9. We've actually worked
to create a frontal resistance that has come to be
known as Ferguson. We thank you for this invitation
and thank you for casting the eyes of your Commission
on our communities. I owe you a personal debt of
thanks for making it clear that we who actually live
in St. Louis, whether it's the Fergusons, Pine Lawns,
Berkley, northwest villages or in countless
municipalities throughout the county, there are
countless boys and girls grew up, myself included,
feeling like prey because the police in our city
stalked those of us who actually who looked like us
for pleasure and for profit, but there was actually no
remedy for us specifically to be sought under our
democracy. I remember in my own younger days when the
harassment seemed like it was daily. Just walking home
from school or from the bowling alley, it could result
in some form of intimidation, humiliation or
harassment. For us this was a right of passage that
our brothers, mothers, fathers, cousins and uncles did
their best to prepare us for. They knew what happened
when there was more than two of us. They knew what
happened if it was just one of us. They warned us about driving 35 miles in a 30 mile an hour zone. They warned us about every nook and cranny where they could be hiding, whether it was on Hanlon Road or behind a local shopping center. They created routes for us to travel in and out of the community when there were ongoing insurance checks, sobriety checks. There were usually police forces continuing to shake down for money. This for us has always been a generational issue. The U.S. Commission on Civil Rights has now cast its eyes upon our community because the execution of Mike Brown, the corrupt and inept ways of the investigation as follows: The investigation that ended in a fiasco of a grand jury that would have amounted to business as usual, except for the anger, tenacity and determination of the people who have been in the streets over 250 days. What happened in Ferguson is a structural feature of our criminal justice system, not a bug, glitch or anomaly. The social concept of militarization, racism, marketization are in full bloom on almost every street in America. We have law enforcement bodies bringing to bear military force on citizens. We have that force falling most heavily on people of color, protestors, decadents and other traditional

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structures in many cases that are fully contingent on 
these profits. We are not here in the interest of 
police reform because it never has and never will 
work. We want a full transformation of our policing 
systems. That means re-imagining every aspect of 
policing authority. Presently our police are trained 
in general to restrain victims, protect personal 
property and disburse crowds. This structure does not 
hold officers who violate our first and fourth 
 amendment rights accountable. And under this 
suppressive system we granted a profit. No collection 
of incremental and unconnected changes are going to 
transform such a system into one where police are 
public servants who protect our civil and human rights 
as members of an accountable, responsive entity that 
works in partnership with civilian communities. The 
Organization for Black Struggle has designed a quality 
policing initiative that creates deep partnership 
between community and police on all levels, and 
specifically in all phases of policing, recruitment, 
training, deployment, accountability and advancement. 
At minimum we want to see residency requirements, 
conflict resolution and threat progressive training, 
demilitarization of all forces, including specific 
withdrawal from the
of police as collection agents, implementation of field contact cars that allow us to track every interaction and early warning system database on police behavior, a media accountability system that includes body and dash cameras where the data is actually controlled by the civilian review board and civilian accountability project that has subpoena power, investigatory and prosecution powers. The board has to have a relationship and a role in developing police policies in certain stadiums. We have attached the full initiative to our statement. The challenge for us and for those of us who have actually committed to this fight is that most of the recommendations that we offer are not new. In fact, over the last fifty years, crisis after crisis have resulted in civil investigations from the sources that include this very Commission, but they continue to go unheeded. My parents came of age during the reconstruction of our culture and democracy that took place in the late '50s and '60s. During that period evils were exposed. Lives were lost. Entities were transformed with the hope that justice would prevail the generation on board. Yet today in 2015 the promises of real justice are as of yet unfulfilled.
Our communities are now subject to institutionalized state violence and they have no path for remedy from this office. Sergeant marshal says we cannot play ostrich. Democracy just cannot flourish amid fear. Liberty cannot bloom amid hate. Justice cannot take the fit of rage. America must get to work. In the true climate in which we live, we must go against prevailing wind. We must descent from the indifferent. We must descent from the apathy. We must descent from the fear, the hatred, the mistrust. We must descent from a nation that's buried its head in the sand, waiting in vein for the needs of its poor, its elderly, its sick to disappear and just blow away. We must descent from a government that has left its young without jobs, education or hope. We must descent from the poverty of vision and the absence of morale leadership. We must descent because America can do better and America has no choice but to do better.

CHAIRMAN CASTRO: Thank you, Mr. Simmons.

Mr. Vargas.

MR. FELIX VARGAS: Commissioners,
distinguished panelists and guests, I'm pleased to have this opportunity to testify on a topic that is --

COMMISSIONER CASTRO: I think your
microphone is off. There you go.

MR. FELIX VARGAS: No where can a
discussion of police practices or prosecution of
police or unjustified use of deadly force have
more relevance than in my hometown of Pasco,
Washington. Now Pasco is a historical village
right at the confluence of two great rivers, the
Columbia and the Snake. It is a small little town
in southeast Washington that evolved from a
railroad depot to a thriving and agricultural
center that it is today. The population of
Hispanics there have grown considerably. The city
now has a population of 68,000. 65 percent of
these are Latinos. Since the '40's and '50s
Hispanics have been attracted to this great and
wonderful part of the country by the wonderful
opportunities in agriculture. It is a place where
families, including my own, have found
opportunities to find and attain a piece of the
American dream. Now we have also cultural divide.
There are language and racial diversity are not
always appreciated or understood, and sometimes
not accepted. For decades my hometown, which sits
right across from the Hanford Nuclear Reactor
site was a place where minorities were dumped, if
we can use that term. Blacks and Latinos were
largely told to reside only in
town, even though they worked forty miles away at the
Hanford Nuclear Site building, the Hanford De-reactive site. They couldn't live in the neighboring towns of Kennewick and Richland. That was reserved for the Anglo populations only. There's a recent article written by historian Kate Brown which documents this fairly well. We remain largely disenfranchised and underrepresented in the state and county organs of power, including the city council, county commission, school board and yes, the Pasco City Police Department. To give a background that a young Hispanic by the name of Antonio Zambrano Montes was killed by members of the Pasco Police Force at approximately 5 p.m. on Tuesday the 10th of February. Mr. Zambrano, also one of the persons who had mental disability mentioned by Ms. Lewis earlier, was observed throwing rocks at the intersection of 10th and Lewis. Police were called. They responded. They came and sought to confront and they did confront Mr. Zambrano. They gave orders to him in English, which was not his native language. Since they couldn't communicate with him, they started firing tasers at him. He started running across because, you know, tasers do hurt when you got hit. He started fleeing and as he fled, the police drew their pistols and

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fired at him. One volley as he ran across the street.
He gets to the other side of the street, turns left.
The police are only like thirty yards behind him.
They fire at Mr. Zambrano at that point. He turns,
lifts his hands up in the air and a second volley
hits him. In all seventeen shots were fired, between
six and eight impacted on him. Now all of this was
captured graphically in the cellphone camera video
which were posted on YouTube. So from the comforts of
your living room, people around the world were able
to see this homicide committed by members of the
Pasco Police Force. The cellphone videos make clear
that Mr. Zambrano posed no threat to anyone, much
less the police. His death at the hands of the police
was totally unnecessary. It did not appear that the
police officers even sought or thought to think of
getting an interpreter to help diffuse the situation
to communicate with Mr. Zambrano. When they couldn't
communicate with him in English, they thought it
convenient to just pull their weapons out to fire at
him. Now we've had previous instances of police
abuse. There was one of the officers, Brian Flannigan
is his name, was accused of racial profiling in 2009
for pressing the face of a young Hispanic woman onto
the hood of a hot car, causing burns to her face. She

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filed a complaint. It led to litigation, and she was
ultimately awarded $100,000. We have an investigation
process going on where police officers are
investigating police officers, and we have, as Mr.
Kladney pointed out, a situation where police
investigate police it's not credible. You add to that
a prosecutor who has been tied to the investigation
since day one and you see the makings of a perfect
storm. We will not get an impartial and objective
determination of what the charges will be filed
against them, against the three. There's an inherent
conflict of interest. We have sought to get the
prosecutor relieved or have him step aside, but that
has been rejected by the prosecutor. Now it's
interesting that the police officers in question were
never -- were never interviewed right after the
incident, right, so all the testimony of all the other
witnesses being taken, the police officers
conveniently at the end of all of this will have a
chance to offer their testimony, their take on it what
actually happened. In no time in my thirty-three years
of national security work for this great country have
I ever been in a situation where people involved in a
confrontation were not debriefed right after a
confrontation such as this. This I submit to you
poisons the credibility of the investigation. This also is the start of the contrast of what happened in North Charleston, South Carolina where a police officer there who shot an African American, today he sits in jail and has formal murder charges filed against him, unlike the three police officers in my hometown who are free to walk in the streets and on paid administrative leave. Now the police chief in North Charleston also said he was sick by what he saw in the video. Don't expect to hear that from a police chief, Bob Metzger, who sits behind me. He's more worried about managing the press fallout and supporting his officers than he is recognizing what has happened in his hometown. So what did we learn? We believe that there's developments of a strategy that we ought to be pursuing. First we need a top-down review of the current police practices and policies in Pasco. Without this we cannot get anywhere. We need to leverage the supporting services offered by the Department of Justice, the state of Washington and governmental/nongovernmental organizations, academic, community leaders to help us find a solution. We need a police oversight commission because our public one, demands that it has to have the police. We cannot expect the trust of the
police to be restored if we don't have visibility to
how the police culture unfolds. We need training.
Now Police Chief Metzger here will tell you that
police officers get 130 hours of training, but he
cannot tell you that this is effective monitoring or
to ensure compliance. We need a highly trained police
officer. We need justice for this and we need to learn
from this and move on and fix the measures which have
been longstanding. I thank you for inviting me to
share these thoughts with you today.

CHAIRMAN CASTRO: Thank you, Mr. Vargas.
Mr. Fogg.
MR. MATTHEW FOGG: Thank you very much. My
name is Matthew Fogg. I'm a retired chief deputy,
United States marshal. I was simply in talking about
this subject, I'm a member or law enforcement against
prohibition, which advocates ending of drug
prohibition, much like American ended alcohol
prohibition. We believe the war on drugs in America
has been the single most racist national policy that
has created cultures of a different extreme, law
enforcement, racial, enforcement disparity in black
and brown communities nearly having the same impact as
slavery. Forty years ago before the war in Georgia
began American had 300,000 people locked up in its
institutions. Today America has 2.3 million locked up
in its institutions, 7 million on probation and
parole. One out of three individuals of color from
the ages of 18 to 30 are in the criminal justice
system out on probation, parole or incarcerated. The
Equal and Justice Institution also a project that did
a survey and they found out that fifty percent of all
men of color in major urban cities, such as Los
Angeles, Philadelphia, Baltimore, Chicago, Washington
DC are incarcerated or in some form in the criminal
justice system. Ladies and gentlemen, I testify here
because of the fact of what happened to me and what I
observed in law enforcement that simply just
translates from the inside to the outside. I took on
the Justice Department for race discrimination, won a
major lawsuit in 1998 and found the entire U.S.
Department of Justice U.S. Marshal Service to be a
racial, hostile, environment for all its African
American deputy U.S. marshals. That lawsuit is still
pending today, even though I won my personal lawsuit.
That means right now when we talk about enforcement,
we talk about the various issues, how do we deal with
hateful forces, how do we deal with disparity. What
we see, as we've got institutions that are already
affected on the inside. I was told

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go along to get along. Don't take on the system.

Don't blow the whistle. Don't speak out. My partners were told the same thing. The New York Post, matter of fact, did an article front page Sunday morning edition, said bigots with badges; U.S. Department of Justice blatant racism right here in New York City.

When we look across the board, ladies and gentlemen, we see time and time again when I came out of the academy, first thing I always remember my supervisor telling me, he said Fogg, I know you learned all of this stuff in the academy and all the great academic stuff, he said, but this is how we do it here, and this is what we're finding time and time again, that what we're seeing is this stuff just isn't occurring just as they say a few bad apples. It is a system in place. I know most officers are good. We say it all the time, but that doesn't matter whether most officers are good when you're in the command-controlling environment. All it takes is one leader to be out of whack and everybody's gonna follow that leader, and if he's somebody that determines that whether or not we can turn our heads, don't report wrongdoing when we see other officers beating or firing, we have certain codes of conduct that we used, and I can tell you those codes of conduct behind the blue wall of silence, and I listed a couple of them because I was thinking here, I said, I remember it
says always have a second throw-down weapon just in case you get into a shooting that it was illegal. When involved in shooting it says be prepared to always articulate that you felt like your life was in danger or threatened. Even if it wasn't, just be prepared to do that. These are -- this is real behind the blue wall of silence. If a suspect runs, they will get a beat-down no matter what. We gonna give you a beat-down. That's automatic. Get the arrest numbers up on the weakest link. Don't worry about it. I remember working DEA projects, and they asked me, they said well, Fogg, I said listen we gonna make this an equal opportunity enforcement operation. I was a group supervisor in charge. I said we going into all areas to make arrests. Our white supervisor, special agent in charge pulled me outside, said Fogg, I know they're doing drugs and probably doing the best stuff over there. They got the purest drugs in the white, affluent neighborhoods, but if we go over there and start locking them people up, he said let me tell you what's gonna happen. He said we're gonna get scrutinized. We would get a phone call. They gonna shut that operation down. There goes your overtime. There

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goes all your seizes and everything. He said man,

just go to the weakest link. What we have then is what
we got now, is ethic cleansing. We see over and over
again in law enforcement all of these things that are
coming out. We see the DOJ recently did a report in
Philadelphia, Pennsylvania showing the widespread
racial disparity. These disparities aren't just
happening overnight. Other officers, we know, we knew
we couldn't go into those affluent neighborhoods. I
knew if I stopped the car with four whites in it and
four blacks in it, whatever I said those black folks
did, that institution is going to back me up, from my
supervisor all the way up to the judge. Those white
folks might say to me Fogg, what was your probable
cause for stopping. You never asked me that before.
This is the type of institution that I begin to see
internally that we were working with, so when I went
all the way and got a finding against the U.S.
Department of Justice because I had an opportunity to
settle, people said take the money and run, man; you
can't win against the Justice Department, but I went
all the way and won, and that just said, it sent a
message to the Department of Justice. This is real,
ladies and gentlemen. So if it's happening to me, if I
got to be concerned about working next to a bigot with
a badge, somebody that I know is going to harm me, imagine what they're going to do to the public. So when we come up with solutions and we come up with ideas how do we combat this problem, first thing we got to do is give police officers whistleblower protection. You're not going to get anything done if you don't have a program just like the U.S. Marshall set up when we have something for witness protection for people that come forward and -- and tell the government tell on others. You got to have that. You got to have civilian review boards with power in them. They cannot be boards that go back with no power. They got to have subpoena power and they got to be separate and apart from law enforcement. The law enforcement cannot police themselves. It scares me today that I got to stand here and I got to say to most people of color you cannot trust law enforcement in America today. That pains me, but when I look at what the FBI just came out with, indicating that hundreds of people were put to death, even on death row because of forensic science that was -- was -- was, what's the word I want to say, forensic science was tailored and -- and corrupted, again, when we talk about the whole institution, we talking about from Ferguson, all the way around to Philadelphia, we
talking about these issues are internal issues that need to be addressed. We got to have video, body cameras, all of these things. As much transparency as there can be there has to be in law enforcement. So I say to this committee, if you're going to make an impact, that's the first thing you have to do, is give law enforcement people witness protection and have these body cameras and have civilian review boards and have separate entities that make certain that law enforcement will always have oversight on top of oversight. Thank you, very much.

CHAIRMAN CASTRO: Thank you, Mr. Fogg. Mr. Smoot.

MR. SEAN SMOOT: Thank you, Mr. Chairman, Commissioners. My name is Sean Smoot. I'm the Director and Chief Counsel for the Police Benevolent and Protective Association in Illinois. I'd like to thank the Commission for giving me the honor of speaking to you today. I'm very grateful to have the opportunity to lend a voice to the rank and file officer and organizations that represent rank and file officers. And I appreciate the opening comments of Commissioner Kladney and Chairman Castro at the start of this briefing.

I spent the last twenty years of my life
representing the interest of rank and file police 
officers in every imaginable legal, legislative and 
executive forum at the national, state and local 
level. I verily believe that with very few exceptions 
police officers are remarkably good people who 
voluntarily face extraordinary challenges in their 
daily duties. These dedicated men and women take an 
 oath and they make a promise. They promise to serve 
and protect. This promise is universal. It is the same 
oath, the same promise made and kept every day in New 
York, Los Angeles, Chicago and in your hometowns. 
Whether it's in response to a terrorist attack, a 
tornado, a felony or a flood, police officers run 
towards danger as others run away. They take the 
promise seriously and they put their lives on the line 
in order to keep it in many cases. Some of them are 
catastrophically injured. Some of them die. It's their 
service and sacrifice that we will -- that we will 
memorialize next month in Washington DC at the 
National Police Memorial. It's the service and 
sacrifice that makes everything we do in America 
possible. We're free because others took an oath 
promising to be there when we need them to pull us 
from a burning car or out of the rubble, to pursue 
those who would commit crimes against us, to protect
our lives. Nowhere has that been exemplified more powerfully or poignantly than here in New York City. I wish that I could come before you today proclaiming that police use of deadly force can be eliminated, that by implementing a specific type of training tool or technique we can eliminate tragic events, the type that open new wounds or reopen old wounds, the type that plague our communities in our country. Sadly confrontations resulting in police use of deadly force can't be eliminated. Some people, whether acting out of delusion, drugs or purely evil intent pose a lethal threat to others. This point was exemplified in the recent ABC news series In an Instant, which revealed to the nation in significant detail just one week ago an event involving Jacksonville, Florida Police Officer Pete Soulis who killed an armed offender after being shot five times himself. This episode illustrates how quickly a seemingly calm and routine police shift can turn into a deadly, violent interaction. Now that is not to say that all uses of deadly force are legally or morally justified. Police officers, like the rest of us, are imperfect human beings. There are over 18,000 police agencies across the United States and nearly one million police officers. Let me say this loud and clear, those who
choose to abuse their power and authority stain the
good service of the entire law enforcement community and
they must be held accountable. Furthermore, credible
representation of police officers requires the
unconditional condemnation of those few who abuse the
authority that so many officers exercise dutifully
and responsibly under the law. Deadly encounters,
while they cannot be eliminated, can be reduced. The
interim report of President Obama's task force on
total policing in the 21st Century identified on several
recommendations the end action items, which if
adapted properly can greatly reduce police use of
deadly force. As you may know, I was appointed to
serve as a member of the task force by the president
on December 18, 2014. In less than ninety days the
task force held several public listing sessions
across the country. Heard the testimony of over 120
live witnesses and received thousands of pages of
written testimony and other documents. This report is
the process of a consensus deliberation. I understand
that the Commission has a full day of testimony
scheduled, and I suspect you're anxious to engage me
and other members of the panel with questions and
comments. So I would just direct your attention to
the recommendations and action items that I've

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submitted in my written submission highlighted to you
from the President's report. I trust you've been
provided a copy of the report, and if you have not,
I've provided you in my submission the internet site
where you and others can get a copy, a whole copy of
it. I hope that you will read the whole thing and I
hope that the Commission will embrace the entire
report. I also hope that you will remember that
police officers are the tip of the sphere for a very
troubled criminal justice system. I want to point out
just one thing because it's come up in multiple
pieces of the testimony this morning, and this is the
effective developments, I think potentially very
effective technological development of body-worn
cameras, which I've outlined in some detail in my
written submission to you. I have long been an
advocate for their use and I believe that proper
implementation of those will go a long way towards
reducing violent interactions between police and the
communities they serve, and this is born out by some
very interesting science. We can do more, though,
than just employ body cameras. I think we can do a
lot more in terms of employing technology to create
better real life simulation training which should be
expanded beyond use of force and into training areas

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related to cultural competency, crisis intervention, implicit bias and recognizing disabilities. Police organizations can play an important role in reducing violent interaction by expanding their work in community outreach like police athletic leagues and by helping to educate members of the public about what their members do, how they do it and why. More training and more community involvement are the key to building trust and ultimately reducing violence.

In closing I would like to again thank the Commission for your kind invitation today. I realize that I and others provided you with a good deal of information to consider, and I sincerely hope that the work of the President's task force and hearing my perspective of that work will assist you in advising the President and Congress in the future. I would also like to thank you and your staff for your time and for your service in promoting liberty and justice for all Americans. Thank you.

CHAIRMAN CASTRO: Thank you, Mr. Smoot.

Before I begin to invite questions from the commissioners, I want to for the record indicate that Commission Heriot joined us so you can make sure it's in the transcript of the hearing and also for my fellow commissioners, we just received an official
confirmation from our Office of General Counsel that
the our notational vote to confirm President Obama's
nomination of Mauro Morales (ph) as staff director
passed unanimously.

Commissioner Kladney, you want to take
the first question?

COMMISSIONER Kladney: Thank you.

Thank you, Mr. Chairman.

Mr. Smoot, the other witnesses called for
independent investigation. Today most use of force
investigations are done by sister agencies, you know,
the city next door, the state police, whatever. Do you
believe -- recently, just and actually the other day
in Baltimore I heard on the news this morning a young
man died, and the mayor is involving a parallel
investigation between the sister police forces doing
an investigation and we have independent
investigations companies that do it and things like
that. Do you think it's an inherent conflict to have
sister police forces investigate police, other police
agencies because they work on task force together, the
chiefs work together they work on investigations
together, their DNA is kind of like all mixed
together?

MR. SEAN SMOOT: I -- I don't. In the

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context that we do it in the state where I'm from in Illinois, almost all police shootings or uses of deadly force outside of the City of Chicago are investigated by either the state, Illinois State Police, which has a segregated Public Integrity Unit that -- that does those investigations or by a multi-jurisdictional major crimes unit, and in those -- within those multi-jurisdictional major crime units, if there even are officers who are assigned to those units from the agency where the incident occurred, those -- those officers are not allowed to participate or speak to the officers who are doing the investigation. In fact, I think -- I think there's a couple issues with regard to having private companies do these investigations. One, I think there's an analogy that can be made in terms of privatizing corrections, which I think is a very dangerous thing to do, and I think whenever we put a profit motive on a function of government, perhaps you would come up with results that are driven by profits and not by substantially getting to the truth. And the second thing which is something that was identified in the President's task force report is the importance of having police officers conduct these investigations who have had exposure to the same types of force
training and understand how these situations can unfold and what realistic reaction would be to them.

COMMISSIONER Kladney: I might be able to agree with you if I lived in a state like Illinois. I don't. I live in a small state. One police department investigates the other police department. They all pretty much know each other, hang out at the same bars and things like that, so I think a large state perhaps can isolate somebody.

My second question has to do with the 48 hour rule. What do you think of that, where like Colonel Vargas was talking about where in a lot of contracts, police contracts, where a person involved in the use of force complaint doesn't have to make a statement for 48 hours and consult with their lawyer, do this, do that, see all the evidence and then make a statement? The reason I ask that is because all other civil servants have to make a statement right away. Why not police officers? Why is it negotiated into a contract?

Mr. Sean Smoot: I believe it's negotiated into the contracts for various reasons. One, the science behind how people remember things, particularly those that are involved in a high stress, adrenaline infused situation has shown that memories
can often be inaccurate if they are immediate because, for instance, if a police officer has a firearm pointed at them, the research shows and the science shows that they can get what is -- what is commonly referred to as tunnel vision, and while they may be focused on the barrel of the gun, their brain continues to process other things that occur away from that focal point, but those things will not come back to them. That processing will not come back to them until their brain catches up after -- after the incident. Some departments where there is no contractual requirement, the investigating agencies often require that officers have at least two sleep cycles before they interview them for their -- for their investigation because they want to get the most accurate information that they can from the officer in terms of what they've -- what they saw, what they perceived and -- and what their physical reaction.

COMMISSIONER KLADNEY: So it's your belief that the officers should be able to review the evidence, talk to fellow officers, see what they found before they make a statement?

MR. SEAN SMOOT: I can't say that they should be able to review all of the evidence. Should they be able to talk to other officers who were

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directly working with them, I -- yes, I don't think that there's a problem with that in terms of not to formulate or create testimony, but in terms of I thought that he was over here; is that where you were, after the fact. But initially normally officers are sequestered from -- from other officers. In -- in -in my state it's fairly typical to have contract language that would either require under the law or under the contract that an officer be provided immediate medical attention if they need it, and then that they would only be speaking to a mental health professional or clergy person, their spouse.

COMMISSIONER KLANDNEY: And their lawyer.

MR. SEAN SMOOT: Or their lawyer, of course.

COMMISSIONER KLANDNEY: I got just one more area I want to cover because I know other people have questions.

MR. SEAN SMOOT: Sure.

COMMISSIONER KLANDNEY: You talked in your statement, I believe, about nonpunitive investigations. Did you talk about that?

MR. SEAN SMOOT: Yes, I did.

COMMISSIONER KLANDNEY: You weren't -- there didn't seem to be some clarity about whether those
were privileged or because you made -- made mention
about medical and aviation.

MR. SEAN SMOOT: Yes.

COMMISSIONER KLANDNEY: But the problems that
I've heard about the debriefs is that they're not
done, that the rank and file don't really get
anything. The investigations are never made public and
all that. Do you agree with that? Do you agree that
they should be public and privileged -- private and
privileged or do you believe that they should be
disseminated through the police department or should
they be made public? What -- what exactly is your
thoughts on that?

MR. SEAN SMOOT: I think in large part it
might depend on what the exposure to liability would
be, and that wouldn't necessarily just be liability
for the officer, but liability for the agency, but I
think that -- that they should be done, and -- and
they should be totally separate and apart from other
types of investigations which ultimately are made
public. So for instance, they should be totally
separate and apart from, of course, any criminal type
of investigation into the officer's conduct, and they
should be separated from the internal affair or
internal review process of the department. The reason
that I think it's essential that we do that because what we're referring to is what is commonly called assembly event reviews is because there is a great deal of information that could be learned from that type of a review, that type of an open, honest review between the officers who were involved and other parties who were involved in the incident that could prevent future uses of deadly force or future uses of force. And, you know, I think we really miss a lot by not learning from those events and -- and we have a very good guidepost in terms of medicine where the federal government has actually created a safe -- a safe place, a set of laws which is cited to in -- in my written submission, so that those who work in the medical field can learn from their mistakes quickly, relatively, after they're made so that, you know, we don't have surgeries that were in errors made, somebody doesn't mark the right part of the body to be operated on or -- or people notice that, you know, a sponge is missing when they finish closing up a patient. These are the types of, you know, I use that -- those as examples, but obviously there are a lot of things that I think we might miss from an analysis when the analysis is strictly an adversarial one, the investigation is strictly an adversarial one.

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CHAIRMAN CASTRO: I have to move on now.

We have Commissioner Achtenberg, followed by Commissioner Yaki, myself, Vice Chair and Commissioner Heriot. Commissioner Achtenberg.

COMMISSIONER ACHTENBERG: Thank you, Mr. Chairman.

Mr. Simmons, I was struck by your, first of all, your testimony in its entirety was very impressive, but in particular two elements that you cite. One element of your quality policing initiative recommendations related to the old fashioned residency requirements. I say old fashioned, I think they are out of vogue now, but once were quite prevalent. I'm interested in having you articulate in greater detail why a residency requirement helps, and if you could also discuss with us jurisdictions that have such a requirement, you know, how -- how it's worked, and is there scientific information that backs up the -- the notion that better policing gets done if the police reside in the communities that they're protecting. And then the second issue would be the recommendation that you make for citizens -- civilian review of the -- the -- what comes out of the dashboard camera recommendation, you know, how is that material to be handled and why do you recommend civilian custody of

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that material. So if you could address those two
issues, I'd be very appreciative.

MR. MONTAGUE SIMMONS: Sure. First with
regard to actually the residency requirement, I do not
have scientific data on hand. For a long time within
our region we did hold residency requirements for both
police service, fire service. Now what we've actually
seen in case of Ferguson in point is that the vast
amount of officers who populate those positions tend
to actually live external to the actual region, in
many cases whereas St. Louis is divided primarily with
St. Louis City Proper and St. Louis County. When we
talk about the field of population that I referred to
within northern St. Louis County, the vast majority of
those officers don't live anywhere inside that
footprint. They actually live external in -- in west
of the county, and in our area we have to be very
honestly clear about the way the population works. We
are one of the most segregated areas in the country.
What that means is that you have people who don't live
in the place and don't usually have direct
relationship to citizens, and that also undermines the
idea of actually being able to hold folks accountable.
People feel more or less under occupation with the way
that it currently exists. There was a time in which

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there was at least a minimum of a two year requirement
in place. That at minimum would involve some
increased levels of trust. I mean ideally what we'd
like to see is a system that creates officers that are
first and foremost held accountable to what they're
trained to do, but then secondly held accountable by
the way they're actually related and interacting with
the community which they're being charged with
policing, which means that you can't enter a community
and then not be in a relationship with folks. Right
now what usually happens is officers are deployed in
the community in which they don't have relations. They
have no charge to build relations, which means when
they're being deployed, they're actually deployed --
usually it's actually been driven right now by
science, meaning that they're using policing tactics
that say that we expect crime to happen in these
locations. Persons actually being in a relationship
with people who live there and can tell you exactly
what's going on, we're trying to shift that paradigm
in regard to the residency requirements.

COMMISSIONER ACHTENBERG: And are you aware
of your intentions that do hold a residency
requirement?

MR. MONTAGUE SIMMONS: Locally not anymore.

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We're looking to get it back and I think part of what we're working on within the next version of the document is to bulk up and actually provide more case studies on things like this.

In regard to civilian oversight, you specifically referred to the media accountability system.

COMMISSIONER ACHTENBERG: Yes.

MR. MONTAGUE SIMMONS: And that's been the charge of a great amount of debate, even locally because we've learned especially over the course of the last year that even with video there are many cases in which you won't necessarily get the local justice that you want.

COMMISSIONER ACHTENBERG: Sure.

MR. MONTAGUE SIMMONS: The language that we use is actually my concern that each and every facet of the reforms and the transformation we're talking about includes layers of civilian accountability. With this, honestly, we've actually in the next version you're going to see stricter language about how the data is used because there's also concerns that what is captured by the cameras can actually be used not only to protect citizens but also to violate citizens' rights. So we're very, very concerned about

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how the data is gonna be used. On one hand we
definitely want to see it used to -- to both protect
both the officers and the people they're policing in
terms of giving an account of what actually took
place, but what we don't want to see happen is that
officers walk up into a place just because they have
the camera on and literally violate someone's first
and fourth amendment rights because they're actually
recording that. So in the next version you're going to
see a lot more strict language, but with the Civilian
Accountability Project, we actually believe that there
has to be some level of citizen interaction
accountability and a role in which each and every
facet, whether we're talking about basic training or
in their advancement or in the systems of
accountability where a civilian review board or some
layer of a civilian accountability system has to come
into play. That's only gonna foster greater
accountability and transparency within our community.

COMMISSIONER ACHTENBERG: Thank you very
much.

CHAIRMAN CASTRO: Commissioner Yaki.

COMMISSIONER YAKI: Yes, thank you very
much, Mr. Chair. I also want to thank Commissioner
Kladney for his leadership in putting together this

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Brief question first to Mr. Smoot, and I want to ask Mr. Simmons and some of the other panelists a different question.

I just wanted to follow up really quickly on your statement regarding the 48 hour rule that are in collective bargaining agreements with police officers. If you would show me what the data says about the 48 hours, that would be really important because it just strikes me that there's asymmetry between what we hear often about what the police say they need to get first impressions from witnesses right away after statements and suspect or what have you, but then we're asking another set of recipient witnesses simply by virtue of their contract to be able to reflect for 48 hours, and somehow there's an asymmetry in accuracy that I'm not quite sure I understand.

MR. SEAN SMOOT: So to -- if I could address your comment, I would -- I would, first of all, encourage you to look, there's a Dr. Lewinski who testified before the President's task force, heads the Force Science Institute, and they have done a tremendous amount of -- of research, which is widely available on their organization's website, and I'm sure that Dr. Lewinski would be happy to provide the Commission with a lot of scientific data with -- with
regard to that question.

To your second point, there's a significant difference between a criminal suspect who was given their Miranda rights and has no obligation to answer any questions or provide any information and a public employee who under Gary can be forced under threat of -- of job forfeiture to answer questions and provide information, and so I think that there is a -- somewhat of a -- a misunderstanding that these waiting period rules are the result of a collective bargaining agreement, and in some states they may be. You know, they are also statutory in many states and recommended by organizations like the IACP as part of the best practices because ultimately when that police officer makes their report, they are making the report of what ultimately could be an expert witness in court.

COMMISSIONER YAKI: Sure, no, I understand, but to me it's not just a suspect. It's also, I mean I'm a lawyer. Half of us -- more than half -- of all of us on this panel are lawyers. We know how we would use a witness's first statement versus their recollection a day later as impeachment for -- it's just a comment. I just wanted to get the science, but
the question I wanted to address to Mr. Pasco and Mr. Simmons and Mr. Fogg has to do with a different aspect.

CHAIRMAN CASTRO: Mr. Vargas.

COMMISSIONER YAKI: Sorry, Mr. Vargas, I'm sorry.

MR. FELIX VARGAS: It's all right. It's all right.

COMMISSIONER YAKI: That's what happens when you take off your glasses.

You have a situation -- I -- I -- I ask this because what -- the flip side of residency is that I come from a -- both Commissioner Achtenberg and I come from a city where it's almost impossible for anyone to actually live there because it's so expensive, much less anyone on a public servant's salary; however, if you were to isolate and if you were to have strong affirmative action requirements that in which the police force were to reflect the population, well, we all know that a lot of these populations live in those areas and -- and can -- and can be recruited from -- from -- from these areas, and I would like, you know, your thoughts about how a strong affirmative action policy can help better create a -- a better community policing climate and

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try to reduce the level of, whatever you want to call
it, mistakes, error, intent, bad judgment, bad
policing that goes on right now?

MR. FELIX VARGAS: Thank you, Commissioner
Yaki. I do believe that an affirmative action program
can significantly increase understanding, certainly
linguistic competency which will help community
policing and build confidence within the community.
We don't have that in my hometown of Pasco. We have
roughly fourteen officers, of 72 who are Hispanic and
not all of those are fluent Spanish speakers. Some
have varying degrees because they're third and fourth
generation Hispanics. We're dealing with a community
where 65 percent of the community is Hispanic.
Significantly over 40 percent are first generation,
so the -- it -- English is almost a second language
spoken in Pasco. You need to have affirmative action
programs where you have police officers who are
culturally sensitive and able to communicate with -
with -- with the community to make -- to make a
difference. We have been pushing this. In a meeting
we had on the 27th of January with the police chief
pushed him to consider a better selection program so
that you can bring in more Hispanics. We got the
reasons why that wasn't happening. The standards were

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apparently too high to qualify Hispanics to be selected. We believe that really that is a must. You have to fire your human resources officer, you get someone who can identify and find where these good candidates are and bring them in because without an affirmative action program, we're not going to get anywhere.

MR. MONTAGUE SIMMONS: I guess I need to be clear, in that the residency requirement we're talking about includes affirmative action, but it's also part of systemic transformation of the institution. Right now we have real tangible problems of recruiting folks into policing because of their view of policing and policing culture. The police right now within our community are very much out of relationship. They are not -- they are really viewed as outsiders. They're viewed as hostile forces. They're viewed as occupiers. Our intention is that as we begin to transform the institution, it much reflect new gender and racial parody so that folks will actually be in communication, be in direct relationship with these folks, but in the way it currently exists, honestly, you'd be bringing in people to be cultivated to just become another hostile force, and that's been the tendency definitely throughout my lifetime. We're
hoping for a more systemic shift.

MR. MATTHEW FOGG: You know, in following that, Commissioner, I was thinking about an incident in DC, the DC Superior Court for U.S. Marshals was predominantly African American, predominantly black our force was, and what I saw was from the top down was that we didn't get the same sort of replies to our complaints or we didn't have proper equipment we were working with, everything that we were working with, so a lot of officers sort of became disgruntled. We were overworked by the prison load that was coming in, everything that we was dealing with. Certainly they came along and all of the complaints that we made, nobody paid attention to us until they started bringing in the white deputy marshals. When they brought in all those whites, all of a sudden they began to give them all this space. Everything changed. What we see over and over again is race plays a very important role here. It seems that when you do bring, even if you bring in black officers, a lot of times you might even get the best qualified, because the weakest one, affirmative action we just gonna throw officers at you. The problem here is once we start making certain that everything is done fairly and equally no matter who you are, black or white, if
you gonna apply laws, they got to be applied fairly.

When I look at Ferguson, I think one thing, I think here you have prosecutors that treated an officer
totally different from then what he treated all the
other suspects before the grand jury. So what you get
is these sort of disparities in how we operate and
that's what I think the real problem is even if you
were to bring in black cops. Certainly you want people
there that can identify with community, but you also
have to make certain that there's oversight that
they're trained. They're not just put there because
somebody said it's affirmative action, let's throw
them there.

COMMISSIONER YAKI: Thank you, and Mr.
Vargas, I apologize for the Pasco reference, but I
just want you to know when you were testifying I went
and watched the video on my screen of the shooting and
it's appalling. It is absolutely appalling.

CHAIRMAN CASTRO: Thank you, Commissioner
Yaki.

I've got questions for three of the
panelists, so I'll try to be brief. The first is for
Mr. Vargas. Now in Pasco do you have, I mean is the
Zambrano case an aberration or have you seen other
similar interactions with police and the Latino

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community in Pasco?

MR. FELIX VARGAS: There is -- there is a history of -- of culture misunderstandings, shall we say, and a history of misunderstandings between our police and the Hispanic community. That misunderstanding, however, in the past has not led to violent confrontations for the most part. There -- if you go to Pasco, you'll find any number of folks will come forward and give you their own historical perspective on police abuse, misbehavior within our community, but as far as police-involved shootings, the Zambrano case stands out on its own. We haven't had this level of -- of violence against the Hispanic community by the police force up until the Zambrano case.

CHAIRMAN CASTRO: And in many communities where there are large Latino populations, it's my personal experience that there already tends to be a concern of the interaction between the Latino community and the police for a number of reasons, including immigration status. What has been the condition or the change in conditions between the relationship between the Latino population of Pasco and the Latino community -- and the police department since Zambrano?

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MR. FELIX VARGAS: There -- there is widespread concern that -- that you cannot you trust police now, and many in our -- our community, in the Hispanic community, are feared -- fear of the police institution. I'm very concerned about that because I have -- I shared the view earlier that anyone who wears the uniform has a very tense job and for the most part are very respectful, but what we have in Pasco is great uncertainty, great apprehension now and this -- this case of Zambrano is being watched very carefully. If the police officers are exonerated, I want to be very clear, if they're exonerated, if the charges are not files against them based on the irrefutable evidence, multiple videos taken of the homicide, it will not be understood. We have a daily protest movement going on in the city, and I fear greatly that we will enter another phase of protests if these officers walk. So again, I come back to the apprehension, widespread concern in the Hispanic community that the police just are not to be trusted.

CHAIRMAN CASTRO: Thank you. Mr. Fogg, you talked about terms of the diversification of the police force. I think it's a complex issue. I think some assume that if you have an officer of color, that necessarily is going to improve matters. Now I know

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from personal experience, I had a young brother many years ago was 16 years old. Got his driver's permit and was driving his beater that my dad had just bought him through the park to get comfortable, and there was a small crack in the windshield. Nonetheless, the police officer pulled him over, threw him on the hood, cuffed him, took him to jail and left the car there. When he found out it was my dad's son, he said oh, Ray, I'm sorry. He knew my dad. Well, if I knew it was your son, I wouldn't have done it. Well, this was a Latino police officer doing this to a Latino young person. So sometimes in the community there is a greater fear of police officers from your own community. Could you talk a little bit about that nuance and how that interplays into the larger picture that we're talking about today?

MR. MATTHEW FOGG: Certainly, Commissioner. The thing with that, I believe, is as we say we all, police officers have little jokes we're all on the plantation, sort of meaning the paradigm of where we're working, and from the top up, really from the top down when we talk about how we are to do our policing, if somebody is saying get your numbers up, you got to get your numbers up. You got to -- we got to see how many summonses you're writing or how many people you're locking up for the month, all of the
things that they ask us to do, and then they say now
don't go in those other communities and make this an
equal enforcement opportunity, just concentrate their
resources on those urban areas, then you're gonna have
I don't care if you're black or white, you're gonna be
in there trying to do your job because you're going to
be going after people, and what happens is that puts
this sort of strain on the black officers because the
black community, or and I'm sure in the Hispanic
community, they look at him as he's the sellout. He's
coming over here and locking us up because the
community knows we're not doing equal enforced
copping. They know we're not going and locking up
others and making this thing fair and just. So they
know that they're being the target. So that's what the
officer's dealing with. He's dealing with this sort of
paradigm that he's pushed into this sort of box that
breaks this promise, so we have to do here is we have
to make certain that, I always said it all along, if
the war on drugs was an equal opportunity enforcement
operation, where we was doing it over in the affluent
areas, it would have fixed itself a long time ago. All
of these problems that we're talking about today,
excessive force and everything, they

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would automatically fix themselves once we begin to
see that we're gonna make certain that if we're gonna
go into houses or, we gonna go after for drugs, we're going into wherever we know they are, then you would have a contingency of the community coming together saying, people saying we need to look at this again. We need to change it, but what happens the way it is now, no, they give you a badge and a gun and they tell that black officer you stay to this particular area and if you get your numbers up, we gonna promote you and so what happens is that creates this sort of -sort of animosity with the people and you got to change that sort of concept that that officer's not just coming in here looking to just lock people up, arrest, get his numbers up because there are crimes being committed, but we're there doing community policing. I think that's one of the biggest things.

CHAIRMAN CASTRO: Mr. Smoot, fellow Illinoisan, Chicago is a different place than the rest of the state and, you know, I've had the honor working with and have many friends that are Chicago police officers who are doing pretty difficult jobs, and I respect that and had the opportunity recently to meet, as you said, when folks run away from danger, there are officers and first responders that are running
towards it. I met Officer Brian Murphy who was one of
the first responders at the Oak Creek Sikh Temple and
heard from him personally what he went through in order
to save lives, so I'm very cognizant of that, and when
I ran for Congress a decade and a half ago, the only
union to endorse me was the Fraternal Order of Police
because of the work we did together on violence
prevention, so I am uniquely aware and very respectful
of the work of the police, but having said that, you
know, clearly there's some issues here or we wouldn't
be here today and one of your comments in your remarks
you said we will never eliminate the police use of
deadly force, and as a concept I can understand that. I
think what we're trying to do here is figure out how we
can eliminate the unjustified use of police deadly
force, and when I was as an observer I attended our
Missouri State Advisory Committee hearing in St. Louis
County on this issue, it was asked of some of the
police officers that presented there why can't you just
shoot someone in the leg or in the arm, and the officer
said well, you know, we are trained to shoot at the
mass of the body, and I have some friends who are
police officers, and I asked them the same question
back home, and they said well, you know, our training
is to eliminate the threat.

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Could you speak a little bit to that because to many of us just common sense seems that, you know, you can eliminate the threat without necessarily killing the threat? Could you address that?

MR. SEAN SMOOT: Well, I think -- yes, I -I can. So I think a lot of this stems from what traditionally and, unfortunately, is -- is still predominantly a use of force training paradigm that doesn't have at the front end a sanctity of life philosophy. Now, you know, and that's just in regard to use of force. We have some pretty good tools now that are less than lethal force and where they're deployed properly where the officers are trained properly, they've been very effective. I can't -- I can't put a number on the number of lives that have been saved because officers have used electronic devices like the taser instead of a firearm in literally thousands, probably hundreds of thousands of situations over the last twenty years, and I understand tasers have, you know, those things are - nothing is perfect, but -- but you have a choice between being shot with the taser and a firearm, I would recommend the taser as a personal recommendation.

In terms of when you -- when the officer

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doesn't have access to that tool, and many don't, many of the cities of Chicago don't. You know, when Chicago implemented a taser program, only the sergeants were -- were initially issued tasers and then that was -- some specialty units were added to the category people that can have the less -- less lethal technology, so, you know, every officer doesn't have that option. We -- we are trained and we do train officers to stop the threat, and if -- if you're at the point in the use of force continuum where it is deadly force, the training is center mass. Now the training used to be two to the body, one to the head. I'd say maybe that we go to center mass now as could be considered progress, but realistically if -- if you use firearms and are familiar with particularly using a handgun, you would realize very quickly in a short period of time on the range, even with a great deal of practice, it would be very difficult to just to shoot someone in the arm or the leg, and in fact part of the reason that the training is now center mass is because, as I'm sure you know, the laws of physics apply and when a round leaves a weapon, if it doesn't hit its intended target, it doesn't then stop. It will continue to travel and perhaps hit an unintended person or target, and that is also a consideration, I
think, that was put into place with the training methodology.

CHAIRMAN CASTRO: I'm glad that the training is no longer just blow my brains out, but nonetheless, what we saw in Pasco, seventeen shots, six -- five or six actually hit; maybe eight. I forget the number. Where did those other nine go? So even -- even with the shooting at the mass, you know, there's -- there's some issues there, and I would hope that we could figure out a way to better train our police officers to become better marksmen and women so that maybe they don't have to shoot the center mass. I've got to believe that that's a possibility.

MR. SEAN SMOOT: If I could just expound for a moment.

CHAIRMAN CASTRO: Yeah. Mr. Fogg will after Mr. Smoot.

MR. SEAN SMOOT: I think you've hit on a very important point. Even in the most progressive police training states, it -- the -- the standard for training is annual qualification, which, you know, means, under most standards, forty rounds fired at a target, a paper target, and if you hit within the -- within the 10 square, thirty of the forty rounds, in some cases as low as thirty, you qualify. That's it.
Well, anybody who has worked in law enforcement knows, first of all, that's totally unrealistic training. We don't shoot at stationary objects. We certainly don't shoot at stationary full frontal objects, and without some simulation, without some realistic shoot/don't shoot scenarios, even if you meet the training -- if you even met the training qualifications of qualifying once annually, I would argue you're not really well prepared to deploy your firearm in a high stress, highly volatile, fast action scenario, and that's the kind of training that we need to ensure is mandatory for officers on more than an annual basis.

CHAIRMAN CASTRO: Thank you, Mr. Smoot.

Mr. Fogg, and then I'm going to give it to the Vice Chair.

MR. MATTHEW FOGG: Thank you, Commissioner Castro.

One of the things, I was a member of the SWAT team, and I've been involved in shootings, and I remember there was a shooting in Miami we were fighting -- I was fighting this guy, and I had my weapon on me, and this was a fugitive, escaped felony. We were fighting in this apartment, all over the apartment, and my partner had a sawed off shotgun and I never pulled my weapon out, even though I was
fighting, physically fighting. Now our training teaches us because I'm not supposed to really be fighting because he might get a lick on me, punch me and know me, take my gun and shoot me, so there's a lot of discretion. The problem that I got here and what I'm supposed to say when I see these incidents all over the country and we got video now and we've had a lot of training. I had sort of what Mr. Smoot was talking about where we -- our training involved being on the SWAT team where we were using rubber bullets shooting at each other, so it was really you had a lot of high stress in shooting situations. The U.S. Attorney asked me right after we ultimately shot -- I didn't shoot him. They shot him. Accidentally the shotgun went off while the guy was running. My partner accidentally boom. We didn't kill him, and one of the pellets hit somebody at the end of the hallway. Didn't kill her. It just went through her lip and it wasn't nothing deadly there, but the key was Assistant U.S. Attorney, first thing he asked me, and we gave statements right away, and he said Mr. Fogg I got identify you because I need to know what happened. I told him everything after I was fighting this guy. I got one question for you, he said, why didn't you just pull your gun out and just shoot him while you were fighting him, and I stopped
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and I thought and I said I guess I didn't feel like my life was in danger. He said oh, good answer, good answer. The problem we're seeing today is why I'm seeing these incidents. I'm like this officer didn't have to shoot, but what we're told in our training is if you do shoot, just say all the things they're saying, I felt for my life, I was scared, I just -one of my -- somebody had just gotten killed a couple of -- six weeks ago, whatever. The point is you have to be convincing that I used deadly force when maybe I didn't have to, and then the second piece is why is this deadly force being used often against people of color. There is more to this than just simply training. It's not -- I had great training. All the guys I know had great training. It's our discretion. Why are these people shooting these folks who are people of color because there's a threat mechanism there? There's some fear there that or somebody's saying I don't have to put up with this guy doing this to me. I can just shoot him like we saw that guy running away from the officer and he just is calmly shooting at this guy down in South Carolina, just no second thoughts at all. That's really what the problem is. It is not the training. It's what's in our mind when we are releasing these rounds. That's

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CHAIRMAN CASTRO: Thank you, Mr. Fogg. Madam Vice Chair.

VICE CHAIRMAN TIMMONS-GOODSON: Thank you, very much, Mr. Chair, and I want, I had my claim, all of the others that our panelists have received, we do appreciate you taking your time and being with us.

My first question deals with the fact that as a result of private citizens that are now videoing with their telephones and other instruments, we're seeing a perspective of events that have unfolded in a number of these situations that we would not have seen but for that. It's my understanding that at least one state's legislature is considering or it has been proposed that they make it illegal for private citizens to video police activity. The first thing I want to know, any one of you think that that is a good idea?

MR. FELIX VARGAS: No, no, ma'am.

MR. MONTAGUE SIMMONS: Not at all.

MR. FELIX VARGAS: Not a good idea.

VICE CHAIRMAN TIMMONS-GOODSON: Matter of fact, why shouldn't such legislation come back? Start with you, Mr. Smoot, why?

MR. SEAN SMOOT: The only reason that I
could see that you would prohibit taping wouldn't necessarily be prohibit -- the prohibition of recording, but perhaps how it's done so that it -- if there were some kind of a limitation on how close you could actually get to the officers when they're handling a situation or something like that. We've seen some situations, you know, just go online and you can see situations where officers are attempting to effect a lawful arrest and there are citizens who take out their cellphones and are literally, you know, holding it this close to the officer while they're trying to effect an arrest, so I -- I was at a meeting a few days ago and it was suggested, and I don't remember what state it was, but -- but that there was some legislation being proposed that there be like a 30 foot requirement, which would allow citizens to exercise their right to videotape officers performing their work, but also allow the officers --

VICE CHAIRMAN TIMMONS-GOODSON: Safety.

MR. SEAN SMDO: Yes, in the interest of safety.

MR. MATTHEW FOGG: The other piece is now everybody's seen Cops, right, we've all seen the video Cops. Cops are being filmed. They enjoy it and they're going on instant calls. Radio is going,
everything. So if we can do it in Cops, why can't we do it across the board. That's my answer.

MR. SEAN SMOOT: I advise the officers that I represent, which is about 10,000 officers in the State of Illinois, they should always assume they're being recorded.

MR. MATTHEW FOGG: That's exactly right.

MR. MONTAGUE SIMMONS: We've actual conducted media rights and cop watch training. At the heart of that is that yes, you have a first amendment right to go in and document the activity, but you must not interfere, which is you must keep a safe distance. You must not interfere with the course of activity, that's at the heart of what those folks are doing. The media has to be part of a cop watch team or something organized they've actually seen or had the same training, so there's no rational idea for such a law unless you, again, try to create another way of insulation for the institution.

VICE CHAIRMAN TIMMONS-GOODSON: Thank you. I have one other question, and that's for everyone, but Mr. Simmons, I was particularly struck by the depth and the breadth and the passion of your remarks, and in fact I related on a personal level to much of what it is that you shared about your urban life

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experiences, but I want to explore the transformation of policing and your challenge to us that we re-imagine policing of the recommendations that you've made and others have proposed, and you've pointed out to us that most of the recommendations aren't new. I was wondering whether there is any one which in your mind would lead to the greatest transformation? It looks like we're having a hard time getting anything done, but if we could get one proposal through, which do you think would be -- lead to the most transformation?

MR. MATTHEW FOGG: Witness protection.

MR. MONTAGUE SIMMONS: And I stand with you, witness protection, but honestly, I would go towards deployment. We have to start in the field of how police are deployed to do their jobs. Too often they're not actually being used for direct public safety. Too often as a result of what he mentioned before in terms of the war on drugs, they're actually deployed looking for folks instead of actually addressing actual crime. In the community I grew up with, if there was a car that was broken into or stolen, you had less opportunity to actually see any justice in that crime than you would in just seeing someone picked up randomly under suspicion of either
being involved in a gang, involved in drugs, involved in any one thing, but in actual public safety, response to break-ins, response to theft, those things very rarely got solved. Most of the resources of the department were actually put toward deploying officers to actually find and rake in suspects under the hope that they actually may be involved in some area of crime versus actually deploying them to respond to the crimes that were actually being reported, so I would start there, just in terms of basic functioning and thinking about safety beyond policing, which I know is actually a campaign in this city to actually realign and think about how police are being used, but I think that's absolutely right because there's a lot of witnesses within the institution itself that can speak to what's happening, and they're afraid to because the institutions take the punishment.

VICE CHAIRMAN TIMMONS-GOODSON: Let me ask Ms. Lewis and Mr. Davis, if you would respond in the context of -- in the disability context.

MR. RICHARD DAVIS: What is the top thing that we can do in the disability context for meaningful change?

VICE CHAIRMAN TIMMONS-GOODSON: Yes, transformative change.

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MR. RICHARD DAVIS: Transformative change, well, in Maryland we actually have the building session called the Ethan Zimmer Alliance for the Self Advocates of Educators, and one of the big things in our testimony identified is the need for relationship building and also the President's task force also identified that as a key thing that needs to happen, and so just creating this opportunity for people with disabilities to have meaningful interaction, build meaningful relationships with law enforcement we think is gonna be one of the most important steps in meaningful transformation, and the way that the National Center on Criminal Justice and Disabilities looking at doing that is through our pathways to justice training, having people with intellectual and developmental disabilities as the trainers creating that opportunity not just for -- we don't really see that officers need to be able to diagnose a disability, but to know about disabilities, to know somebody in their community who has a disability and can build that relationship is what we think will lead to the transformative changes that will have the best impact.

VICE CHAIRMAN TIMMONS-GOODSON: Ms. Lewis.

MS. TALILA LEWIS: I believe that what we
need to do across the board is have a bit of what we
call in the disability community, disability
solidarity. What that looks like is communities of
color who are fighting for racial justice also need to
be fighting for disability justice, and those -- and
organizations of disability rights organizations
should also be fighting for racial justice. The
intersections between those at the margins of the
margins can be seen have been spoken to here, and if
those population aren't being focused on, then I'm not
sure what we are doing. So decriminalization of
disability means not incarcerating people, not
arresting people who are acting in ways that are
commensurate with their disability, but things that
can't be controlled, and I think that's first, and
then talking about public safety and how we deploy
police officers, and this is how it all overlaps. What
we find is that people in the disability community, we
now are telling people don't call the police if your
loved one is in a crisis, and that's problematic, and
we see that, of course, in the black community as well
and the brown communities as well, and there's no
reason for that. There should be a certain amount of
trust that can be had, and right now it's not going to
happen until we start talking about

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culture shifts and we really start looking at disability and racial issues simultaneously.

VICE CHAIRMAN TIMMONS-GOODSON: Thank you. CHAIRMAN CASTRO: Thank you. Commissioner Heriot and then Commissioner Narasaki will conclude this panel.

COMMISSIONER HERIOT: Thank you, Mr. Chairman.

Commissioner Yaki already asked the question that I first had come up with for Mr. Smoot, but I just want to follow up very briefly. You had mentioned that a Dr. Lewinski was the primary source for the research that he mentioned.

MR. SEAN SMOOT: He's the leader in the field, yes.

COMMISSIONER HERIOT: Could you do the Commission a favor here, if there's some literature that isn't by Dr. Lewinski, could you like supply that to us in the next week or so, give us citings just so we know where it is?

MR. SEAN SMOOT: Certainly.

COMMISSIONER HERIOT: The other issue I just wanted a little bit more information on. You had mentioned many police officers are not equipped with tasers. What's the bottleneck here? Is it because

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tasers are very expensive? Is it because we have to
9 go through a period of training? Why hasn't this
2 happened more rapidly than it has? I mean tasers are
3 new, but they're not that new.
4
5 MR. SEAN SMOOT: I'm not -- I'm honestly not
6 sure. I think it really boils down in a great deal like
7 everything else, to funding because they're not that
8 expensive to deploy. In fact, you can get some grants
9 and even some companies that produce these things will
10 assist the agencies in getting them, but, you know,
11 unfortunately, when economic times become tight for
12 state and local government, one of the very first
13 things to get cut is -- is police training, and before
14 you can, you know, effectively and safely deploy these
15 things, officers have to be trained in how to use them
16 properly.

17 COMMISSIONER HERIOT: Mr. Fogg, do you have
18 a comment?

19 MR. MATTHEW FOGG: Yeah, I wanted to make a
20 comment about the tasers because I've heard this issue
21 about the tasers often, many times, you know, if the
22 officer had a taser, maybe they wouldn't use deadly
23 force. Deadly force has a strict, a strict code, which
24 when we use deadly force, I'm not gonna pull out a
25 taser if I think that you're trying to take my life.

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I'm gonna -- I'm gonna pull my gun out. So there's no reason for me to use a taser if -- if I need to shoot you. Now we have to see the difference between the two. The taser is more or less probably to -- to sort of maybe subdue somebody, but when you're using deadly force and you're firing rounds off, you got to articulate I was in extreme danger for my life or the life -- imminent danger or the life of someone else. That's the difference, so I'm concerned with people saying --

COMMISSIONER HERIOT: What is it about the taser that makes you consider it inadequate?

MR. MATTHEW FOGG: Because I'm saying that I'm not gonna use a taser if I really thinking you're trying to kill me.

COMMISSIONER HERIOT: But I'm just asking why because I'm -- is it less effective to think --

MR. MATTHEW FOGG: Yes, if I think you're trying to kill me, I want to make sure probably I'm gonna kill you or stop you one hundred percent, and the taser may not. Now I understand tasers should, but we seen people been tased and still shot or still were able to do things that we didn't think they could. I just want to be clear that when we say using a taser as opposed to your gun, that if that's an

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option that I have, then maybe my life really isn't in the type of danger that I really think it is. That's the concern that I have.

CHAIRMAN CASTRO: Mr. Vargas and Mr. Simmons.

MR. FELIX VARGAS: Commissioner, a taser can be effective in a variety of scenarios; however, when you have a young man who suffers from mental illness and he has substance abuse and he has drugs in him, a taser really is not going to make that much of an impact on that person really, and that was the case with Mr. Zambrano, so then the officers left with using a .45 caliber Glock pistol, which is a highly lethal weapon. The problem that we have is that we're not considering other techniques. In the case of Mr. Zambrano, he was a small man, maybe 5'6. Weighed maybe 130 pounds. All you needed to do was basically just put your arms on that person and you have him in control. We have no training in takedown procedures for our police, which is -- which is necessary to consider.

COMMISSIONER HERIOT: Thank you.

MR. MONTAGUE SIMMONS: I just want to follow his comment. Earlier when we were talking about training and we talked about threat progression,
too often people go to deadly force out of fear --

MR. MATTHEW FOGG: Yes.

MR. MONTAGUE SIMMONS: -- in stating
that they're actually in fear for their life.

Unfortunately, we lived in a time and in a place in
which that's actually enhanced by the length in which
we see race and skin often translates to increased
threat, increased fear, so one of the things we're
actually recommending is enhanced personal unarmed
combat training under the idea that if you're actually
training, if you actually feel comfortable in actually
using your body in combat, you might be less inclined
to default to a weapon and to default to thinking that
you're actually in fear for your life. It's actually
training, but one hopefully in adding that to the
culture you begin to weed out those who will
automatically by instinct. What we normally say is
typically we see two types, either you get boy scouts
or bullies. In our eyes there are those that actually
want to go into this and do the right thing, want to
serve the people. Those are boy scouts, but there are
those that come in with this inclination towards
violence, inclination towards using weapons and
hostility. If they're actually trained, hopefully
we'll see more folks come in with the inclination to
actually do the right thing.

MR. MATTHEW FOGG: I'm not sure, I'm sorry, I'm not sure if there's a law in force, and I've been in a lot of situations, I'm not sure if it's the training, it's not the training. It's I've decided that you are less value and I can shoot you and I can get away with it.

MR. MONTAGUE SIMMONS: There you go.

MR. MATTHEW FOGG: We have a license to kill.

MR. MONTAGUE SIMMONS: That's true.

MR. MATTHEW FOGG: I know that I just have to be able to articulate all of the things that I'm going to get my story together later and do exactly that, so that all I'm just simply saying to you is no, we need psychological intervention before we even get on that job. It has to be extreme psychological testing and understanding what a person's purpose is in a reason because again, why should we be shooting everyone at the same rate. It shouldn't be this rate of shooting people of color more than others and I've been in shootings where I have seen he didn't have to shoot. What did he shoot, and then of course he's going to articulate well, I was afraid; I was scared, even if those things really wasn't the reason they
shot. So that's the concern that I have here.
Officers are shooting when they know that guy was
running away from the man in South Carolina. I
guarantee you when they sit down, he's gonna say all
kind of things that he felt and believe the reason why
he fired his weapon, and we need to address that, and
that's a psychological issue.

MR. MONTAGUE SIMMONS: Absolutely.

MS. TALILA LEWIS: Can I just add that I
think it's important when we're addressing the stigma
surrounding race, racial fears, we also have to
address the stigma of discrimination surrounding
disability, mental illness, intellect -- people with
intellectual and developmental disabilities are seven
times more likely to interact with police departments.
The other thing that really has to be addressed is
simultaneously we cannot talk about racial justice
without talking about disability justice because I am
a disabled black person and I lived this experience
simultaneously. You cannot separate those things. So I
think it's really important that we talk about
disability justice and racial justice as it relates to
police departments and policing.

CHAIRMAN CASTRO: Commissioner Narasaki,
you have the last question.

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COMMISSIONER NARASAKI: Thank you, Mr. Chair.

I wanted to make a short statement too, and that is I wanted to thank staff for really putting together such an excellent panel and you have me to blame for the fact that this panel is kind of large because I felt it was important to have the disability community's voice here, and I wanted to appreciate staff for making that happen. But in the negotiations, because we already had such packed panels, we weren't able to add an Asian American, so I just wanted to note a few things about why they are also important to this conversation before I ask the couple questions. I promise it will be really short.

You know, I find this discussion very challenging because, obviously, when you're talking about use of force, both police and the communities they save have very legitimate concerns and change clearly has proven to be extremely difficult because we've been having this discussion for decades, and we have not made meaningful advancement. Last year in New York an 84-year-old Asian immigrant who did not speak English ended up hospitalized after an altercation with police who were trying to initially give him a ticket just for jaywalking. The mayor had
asked the police directively to hit jaywalkers in this particular community because of a series of recent pedestrian deaths. He was beaten after he tried to walk away because he didn't understand the police instructions who was trying to write the ticket and that's, I think, an example of everyday things that somehow escalate to something larger when they really apparently shouldn't be escalated to that level. We know that police risk their lives every day, but they also need to have accountability measures that takes into account their concerns about their own safety and the safety of those around them. Community members need the police to protect them and enforce our laws, but they need to be able to trust the police that they're gonna partner with us effectively in that job, and we understand that police are in danger of losing the legitimacy and cooperation they need if the community cannot trust them, as we've just heard. The murders of the NYPD officers, Wenjian Liu and Rafael Ramos, highlight the dangers that our police face every day and the shooting by NYPD officer, Peter Liang, of Akai Gurley innocently walking up the stairs with his girlfriend shows the danger that minorities, particularly African Americans and those with disabilities face everyday. The tragedy there
apparently was at least in part the result of two 
rookie cops, perhaps without sufficient field training, 
being thrown into NYPD's most perilous assignments, 
patrolling the dark stairwells of a high crime 
project in order to stand the rise and shootings of 
police public housing. Again, good intentions, but 
unfortunately bad result. And I think it's important 
for us to remember that both black and whites matter, 
and the challenge that I want to put to you all in 
this panel is, as I said earlier, we've been having 
this conversation. Some technology is new. We have 
tasers now. We have video, you know, affordable on-
body cameras, but other than that it seems to my that 
the biggest issue is cultural change, how the police 
look at policing. And what is it that is going to 
cause a cultural shift that all of you seem to agree 
need to happen? You know, when you talk the blue 
wall, I can see how that happens. If you are 
protecting someone's back everyday, you're gonna have 
their back. You're gonna give them the deference of 
their opinion because your buds. How do you break 
that down, and when you talk about having meaningful 
witness protection, what does it actually look like? 
So that is what I'm very interested in this 
transformative issue, and I think what we have to
transform is the culture because you can have every
kind of protocol that looks pretty on the books, but
if people aren't actually going to follow them with
the right intent, I think we're not going to have any
different results.

MR. MATTHEW FOGG: You know, I was just
going to say that, you know, a lot of people, remember
we had a situation in New York here where the guy was
sodomized by the plunger, everybody was saying this
was a horrific act, but everybody missed the point
that the police officers brought him into the police
station, had him in the bathroom, which means they
knew that other commanders and other people could come
in to see him. That's what I was concentrating on. The
other day when we had half the police department in
New York turn their backs on the commander-in-chief,
that should tell everybody that is a culture out of
control. So how do we get that culture into control.
The first thing you have to do is bring in people who
are in leadership and hold them accountable. They've
got to be held accountable to the point that when
something happens down that rank and file, you see it
in the army all the time, let somebody get out of
control in that rank and file, that commander is gone.
So when he knows his back is
against the wall, he's gonna make certain that his men are doing it by the book as much as possible and making certain that training and everything is constantly saying you have to do it by the book the way we've been taught to do it, whether you like it or not and not none of that stuff when you came out of the academy like I heard I know you learned all that training, but this is how we do it here. When we saw that guy get beat crazily out in California, everybody see the helicopters, the officers know they're being filmed and they're still like kicking and punching this man and kicking him in the groin and everything you can think of and all of America is watching this on video. We saw Eric Garner get choked to death in New York. They used a choke hold that was already outlawed by the police department, but yet the man was -- the officers weren't even indicted. So what I'm saying to you is we got to first attack it from that perspective that the office, command office have to be held accountable, and when something like that happens, they have -- they gotta go. Just like in the Secret Service, we've been hearing what's happening in the Secret Service, first thing we hear they got rid of the first commander; they brought in a new person. Now that person's under the gun because that culture
behind him has to change, and you got to really put som
real heat on the commanders to say you will ch
change it or you will lose your job. I think that's f
first.

MR. SEAN SMOOT: If I --
CHAIRMAN CASTRO: Mr. Vargas, and then Mr. Smoot, and then we need to wrap up because we have the second panel, some of whom have to leave a little earlier.

MR. FELIX VARGAS: Commissioner, we do need a cultural sea of change. We need for our police to look at themselves as the community looks at them, and that is what's lacking right now.

COMMISSIONER NARASAKI: But what is actually going to do that, though? We all understand what the culture needs to be.

MR. FELIX VARGAS: Yes, let me respond to that. It begins with a recognition, with some introspection on the part of our police, that there are some serious gaps and serious ways that they need to self-correct. It begins with that recognition that I've got a problem.

COMMISSIONER NARASAKI: But how are you going to get them to recognize that? I just saw just a recent report about a web laws by former Curd (ph)

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and retired police where they're openly calling the
citizens here apes, calling black citizens apes, using
racial slurs, attacking drivers.

MR. FELIX VARGAS: It's gonna end with me
sitting down with that man over there, Chief Metzger,
saying chief, do you recognize that you have a problem.
If he says no, I don't have a problem, then nothing's
gonna get resolved. So we need first to see the same
issues. We have an opportunity. The -- the Department
of Justice Community Relations Program is going to
start a mediation in Pasco, so we're going to sit
across the table from each other and we're going to
identify issues and we're going to go through a process
of looking at it line by line to see if we understand
what it is we're talking about, and then we're gonna
look at possibly putting together a game plan where we
understand each another, and this is going to be a
community-wide effort, so we have an opportunity to
have in my hometown in southeastern Washington to make
some changes, bring about these cultural changes which
could be applicable in other parts of the country, so,
you know, I say this, but I'm optimistic. I think we
can actually get to the place where we have an
opportunity to get things, to get things right and to
start the healing process now,

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but it all begins with people talking to each other and having good will.

COMMISSIONER NARASAKI: I feel a lot of chiefs may understand and may want to address the issue. I'm wondering how you get the line hops to be bought into the fact that because ultimately the institution is made up of the people who are doing the job every day?

CHAIRMAN CASTRO: Commissioner, I'm going to ask Mr. Smoot to answer that and that will be the last response. We really do need to start with Panel 2. I apologize.

MR. SEAN SMOOT: Thank you. I appreciate having the opportunity to respond.

I think the first way you begin to rank and file to buy in is by inviting them to the conversation, which doesn't happen, and I think something that holds out significant hope for me to — to transform culture, and maybe it has to be done department by department, state by state, I hope not, but it might, is it the collaborative reform process that the Cops Office started doing in various jurisdictions. You know, the culture of policing needs to be changed from a sentinel mindset, a soldier mindset, a military mindset to institution that at its
core is based on procedural justice and legitimacy, and that procedural justice and legitimacy has to be inside the department as well as outside. You heard earlier testimony about how people were treated differently within the department. How would you expect somebody who works in that department to go outside and treat people the way they should be treated, and so things like quotas, profiling based on race, sex, sexual orientation, disability, those things degrade not only procedural justice in the public, but procedural justice and legitimacy within departments, and -- and so I think that's really -- we need to get at the core and it's got to start with collaborative processes now that include police officers, line rank and file officers, and we need to start training officers from day one at the academy on a training model that's a guardian training model based on procedural justice and internal and external legitimacy. Thank you.

CHAIRMAN CASTRO: Thank you, Mr. Smoot. Thanks to each of the panelists. This has been extremely informative and we appreciate it. Hopefully, you will be able to stick around and watch some of the other panels. Thank you for your time. As the first panel begins to step away, we'll ask

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members of the second panel to begin to come forward while Ms. Dunston changes the name plates and then we'll start immediately upon their seating. (Round of applause)

Is Mr. DeCarlo here? We're going to get started. Thank you, all. I want to now introduce our second panel. Our first panelist is Mr. Cedrick Alexander, with the National Organization of Black Law Enforcement Officers. Our second panelist is Mr. Bob Metzger, with the Pasco Police Department, a chief there. Our third panelist, Evan Bernick, from The Institute for Justice, our fourth panelist, who hopefully will arrive soon, Mr. John DeCarlo, with John Jay College, and our fifth and final panelist, someone I actually met in our hearing in Missouri, Ms. Pamela Meanes, who is the president of the National Bar Association.

I would like for each of you to raise your right hand and swear or affirm that the information that you are about to provide to us is true and accurate to the best of your knowledge and belief; is that correct?

MR. CEDRICK ALEXANDER: Yes.

MR. BOB METZGER: Yes.

MR. EVAN BERNICK: Yes.
MS. PAMELA MEANES: Yes.

CHAIRMAN CASTRO: Thank you. Mr. Alexander, please proceed. You each have seven minutes. The lights will let you know when it's time to end.

MR. CEDRICK ALEXANDER: Thank you very much, and I promise you I won't take that much time in the interest of and respect everyone's time here. But let me start by saying this, is that I've been in policing for over thirty-eight years now and have worked in a variety of environments, both at the local, state and federal level. Policing today is at a crossroads in its history, as we all well know. There has been a long history of separation between police and community ever since the beginning of time and that continues to this day; however, I think it's important to note too that much progress has been made as it relates to policing community relations in light of many of the things that we see and hear and talk about here today. I think that for myself and in the time that I've spent in currently as public safety director in a major county in Georgia in serving as president and also as one of my prior colleagues up here, Mr. Smoot, serving on the Presidents' task force on 21st Century policing really gives me an
opportunity to share from a variety of -- of positions
my thought in terms of how and where I think policing
is going as we continue to move into the 21st Century.
We are beginning to see, quite frankly, as we talk
about police officer and their training, training is a
very important aspect. I'm quite sure that we all can
adhere to and say that that's important to officers
doing their jobs, but we're seeing also a very
different officer today. Many young people who are
coming on this job are not here to stay twenty and
thirty years. Many of these young people may stay
anywhere from three to five to seven years and may
move on to another profession so by the time that they
begin to adapt to this profession for many of them
they will have opportunity and move on and we're also
seeing many young people today too that are far more
educated than in the past which allow them
opportunities to do many other things, and I think we
also have to take into account for almost over the
last ten years as well too, as we've seen a very
struggling economy in this country, a lot of men and
women, and this is more anecdotal observation than it
is scientific, and it is from talking to a number of
officers both in my department and across the country
as well too, many young people have gone into law

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enforcement not necessarily because that's something they wanted to do, but many of them needed a job and they found themselves in a very noble profession in which they end up having a great deal of fondness about and many have stayed, but as we're beginning to see the economy begin to turn around, I'm beginning to see in my own department young men and women who are deciding to go after their careers in which they started off to do in college anyway. So I think all those things are great. I just think for us as we begin to talk about policing in a 21st Century, I think it becomes important that we also have to look at generational difference, and one thing that I am very challenged by that I hear so often is that when we talk about challenging and policing, it is so easy to paint everyone with the same brush, and I would ask that we all caution ourselves to that, and I say that to my friends and colleagues across the country because all police officers are not the same. There are those out there that are doing this job every day and they do it very all. They save countless lives. Unfortunately, those are the stories that we may not hear about, but usually the most egregious and grotesque stories we do hear about on a frequent basis and then we tend to want to cascade the whole police
department as being a horrific profession, but I think it's important to note as well too that we're asking police to do more today than we ever had in the history of America as well. We're asking them to know about this and to be experts in that and to do all the things in which no one individual for a 30 thousand dollar a year starting salary, quite frankly, is going to be able to do, and that's just the hard core facts of it all. So yes, we can train, but we also put police officers in a position, quite frankly, where we're really asking them to do a lot, a lot and we're asking them to solve all of this -- of this nation's social issues that began before they were born, that continue to exist today and will continue to exist when they leave the profession either through resignation or retirement. We are going to have to change policing. We're going to have to change our attitude toward policing in terms of what the job is and how complex it is. We're going to have to train officers. We're going to have to, first of all, we're going to have to recruit the right kind of people for this job. That's first and foremost. What do they look like, and when you do that when we say we want better trained officers, we want more educated officers, we want officers to be experts in mental

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health, we want officers to be experts in education, we want officers to be experts in virtually every other profession that's out there and to make sure that I'm protected as well too, and when I call you into community because someone is selling drugs or shooting late at night, I want you to fix that and if you do that job in a way that I may not particularly like, I'm gonna have something to say about it. Now, that is a very challenging thing, but that is what we are confronted with in the 21st Century policing. It is how do we go forward, and I will ask you all as I will ask, and this is more probably a rhetorical question than anything else, but for the last several months beginning back last year, the President of the United States put together a task force to look at how do we advance policing going into the 21st Century. A document was put forth to the president with fifty-nine recommendations and a number of action items divided into six pillars and each one of those pillars outside many of those pillars out -- outlined many of the issues that you have talked about thus far this morning and we're gonna talk about tomorrow and next week and next month and next year, but within that document what you will find, quite frankly, is an opportunity for us to jump start policing in a real

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positive way, in a way that's going to be meaningful
and helpful and not start over again, but starting
from pillar one, building trust and legitimacy right
down to pillar six where we talk about police well
being. Police well being is how we recruit, how we
provide psychological training to police officers or
provide psychological support, I should say, for
police officers. We are putting our men and women
every day in very high stress situations, and in light
of all that we have seen over the last several months,
shootings and incidents that we all question that we
know, quite frankly, based our own observation and
experience just downright wrong, but a system in this
country still has to adjudicate that, and we'll trust
that they'll make the right decision. Thank you.

CHAIRMAN CASTRO: Thank you, Mr. Alexander.
Chief Metzger.

MR. BOB METZGER: Thank you very much.
CHAIRMAN CASTRO: No, try it again.
MR. BOB METZGER: Is it on now?
CHAIRMAN CASTRO: It is.
MR. BOB METZGER: I want to thank the panel
for inviting me here today. I would like to say I'm
not gonna just read my script. You've already got
that. What I'd like to say, though, is I've been in

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the business for forty years. I've seen a lot of change in police work; some good, some bad. I'd like to echo what my partner next door to me said. I have read the President's statement on 21st Century policing. I found it very interesting and enlightening. I think it is a good start to what we have to do. Also one of the earlier panelists talked about guardian, and of course part of that panel, Sue Rahr, who is the director or our training academy in the State of Washington was instrumental, I'm sure, in putting that concept into it, but I'd also like to talk about what it takes to be a police officer and - and as has been stated, there's a lot there. I listened to the previous panel and there's a lot of training that needs to be done, but how much time can we give. An officer works 2,000 hours a year and not much of that time do we spend in training. That's a concern. I'm not saying we can't do it. I'm just saying it's a concern. We in the City of Pasco have changed our schedules so that we have a training day built in so we don't have to pay overtime to do that. That was very important to us in on our training. We also were also to get a building downtown so that we could, again, conduct training, and I think that's very important. We also talked about national minimum

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standards. I don't think that's a bad idea, but what are those standards and how do those standards transcend all of the police departments that are out in the country? That would be a challenge, but it's certainly something that I think we could probably do. I also agree with one of the panelists who said leadership is the issue, and I agree with that. I'm one of the leaders. I've been a police chief for over twenty-three years in five different departments, and they're actually right that it's up to leadership. In fact, I was speaking to the Cops Office earlier this week about doing an assessment of our department just to see where we are in terms of our community relations with our department, and it starts with the leader. If I don't tell my staff what needs to be done, it's not going to be done. As an example of that, we have two officers that are on administrative leave that are being charged with crimes, so we do not put up with that, and that's not a standard that we accept within my organization. I'm not talking about the shooting that is still under investigation. I'm talking about other things that have gone on within the department. So we set a very high standard. I believe in my career and my life police work has a higher standard, and I believe that we have to set

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that as leaders. I'm not sure I'd go so far to say
the leader has to go, but I do believe think the
leader has to accept responsibility, as I have, and
then move forward, realizing all the other moving
parts, but there's also a need to support the staff
when they do right, and as we all know most of what
happens in police work is done well. We have a lot of
victims out there to crimes in all parts of the
community that have done very well. In my case, the
City of Pasco, we went from a high crime rate twenty
years ago to a very, very low crime rate here and we
did all that without necessarily arresting everybody
and certainly without hurting everybody. With working
with our community we established community policing
stations. We established a lot of community policing
activities that have not only created a lower crime
rate, but have also created a better relationship with
the community. Is it perfect yet? Probably not. It
probably could use some change, and I'm certainly
willing to sit down with anybody that does it.

I think another thing from leadership that
sometimes we lack or sometimes not lack, but we forget
about it and I certainly have to remind myself from
time to time is we're not invalid as leaders. None of
us are. We all make mistakes. We also have to
realize that because policing is a constantly evolving process that we have to be ready for those changes, and I think one of the those things in listening to the prior panel and in what you're doing here today is one of those opportunities for me, certainly as a leader, is to listen, observe, take some of these things back to my department when I go back and do that. We meet three times a week with all of my command staff and they're given very clear direction from me as to what type of policing we're going to do in the City of Pasco, and I think that needs to be in every city, but I can also tell you, having been a chief in five different cities, that every city's different. There's no cookie cutter approach to policing in any one state and it's all different and I have to make sure that I take my background and experiences and not try to cookie cutter them into the city that I'm in now, but rather take what I learn and try to adapt it within the City of Pasco and learn the City of Pasco.

Another thing I'd like to talk about is I personally, and I don't think any police chief out there condones police misconduct. What is police misconduct, and that is something that is very evident sometimes and other times maybe not so clear and it's

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something that we have to address certainly internally. We also have the issue that was brought up quite a bit by the other panels, is the process for justice to take time. In all of our cases that we've had in the City of Pasco it's taken several months for the investigation to be concluded. The DOJ is overseeing it. We've talked to the FBI. We're an open book in terms of how the investigation goes and I think that's important, and we will certainly continue that knowledge. I certainly as a leader have talked to my partners in the FBI and the U.S. Attorney for the Eastern District of Washington and have let them know that when they're ready to come in and do their investigation, they're more than welcome, and I think that, again, as a leader is important. If there are deficiencies, then we need to clean them up. If there aren't then we -- I think the public needs to know that, so hopefully they'll have a better understanding and hopefully we can begin building or rebuilding those bridges that have been hurt or damaged, if you will, during this process.

I'd also like to say that there is a difference between, I know there's been some comments made about how long it can take for an officer to be interviewed and I know that was brought up by the last
panel. In my case I've been advised by both the prosecutor and our labor attorney to not allow the officers to be interviewed until the criminal investigation is done. They all have attorneys, so that has to be worked out through that process. And I realize you're saying you're gonna tell me well, why didn't you go quicker. I've been advised, and that's what I have to go by. So again we all get advice. One of the things that I'm doing is we've also sought the advice of outside experts in the use of force to look at not only our training program but this incident as well as others to see what we can do as a police department to deal with these situations to make sure they don't occur again.

So with that I'm going to turn it over to my other panelists, and I look forward to do questions later.

CHAIRMAN CASTRO: Thank you, Chief Metzger. Mr. Bernick.

MR. EVAN BERNICK: Thank you very much. I want to thank you all for inviting me here today. I'm fighting off a bit of a cold, so hopefully that won't pose any significant problem.

How can that happen in this country? It's a question that many Americans are asking themselves.

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It's a question that many Americans are asking themselves in the wake of tragic and horrific deaths of Eric Garner, Tamir Rice, Walter Scott, Eric Harris and others. It's a question that the Institute for Justice is familiar with. In 2005 we litigated the case of Kelo v City of New London, which dealt with the question of whether a private developer exercising the power of eminent domain to bulldoze an entire working class neighborhood for so-called economic development. The Supreme Court said yes, and Americans were outraged. How could that happen in this country, they asked. Now Susette Kelo, who lost her land, might not seem to have much in common with Eric Garner who lost his life, but both were the victims of unchecked government power. When you see unchecked government power, you see people losing their liberty, their property and even their lives. Today I want to talk to you about one of the most potent sources of unchecked government power in this country today, an example of judicial policymaking that makes it effectively impossible for police officers to be held accountable for constitutional violation. In what follows I will summarize, criticize and call for the appellation of qualified immunity. Section 1983, the Federal law that enables
citizens to sue for constitutional violation is broad, unequivocal and unambiguous. It says that every person acting under color law who causes a deprivation of any rights secured by the constitution of laws shall be liable to the party injured, shall be liable. Section 1983 embodies the foundational principle of justice that resonates with Americans what's now referred to Marbury V Madison. When there is a right there is a remedy. For decades now we have had rights without remedies. The 1967 case of Pierson v Ray the Supreme Court held that police officers sued for constitutional violations can raise qualified immunity as a defense and thereby escape paying out of their own pockets, even if in fact they violated the constitution. This position was unabashedly policy oriented. It was thought that government officials would not vigorously fulfill their obligations. They can be held accountable for actions taken. Under current law the general rule is that victims of rights violations pay the cost of their own injuries. In practice, qualified immunity provides a near absolute defense to the most outrageous conduct and sometimes not even that. The 9th Circuit has held that throwing a flashbang grenade blindly into a house isn't outrageous enough. Just last year in the Supreme Court decided that
firing fifteen bullets at a motorist is a reasonable method to end the motor's plight from the police. So much for every person shall be liable. Qualified immunity shields police misconduct not only from liability, but also meaningful judicial scrutiny. Private lawsuits are an essentially tool in uncovering the truth about police misconduct. The discovery process conceals information that make broader policy changes within police departments possible. At trial genuine, traditional engagements and impartial evidence-based determination of the constitutionality of the officer's actions can take place. Qualified immunity such a search for too short. If qualified immunity is raised before trial and the judge denies it, that decision is immediately appealable. If it's granted discovery stops and there is no trial on the merits. Now what needs to happen? Simply put, qualified immunity must be abolished. It should be replaced with a rule of strict liability for bona fide constitutional violations. There are a variety of ways to get there. First, officers can be held personally liable for any rights violations and pay out of their own pocket; they carry personal malpractice insurance just like lawyers, doctors and other professionals. Second, police departments could

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be held liable for rights violations by officers, and
punitive damages could be assessed against individual
officers out of their own pocket for particularly
outrageous conduct. Third, police officers can be
held personally liable, but police departments could
be required to insure them up to a certain amount.
After that they'd be paying out of their own pocket.
They can also be criminally prosecuted for
particularly outrageous conduct. To be clear, these
are only ideas. The question of how to ensure that
officers exercise power to delegate them with the
proper finger while also keeping that power in check
should be left in the first instance to elected
officials within the limits of the constitution of
Federal law, like Section 1983. Qualified immunity
plants those limits and those laws. It cannot be
saved. It should not be saved. We must replace the
traditionally created immunity that police officers
currently enjoy with the realistic avenue for the
vindication of constitutional guarantee. This can no
longer happen in our country. Thank you.

CHAIRMAN CASTRO: Thank you, Mr. Bernick.

Ms. Meanes.

MS. PAMELA MEANES: Thank you, Commission.

Is it on?

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CHAIRMAN CASTRO: I believe so, yeah.

MS. PAMELA MEANES: Thank you, Commission, for having us here.

CHAIRMAN CASTRO: Try again.

MS. PAMELA MEANES: Thank you, Commission, for having us here. My name if Pamela Meanes. I'm president of the National Bar Association, and we believe that what you're doing here today is gonna make a real difference in continuing to shed light on what has become America's epidemic. There are some positions in our country, in our society that require at least the illusion of impartiality. Judges and police officers who enforce our laws are among those positions. If we trust an individual to have the authority to take away a person's freedom or even their life, we want to have all of the assurances possible that you will not do that based on your negative feelings about a person's race and ethnics. San Francisco police public defender, Jeff Adachi said that police departments suffer from a culture of racial and prejudice bias. They need to be exorcised. Then he ended his comments by saying how do you legislate racism. The National Bar Association's response is you cannot. You can't pass a law that will make someone like someone. You can't pass a law
that will make someone trust someone. As a result the National Bar Association is putting forth we don't believe that the laws that we are asking to be implemented is all of the solution, but it is absolutely a part of the solution to what we believe is the problem because we believe you can't legislate racism away, because we believe that at the core of the problem of policing that we see is a broken educational system and the failure of this country to deal with the issue of racism, and so we believe that laws should be passed and weed out individuals that don't deserve to be on the force. Eliminate them from the beginning or keep them in the police squad until they're ready to hit the field. The laws we're offering you may say why did you separate them on the level you did. Well, we know if you put too much in one bill, it will never get passed, so there were some things we looked at the local level and said these are the things that can be immediately passed by a city council. Stricter mental health testing, you heard it said here today. What does that look like? There is psychological testing in some locations for -- that weeds in and weeds out biases; however, there's also tests on the internet that tells you how to pass those tests. There should be a standardized strict test
that looks at those issues and deals with the racial
biases and individuals that have a propensity toward
it should not be given a gun to go on the street.
They can stay in a squad room and answer calls
because this is a matter of life and death. Stricter
mandatory deescalation of force training, we've
talked to officers across the country who say we get
trained on that, but when you see the flurry of
videos that came out this weekend when white cops are
confronted with white individuals and instead of
drawing their guns, they're backing up from them and
they're not immediately going to shooting, but when
you see individuals in the African American community
where the first response is actually to draw the gun
and to shoot, that tells you there is a different
style of policing within the first community and
white community. Prime example, when a white man in
South Carolina can go into a Walmart, steal a cash
register, paralyze the store, lead the police on a
high-speed chase, take his gun, try to struggle with
it and the cop tasers him, but a black man standing
in the Walmart in Ohio is on the phone with his
girlfriend and there are immediate shots fired, that
tells you there's a difference in policing. Mandatory
race-based training, and I'm not just talking about
give a course and do some simulation. I'm talking about get to the heart because you've heard the stories of the e-mails that have come out from the fourteen officers in San Francisco, but what about the gentleman in West Charleston, in West -- West Virginia where he dressed his daughter up in his police outfit and had her dancing around to the national anthem of the Ku Klux Klan, and then his response was I should not be fired because if you put my racism on a scale, my racism at a 10 and other people in the department is at a 20 or 30. So on that local level, mandatory mental health testing, strict racial training and also deescalation of force training. On a state level we're seeing independent investigations of police-involved shootings, independent prosecution. We do not believe that a sister organization can't investigate unless they're willing to and they go through the testing of actually saying that there is no relationship with that department and there's a weeding out in the law of anyone that is connected with them. We don't believe in the case of the prosecutor that it's necessarily the prosecutor that's the problem, but the real problem here you all and the reason we fear that in South Carolina even when you see, even when you see with this video that Officer
Slager making out is because of the law that was established in Tennessee versus Garner. That law says that an officer can elevate force to that degree which he or she believes is reasonable to stop the force, that's in front of them. You heard these panelists talk about it. Why does an officer say, why do they say I fear for my life, because Tennessee Garner gives you the right to say that. It gives a script and we fear that when a standard is that subjective, that can only can changed by the Federal Government. You see a lot of body camera laws, but we caution you to say that's not enough. Put some accountability on those body camera laws. Make it a felony for an officer to tamper with the law. When you hold people accountable and they have the possibility of losing their freedom, it will change how they act. Lastly, make it a felony for another officer to stand next to an officer, see them commit police brutality and don't to a doggone thing about it. That's why we say that Officer Michael Slager should be arrested because he stood there and he saw or at least heard something fall on the floor, and his report said nothing about it. Really quickly, if we didn't have the video camera in South Carolina, the narrative that was told for three days by the police department, the National Bar Association
doesn't applaud that department, but they said it was a traffic stop gone bad until we saw video to the contrary.

CHAIRMAN CASTRO: Thank you, Ms. Meanes. If we could, I appreciate the audience participation, but we don't want to have comments during the presentations, so we don't want disruption, but we appreciate your expressions. I'm going to start with the first question and I'll ask my colleagues to join in.

Chief Metzger, there was a question that was rhetorically asked by Mr. Vargas during his presentation. I'll put it to you. Do you recognize that you have a problem in the Pasco Police Force?

MR. BOB METZGER: I believe every police department has problems. Yes, we have an issue here.

CHAIRMAN CASTRO: And what do you see that issue to be?

MR. BOB METZGER: I believe the training certainly, mental health. Let me also add that we have a mission in town.

CHAIRMAN CASTRO: A what, I'm sorry?

MR. BOB METZGER: We have a union gospel mission in town. Which has a lot of mentally ill people in it. We deal with mentally ill on a regular basis. Do we have

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enough training? Probably not. We've been looking for others. We also have a very large methamphetamine problem in our area, not that I'm sure other areas don't, and in the cases that we've had, the methamphetamine has certainly added on to the mental health and it makes it very difficult. Our training has always been how do we deal with the mental health, but when you add the methamphetamine into it, it changes the whole dynamics and what goes on within that process. It's very hard to train officers on somebody like that. In one case we had a meth addict who we pulled a taser on him because we do carry both pepper spray and taser, neither one of which are effective on a lot of people that are under the influence of methamphetamine, and that does change the dynamic.

CHAIRMAN CASTRO: Let me just say, I appreciate you being here. When our Civil Advisory Committee held their hearing in St. Louis County, the Ferguson police officer, chief of police refused to participate or even talk to me to see if we could get some agreement, so I do appreciate that you're here --

MR. BOB METZGER: Thank you.

CHAIRMAN CASTRO: -- and that you're answering our questions, so that doesn't go
unappreciated or unnoticed.

MR. BOB METZGER: Thank you.

CHAIRMAN CASTRO: Now also you earlier said how much time can you actually spend to train the police officers in terms of their interaction. My question would be how much time can you not afford to spend? I mean you've got to take whatever time you need, it seems to me, to avoid deadly force encounters gone wrong. So what other things are you doing or are you planning to do to address that? I know in your remarks, your written remarks, talked about some crisis intervention training, but it sounds like not all officers, only most officers are going to do that. Can you talk a little bit more about how you intend to improve that?

MR. BOB METZGER: I'd be glad to. There are two crisis intervention trainings in the state of Washington. One is a forty hour training and that's to train, get people involved in a team effort, utilizing other police departments and so we have to send some officers to that. It's a week long training. We then have a three hour basic training that we've put all officers through. The only ones that were not are the ones that might have been on vacation or out sick that day. I think we have all
trained in that. They're bringing that back. They also contacted, there's a local doctor, mental health doctor, because one of the issues that we've run across is, and I'll go back a little bit, when I started police work forty years ago, mental health issues were pretty simple for us to deal with as police officers. We could arrest them and take them in for three days, and the hospitals were readily available. That all changed in the '80s and we don't have that anymore. We can't just lock them up. I'm not saying that's right or wrong. That's a fact. We can't do that anymore, and so a lot of them are left out for us on the street to have to deal with, and they all have various levels of mental disabilities. And so we're dealing with those, like I said, on a fairly regular basis in our case. So we're trying, we're bringing in people from the mission to talk about what they're seeing in there. We're bringing in other health professionals. We just opened up a new thirteen bed unit that's gonna cover the entire south -- southeast part of Washington to be able to take mental health people who we find on the street who are not in danger, who are simply going through issues with mental health and try to get them some kind of

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services. Part of the problem is that we're finding, at least in our area, mental health services, just like all of us are strapped, they're strapped for cash and so they don't have the services that I know I had when I started forty years ago to at least have the doctors and the nurses and other professionals out there. So that lack of mental health, and I'm not blaming mental health; it's just their funding has gone down just like everybody else's, so it's very difficult to get that, but we're trying to utilize them to come in and talk to us about the issues that we're seeing and of course we debrief after every arrest that we have to see what we can do better and maybe try to -- and we do have dash cams. They're the only ones that are across the area. There are other cities across the river that have dash cams, so we do also have that availability to look at that and try to determine what we can do better.

CHAIRMAN CASTRO: A couple more questions for you before I turn it over to my colleagues. I'm referring to the local federal officials of the other law enforcement, you referred to them on several occasions as my partners and then you're telling us that you're being told by these partners that you can't interview the individuals involved in this
criminal case for a criminal investigation until after the investigation is done, so two fold there, do you think that there is some sort of inherent conflict when you're dealing with people who you already work with as partners to independently look at an issue like what happened with Mr. Zambrano, and secondly, don't you have some discretion of your own? You're conducting a criminal investigation. You should as the investigator decide when you need to investigate and who you need to ask when; shouldn't you?

MR. BOB METZGER: Yes, so let me clear it up. I'm not talking about the federal partners. What I'm talking about is our prosecutor and our labor attorney.

CHAIRMAN CASTRO: Your prosecutors are the county prosecutors?

MR. BOB METZGER: Right, right, and he had asked us if it would impair the criminal investigation if we were to interview the officers before we do our Gary interview before we do the Miranda interview. Our labor attorney, not the union labor attorney, I'm talking about the city's labor attorney has advised us to interview the officers before the criminal investigation is complete is not appropriate and would interfere with our ability to, for example, terminate
later on if we had to under Washington State Labor Law. So that's what I'm talking about when I talk about who's -- who's advising me.

CHAIRMAN CASTRO: So who's conducting the actual criminal investigation?

MR. BOB METZGER: It's being conducted by, we call it our Special Investigation Unit, which is made up of officers from the other police agencies, not one agency, but several. There's about fourteen officers involved in it, and everything from this investigation is turned over to them. We have an MOU, a protocol has been set up, so none of my officers are involved in the investigation. It's strictly the officers from that SIU, and then the FBI, they're not part of that MOU, that's a separate instance, I have asked them to come to oversee that, make sure that the integrity of the interview or the integrity of the process, if you will, is not questioned by anybody.

CHAIRMAN CASTRO: So you, probably like all of us here, you've seen that video of Mr. Zambrano many times and, you know, I remember when I first saw that video, there was some news commentary saying, well, you know, the guy was throwing rocks and then you look at some of the other cases, Rob Pedro, he stole cigarettes or he was selling fake cigarettes.

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You know, sometimes the victim is not necessarily the most upstanding citizen, but does that give police officers the right to use the kind of deadly force that you see in the video in particular in Pasco? What are your thoughts about that video when you saw it?

MR. BOB METZGER: My thoughts like everybody, I was in horror when I saw it. I saw it probably right away that night, although I was still at the scene when I got called out to the scene, and certainly if that's all there is to the investigation, but we're gonna end up with sixty-eight witnesses, thereabouts. We've got forty video, including in-car video. We have many other videos. What you have there is twenty seconds of an event that I'm assuming, and I don't know all the facts yet because it hasn't been completed, but the investigation there took place over the course of about ten to fifteen minutes, of which that twenty seconds is kind of the end, if you will, of that whole investigation. By, again, as a - as chief of police, I'm not -- I don't -- I try not to jump to conclusions. Years ago, and I'll give you a quick example if I could, years ago before we had cameras and everything else, so when I started police work we didn't have computers, quite frankly, so but I...

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get a call to a person's house and they said this
person, that they saw somebody climbing in a back
window. So I go in. Sure enough there's somebody in
the house. There's a young lady. She said this is my
mother's house. The name is different. Mother just
moved in the neighborhood. They didn't have
cellphones back then. Neighbor just saw her going in.
If that's all I took was just that she broke into
that house and didn't do anything else, she'd be in
jail. As it was I -- something about her, I said we
got to do more investigation. We checked her out.
Turned out later on yes, in fact that was a daughter.
She was in college, had come home. Mother didn't know
it. Didn't have a key. Had to come in through a
bathroom window that she knew her mother always left
open. So again, it's that piece of the investigation.
One thing I've learned over forty years is you just
never know what all of the information is going to
show. It's very time consuming. Trust me, as a police
officer, there's nothing worse than sitting back and
waiting for all of that information to come forth,
but until I get all that I'm doing a disservice to my
community, to my police department or police in
general by jumping to conclusions based on a twenty
second video. That video alone, yes, it's not good,
and I'm not gonna try to defend it or the officers that did it, but there's a lot more to the investigation. When it all comes out, then all of that has to be taken into consideration, then what the prosecutor decides what to do criminally and what I decide to do within the department.

CHAIRMAN CASTRO: I would be surprised if any video prior to what we saw in the last twenty seconds will justify what we saw in the last twenty seconds, but I would hope that whatever other video you have would be made public so that we could assess that.

So let me ask this one. So when you caught the person who entered that home, can you tell me what the race or ethnicity of that person was?

MR. BOB METZGER: It happened to be -- it was a black female.

CHAIRMAN CASTRO: Did that affect your decision in any way?

MR. BOB METZGER: Not at all.

CHAIRMAN CASTRO: Do you believe that there is at least some sort of subconscious bias in the police department that may treat African American or other minorities differently in scenarios like that than non-minorities?
MR. BOB METZGER: I think everybody has some innate problem with that, if you will, not just police departments. I think people in general, unfortunately, so to say no, there's absolutely not, no, I'm not going to say that. Do we try to temper it, absolutely.

CHAIRMAN CASTRO: And what is it that your police force does to try to temper that, yours in particular?

MR. BOB METZGER: Here at mine in particular, we have an outreach in the community. We have policies, rules and regulations. I know one of the panelists up here was talking about if somebody sees something, they have to turn it in. If they don't that's a violation.

CHAIRMAN CASTRO: What about specific training for your officers?

MR. BOB METZGER: Specific training for my officers --

CHAIRMAN CASTRO: Cultural sensitivity, language.

MR. BOB METZGER: Cultural sensitivity, we have language. About a quarter of our officers are fluent in Spanish, and so we have them do some of the basic commands in Spanish. We each carry a cellphone,
so we have a language line that we can use, and then
we also make sure that our bilingual officers are
spread out throughout the districts and throughout the
shifts, so that there's always one available to come
and assist or to make a phone call or whatever needs
to be done to help other officers who don't have
bilingual skill.

CHAIRMAN CASTRO: Do you know if
that happened in the Zambrano case?

MR. BOB METZGER: No, it didn't.

CHAIRMAN CASTRO: Why not?

MR. BOB METZGER: There wasn't enough time
and one of the officers there wasn't a Hispanic
officer.

CHAIRMAN CASTRO: Commissioner Kladney.

COMMISSIONER KLADNEY: Thank you. I'd like
to ask the panel and anybody who wants to talk about
first to Chief Metzger, does your jail provide most of
the mental health services in your city?

MR. BOB METZGER: Yes. We have a county
jail, and I don't have anything to do about it, yeah.

COMMISSIONER KLADNEY: So you have one
jail for the whole county?

MR. BOB METZGER: Yes, that's true.

COMMISSIONER KLADNEY: And do you take a

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lot of people into that jail on 48 hour holds and things like that?

MR. BOB METZGER: For?

CHAIRMAN CASTRO: Mental health.

MR. BOB METZGER: No, very few. There has to be some kind of criminal activity. We don't just take them in for mental health.

COMMISSIONER KLANDNEY: Right, but they don't go to the mental health centers; they go to jail; is that correct.

MR. BOB METZGER: Well, if it's criminal we'll take them to jail. If it's mental health, we do have places where we take them into.

COMMISSIONER KLANDNEY: Have you ever heard of early intervention systems?

MR. BOB METZGER: Yes.

COMMISSIONER KLANDNEY: You don't have one in your city?

MR. BOB METZGER: No.

COMMISSIONER KLANDNEY: Is that because you're a small department?

MR. BOB METZGER: Small department and we just don't have the personnel to be able to do that.

COMMISSIONER KLANDNEY: Do you believe that your investigation should be made public?
MR. BOB METZGER: It will be when it's all completed.

COMMISSIONER KLANDNEY: Is that the law or is that part of your philosophy?

MR. BOB METZGER: Part of it's the law and part of it's my philosophy. What will happen is, just so you're aware, when this is all done the prosecutor will make this all available. He'll do a conference whenever he decides, and then it's always available under Washington State public records laws. All of that will be available, all the videos, testimony, everything.

COMMISSIONER KLANDNEY: And I saw your press conference after the incident. What is your policy on use of deadly force? You said it was down at the clerk's office. I didn't go get it.

MR. BOB METZGER: Well, you could have.

COMMISSIONER KLANDNEY: I'm sure I could.

MR. BOB METZGER: It's online now too.

COMMISSIONER KLANDNEY: It is?

MR. BOB METZGER: It is online.

COMMISSIONER KLANDNEY: Thank you.

CHAIRMAN CASTRO: Commissioner Yaki.

COMMISSIONER YAKI: Thank you very much, Mr. Chair. One quick question for Chief Metzger and
one that will be for everyone else. I'm very curious about the advice that your attorneys have given you about the officers being questioned, and I'm especially curious because if I've heard your testimony correctly, the FBI is somehow involved in this investigation.

MR. BOB METZGER: No, they're not really involved. They're just overseeing it.

COMMISSIONER YAKI: What's the difference been overseeing and being involved?

MR. BOB METZGER: They've been in contact with investigators from the other department.

COMMISSIONER YAKI: Have you advised the FBI that it's your policy not to interview these folks until the very, very end of the investigation?

MR. BOB METZGER: Yes, I have.

COMMISSIONER YAKI: And did the FB -- I'm just -- it just seems to be contrary to what the FBI has done in every other case that we've talked about or eluded to in the cases here, whether it was Michael Brown, whether it was Eric Garner, whether it's Trayvon Martin. Why is it that the FBI in this case, if you know, has said it's okay?

MR. BOB METZGER: I don't know. See what -- what, just to make sure the panel understands, the

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way we run the Special Investigations Unit is I am not in charge of it. It's an independent investigation in my department. I did ask the FBI to come in. I asked DOJ to come in. They made contact. I don't know what their contact has been with the Special Investigation Unit, as again, I am not interfering or involved with that.

COMMISSIONER YAKI: So you don't know if the FBI has actually asked to interview these officers or not?

MR. BOB METZGER: I'm not aware of it.

COMMISSIONER YAKI: Did you have a quick?

COMMISSIONER KLABNE: Yes, if I could just for a second to clarify this, when you talk about your department interviewing them, you're talking about that for the civil service action or for any contemplated civil service action. As far as the criminal investigation goes, do you know whether they've been investigated or not or interviewed or not or whatever? I mean I'm sure they've been interviewed by now.

MR. BOB METZGER: I don't know if they have or not. I don't believe they have yet. I think they're going to this week.

COMMISSIONER KLABNE: Thank you. I just

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wanted to clarify who was interviewing them, for what reason. That's all.

COMMISSIONER YAKI: Thanks. When you were talking about, there's something that was sort of resonating in my mind when you were talking about how much time can I devote to training, how much -- how much can I deal with the issues of -- of trying to get my officers to -- to be able to speak Spanish, how do I get them to deal with issues of the -- of the mentally ill, and it -- it goes to me to the question raised by the first panel, which is the -- the reflection of the police -- of the police force being a reflection of the community itself, whether in diversity, whether in residency, and I'd like to get your thoughts and then the thoughts of others as well because this is becoming to me an increasingly important point. First of all, what are you doing in terms of attempting to or if you are doing anything, I shouldn't presume, with regard to diversifying your - your police force not just in terms of whether they can speak Spanish or not, but whether or not they can be represented by other neighborhoods or other communities that you're going to have to police, and second -- and secondly, you know, to the -- to the others here and to Mr. Alexander and to Ms. Meanes, I
want to throw that open to you as well as to how important is diversity issues and what suggestions you might offer to Mr. -- to Chief Metzger on how to achieve that in Pasco? So Chief, if you could.

MR. BOB METZGER: Sure. Real quick, we do several things, actually. We have school resource officers in each of our high schools that interact with the kids. From that we've built a police explorer program, open also to our young Hispanic males and females and part of that -- it's through the Boy Scouts, and part of that is our attempt to get them interested in policing. Some of them do. In fact, we have one young lady right now who's in the process of taking the test. We then have a very active police reserve program. It's not like the one perhaps that you've seen recently in the news. They do not go out on patrol by themselves. They basically are there for special events working with an officer, but it's also a training ground. There is an academy for that reserve program, and they come out certified by the state as reserve officers and then they're allowed to work with officers not by themselves. That also has fifteen members. Thirteen of them are Hispanic and a couple of those, one of those just took the test to become a police officer. We've also had a couple of
our explorers that are currently in our local community college, both of whom have told me that they're interested in taking the test. We, of course, are a civil service organization, meaning there is a test and so we have encouraged, and in fact the last test was done in Pasco. We have also, we're going to our Civil Service to give additional points. They haven't done it yet, we're working on it right now, to get the Civil Service Commission to award extra points for both being a police explorer and for being a police reserve officer so that those people that are local and reflect the community can have an extra incentive, if you will, to become members of the police department. So those are things that we're trying to do locally to increase. I will say out of the last test we had, we had about seventy people take the test and we only had four or five Hispanics that came in to take the test.

MS. PAMELA MEANES: This may come as a surprise, but the National Bar Association is going to caution this Commission to believing that residency requirements in affirmative action programs solve the problems that we see in police departments. Part of our 25 state initiative that we have against police brutality involves us going to into the communities
that we're looking at and do you know your right forms and often we do and we all the time invite the police to come in with us because the purpose of this is to train the community on how to interact with police departments, educate them on you get pulled over by a stop, make no sudden stop. Sit still. There are certain things you should do and not do. I will tell that what has become so disheartening and evident is that some of the most horrific remarks that have been made as it relates to race and the denigration of African Americans have been done by black officers. I was in Arkansas and the chief of police who had only been there for less than six months stood up and began to reprimand the individuals in the audience about being involved in the sexiness of the Mike Brown case when they should be taking care of home. Then proceeded to rattle off a name of black-on-black crime, things we hear Rudi Gillian say on the air, and he said if you want to solve the problem, solve it in your own backyard, but yet he didn't rattle off the 85 percent of white-on-white, that it's actually going up instead of going down. That's black-on-black crimes. Then said at the end of this program get yourself together because I'm tired of scraping your kids off the ground. That officer would have never said that in a
white community when we were doing a know your rights.

Went to Jackson, Mississippi with the U.S. Attorney, African American, the chief of police, African American, the sheriff, African American, and we were teaching 200 young black men about their constitutional rights and we give out these little cards that say here is what the constitution actually allows you to do. The chief of police of the -- of the sheriff, the sheriff in that area stood up and said I disagree with everything that the president of the National Bar Association said. If I pull you over to the side, do not begin to litigate your rights to me. You do what I tell ya, when I tell ya and how I tell ya. Then they pulled over one of my attorneys, and they said why didn't you check her. Why did you allow her to give these cards to these guys because when we pull them over, this only makes it worse. In 2015 for individuals to say that the exercising of your rights puts you in the line of fire tells you we have a problem. It's not just loading into a community cops that look like them. It's changing the culture of that community and not putting on the street individuals that don't recognize, contrary to popular belief, police work for us and not the reverse. We have a problem, and it's in that vein.
that we say look, I hear cops when they say, and I
agree, we do not have a war against police
departments. I want the cops protecting my area. I
want them protecting my home. We have a war against
bad police officers, but what I find ironic is that
when you tell me not to paint your profession with one
brush, that is all they do to the African American
community, especially when it comes to young black
men. The chief of police in Arkansas said we police
harder in black communities because you commit the
most crimes. He didn't rattle off any other
statistics. He wasn't honest about what he said, and
so my son is a 14-year-old guy in an honors program. I
fear that with his mother being a lawyer and his
father being a pastor with a doctor degree that he can
walk out into the street and he can look at someone
the wrong way and I no longer have my son. So I don't
come to you just as the president of the National Bar
Association. I come to you as a mother of four with
one son telling you this is a real problem. Don't just
load the community with people that look like them,
but deal the real color issue is blue. Black and white
makes it worse, but when a culture says you obey me,
you are subject to me, we're dealing with a systemic
problem, and we don't like to have the hard

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conversations, but this is a matter of life and death, and that's the issue. It pains me to have to say these stories, but these stories are true, not what someone told me, what I experienced as I went from state to state to state to state. Do not reprimand us and think that all of us are criminals, all of us are -- so you don't paint a community, and when we get - move away from that narrative and say every black male, if you look at the report we gave you, it lists out a lot of mental health patients, that they automatically believe because they're African American something's wrong with them. The reason we focus on African Americans is because African American being a nine times more likely to be shot by the police, so if the least of us are valued, then the most of us will be respected.

CHAIRMAN CASTRO: Any other comments from any of the other panelists? If not, Commissioner Achtenberg.

COMMISSIONER ACHTENBERG: I had two things I wanted to ask Ms. Meanes about. You in your statement you talk about the establishment of independent prosecutorial bodies of cases involving allegations of police misconduct. Could you talk at greater depth about that, and could you identify any

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places where that approach has been taken and what has been the result of that approach first, and then I have a second question for you as well?

MS. PAMELA MEANES: Thank you so much, Commissioner. What we are recommending is not the establishment of a police review board. We're actually saying that state's attorney's office should have an investigation department within the state's attorney's office and that those investigative bodies should do the investigation and the states attorneys should handle the investigation, something similar to what was being offered here in New York. The only department that we know that's similarly doing this is in California. What you guys should know is that our initiative is really chaired by two individuals. One gentleman is a twenty-eight year veteran prosecutor with Alemany College in California. He's the second highest ranking individual, and the other gentleman is a twenty-three year guy who actually represents families, and the reason for that is we want the balance of opinion. This prosecutor said to me that's where you really get -- remove -- you can assure that there is no bias because the state's attorney's office is not connected to that local prosecutor. The local prosecutor has the choice and makes the deal, and we
have talked to many prosecutors who are now judges on
the bench, and they said Pamela, when we decide what
kind of indictment, we present the case in that
manner, and sometimes we work very closely with the
police department, so it's a trust issue. The only
county, and it's kind of untested, is in California,
but the reason we're saying this is that we really do
believe that there are places around the country that
probably could investigate themselves, but the trust
is so damaged at this point that you need an
independent body and police review boards are too
susceptible, and if you look around the country, even
in St. Louis City, in St. Louis County, even if you
gave them authority, even if you gave them authority
the possibility of people choosing the right people
because folks are gonna complain either away, but if
you give it to the state's attorney, this wouldn't
require a state to use a lot of money. You set up that
individuals to do the investigation and we believe
that that then has some -- some -- puts some barrier
between the police department and the local entity.
You will know that in these cases that's the reason
the National Bar Association has always called on the
U.S. Department of Justice to do it because we wanted
to say that if an outside agency is looking, it

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can bring some credibility.

COMMISSIONER ACHTENBERG: That's very helpful. The second issue I'd like you to address, you said there should be mandatory racial bias training. I was assuming both related to explicit bias, but even more importantly implicit bias. I'm wondering if you could talk a little bit more about that, and are you aware of programs that your -- your members in the National Bar Association either think work or have been proven to improve approaches, if you could address that issue?

MS. PAMELA MEANES: It's more implicit bias than it is overt bias, those biases that we own and have that sometimes we don't even know that are there, that we don't even know we have a propensity to do it. You know, when I got married, my husband said your mother was a strong women, but she kind of reared you not to like men, and I said what are you talking about because I would make the statement all the time I don't need a man to survive and so in that he had the feeling that he was unnecessary, and some of my actions then led to that, so that was something I had to deal with, that I thought that this was a strength and something that's right, but on the other hand having that partner is a great thing. If you look --
I don't know if you saw the announcement that just came out by U.S. Attorney Harris. They're about to start an implicit bias training program in California because of the systemic problems that are there. What we saw in the Oakland Police Department was under federal review for how many years and they still have a load of problems and now they're moving on the implicit bias training because people are recognizing that as a nation we have failed to deal with the elephant sitting in the room and that elephant is race on every level, and until -- and what we have to use that training to do, Commissioner, I don't think it's being tested anywhere. I think California is the first place to say we're going to do it and the police department is saying we're going to do it. Now we have little pockets, if you look at LA, Connie Weiss is doing a community relation building where she has a department that you get points if you deescalate a situation as opposed to escalate a situation. All of that is nice, but our problem at the National Bar Association is that we don't have time to do all of those little pockets of changes, and that's why we're saying implement some of these things with implicit bias training that would weed officers off the street, but the police chief said to me well, what do we do,
Pam, when we don't want to identify them, and I said
don't put them on the street until they're ready and
the implicit bias training would do that and you have
to not release the facts and then have techniques of
how to pass the test or training on how to pass them.
I was stunned and shocked when I went on the internet
and there were tests of how to pass the psychological
test for policing. That's not the nature of what we
should be doing.

COMMISSIONER ACHTENBERG: Thank you.

CHAIRMAN CASTRO: Commissioner Narasaki.

COMMISSIONER NARASAKI: Thank you, Mr.

Chair. I also do want to appreciate both Mr. Alexander
and Mr. Metzger for coming to this kind of hearing
because of course the lens is very much on the
profession in an uncomfortable way, so I appreciate
that because I think you are very key to us really
understanding what change is going to make a
difference. I was struck by the discussion about how
much we are asking police to do these days,
particularly in the area addressing mental health,
given the lack of resources that are in society to
help address from the health standpoint issue. I feel
like police are sort of like helpful teachers. Right, we're asking them to address all the challenges that

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society throws up and not necessarily giving them all
of the tools. I also recognize the reality that it's
also happening at a time when there's actually less
money in local budgets to do all the training, to
hiring of people so that you could have training days
and still have people out doing what they're supposed
to be doing. What thought has been given, and I say
that to all the panelists, about really trying to
build the political will and the public support for
the resources that are really necessary, I think, for
us to do the kind of change that is going to be called
for that everybody's asking for, and have you seen
that work in some communities? I was very interested
when I read, I think it was the perf report where a
lot of police chiefs in fact were saying that they
welcomed DOJ investigations because it actually helped
them have more leverage over both -- any labor issues,
union issues they might have as well as creating the
public will to say okay, we really actually need to
pay for this training for good quality training, not
just check the box training, and have enough officers
to really do community policing the way it's supposed
to be done. So I just wanted some response to that.

MR. CEDRICK ALEXANDER: So I'll respond
and give chief here a break, if you don't mind.

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COMMISSIONER NARASAKI: I was giving him something happy to talk about.

MR. CEDRICK ALEXANDER: Yeah. So let me say this for a second. It's very important that communities support police even in spite of the very challenging times that we're experiencing now across this country. It's certainly asking a lot, many Americans to still have a sense of confidence in their police department, but I think it's important to not forget as well too that we still have police, that community needs to coexist. Police needs community. There's a lot of work that had not been done in the past, and based on a lot of history as I noted from the onset, but here's, you know, here is my thought about it from a number of different perspectives and one being having been a chief in two cities in this country, and it becomes important for -- for us in policing, for all of us in policing across the country to have that community support. For an example, let's talk about mental health for a moment because what we're beginning to see and what we have seen over the last number of years are -- are these negative confrontations between police and particularly those who may be having a -- a -- a mental health experience and many of them have been very negative outcomes that
have presented us with ways maybe of not to do things when we look at them on video. So in light of the fact that during the mid and late 1980s there was a deinstitutionalization of individuals who were typically incarcerated or I should not say incarcerated, but who were housed in mental health facilities. With the onset of new medication a lot of people allowed to go back into the public, but they required also that they would have to have some social support to help maintain a place of residency and also stay on their medications as well too, but oftentimes we know many of these people are homeless who struggle. Many of them may not have the type of social supports that they need to get off medication, and then you have these events that occur between police and community. What we have done in Dekalb County, Georgia because most recently we had a shooting, as many of you may have heard, of a naked man by one of our police officers. That was in Dekalb County, Georgia, and that case is under investigation by an outside entity, which is the Georgia Bureau of Investigation, and I'd certainly be willing to speak more about that as it relates, Commissioner, to your question around should outside entities investigate, and I can talk at length about that, but what we are doing

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now, the State of Georgia only required our police academy recruits to have four hours of mental health training, four hours, and you're finding most states across the country the mental health training is very minimal. What we have employed post that shooting, in fact what we had already began to talk about prior to that shooting, we enhanced our live training to forty hours mental health training, not to just check the box, but to really have good mental health training for all recruits that are coming in.

COMMISSIONER NARASAKI: And how did you build support for the funding to be able to do that?

MR. CEDRICK ALEXANDER: Well, we're not getting additional funding to do it, quite frankly. We see it as a necessity. We have six months of police academy and we have a little room in there where we can add and take away training as we want to, so we're going to move some other training around because we see this as being a priority and we're going to add an additional forty hours or one week to that academy training because we see the importance of it and we also noticed too that many of the calls for service that are going out in our community of over 700,000 citizens, a lot of those calls have some mental health component.

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COMMISSIONER NARASAKI: I appreciate that, and I appreciate the fact that you've made it a priority. I'm just trying to get at the issue of whether in fact society needs to do more in terms of funding in order to address this, and if we do, then what do you do in the reality when both the federal and local budgets are not heading up and they're heading down, but I did have two more questions, and one is we are going to have Heather MacDonald from the Manhattan Institute on a later panel, and I wanted to ask Ms. Meanes because you brought up the issue of, you know, the what -- what some people often raise in the situation is there are fewer black people being killed by white cops than black people killing black people, so I would love to hear your response to that, and the other thing is, and perhaps one of you gentlemen reached this is so oftentimes we see the hero cops who rescued someone or in a highly stressful situating shot a bad guy or something like that, but I don't think we really see very many people or maybe I'm not as aware that it's happening, people lifted up because they've done real good community policing because they have deescalated a situation, and I'm wondering what the role is in terms of we talked about some of the sticks, what are some of the carrots. Are
there in fact any effective carrots that will help us
to change the policing culture, as many of the
panelists have already noted we need to change?

MR. BOB METZGER: I can start with that
one. One of the things that we do in my department
is, you're right, it's very easy to think about
discipline all the time. It's very hard to think
about some of the other good things. We do a yearly
award ceremony that we do recognize those officers
that do those things that, quite frankly, don't make
the press. We try to get the press there. They
usually don't want to come because that also doesn't
make the news very much.

COMMISSIONER NARASAKI: Do they get
nominated by the community?

MR. BOB METZGER: Nominated sometimes by
the community. Sometimes by the fellow officers.
Sometimes by supervisory. They also do it for
residents. We just had some awards go out the other
day for residents that helped us do some things. In
this case they caught some burglary suspects that had
run by their house. So we do it on either an as need
basis, in other words, as things come up and then we
also do a formal awards ceremony where we do it, and
it's not about the shootings or any of those things.
It's about just the things that you're talking about, and I think that's the kind of culture that it's, as a police chief anyway, it's imperative on me to make sure that we emphasize that, if not more, at least as much as we do the discipline part. We have the rules and regulations, all the other things, but it's that good police work and that's instilled not only in our quarterly and our daily meetings that we have with supervisors, the daily roll calls, but then those other events such as the award ceremony and I think that's incumbent to constantly report that.

MR. CEDRICK ALEXANDER: And let me add something to that as well too. You know, inasmuch as I think we still do a lot of great training that end up with a lot of good results that you don't hear about that you just heard the chief articulate, is no, it doesn't get the kind of notoriety as something going wrong, horribly wrong, so what we do is we try to encourage, enhance, make that as simple as we can within the community, within the police department and you can have a very good department that do wonderful things and that doesn't get recognized. Okay, that's okay. I can live with that. The challenge becomes for any administrator, and I think the chief, any of us would agree with that, would be that when one
department do something wrong on the other side of the
country is a reflection now on all of us, and when
that happens, those police officers who are doing a
great job oftentimes do get that same stroke of that
brush and they may have had a history of just having a
great career, doing wonderful things, saving lives
that they can go back to, but that's the nature of the
business. We come to accept that's what it is. When we
do something great in Washington State, we all herald
over it. When we do something bad in Dekalb County, we
all are saddened by it. That's the nature, but it does
have its challenges and when you're trying to keep up
with the morale of your men and women and their
ability to go wayward, it does cast reflection on
everybody.

MS. PAMELA MEANES: Let me tell you one
thing the National Bar Association has done, we
applaud those officers who have deescalation of force
training and we actually present and show that as a
demonstration of how real policing should be done. In
addition, I had seven minutes, but a part of what we
say also is I've also sat on panels with very
excellent police chiefs, Chief Ramsey out of
Philadelphia, he is one of the finest I've seen, and
his approach to this issue is to acknowledge from the

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community we have problems and here are my challenges
in dealing with my problems. Now Pamela, help me try
to figure out a solution to that. He comes not with a
defense and with his back up, but he comes with an
understanding of knowing the relationship is broken
and I've met folks and we have highlighted those among
the African American community and encouraged our
affiliate chapters to work as partners in this. In
terms of the funding, we've asked the local government
to use its forfeiture funding that is just sitting
there not doing anything that they can allocate and
utilize, and that's what we're saying to the Justice
Department. There's money you got from the bank
failures and stuff that you can direct toward some of
the government that you pay as the racial profiling on
the federal level and you say well, we can't apply
that to the local department. Sure you can. You give
grants to them all the time that is dealing with
policing. You can tie to that a mandatory for you to
adopt your federal standard and make it be just like
you did with racial profiling, a mandatory
desescalation of force that attaches those forfeiture
funds to that because I agree with you, money is
scarce, but we have to find a way to fund what we're
doing. Somehow North Charleston found the money now

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to do all the cameras. What is valuable to us, we
find a way to do it.

CHAIRMAN CASTRO: So I'm now going to
go back to Commissioner Kladney.

COMMISSIONER NARASAKI: Can she reply
to the Heather MacDonald?

MS. PAMELA MEANES: The question of the
race?

COMMISSIONER NARASAKI: Yes.

MS. PAMELA MEANES: Give me the question
again.

COMMISSIONER NARASAKI: So the argument
is the issue not white cops killing blacks, but
it's blacks killing each other.

MS. PAMELA MEANES: Well, that's comparing
apples to oranges and let me tell you why or apples to
a pear because there is no African American that I
know when it's black-on-black crime who is paid to
protect and serve. That's their job, who is paid to
actually in that situation to protect that person.
Secondly, I've never seen an African American be given
48 hours to get his story together in a situation like
that or escape prosecution by saying I feared for my
life. Those are two different situations, but a law
enforcement officer is given the right and the

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authority and justifiably under the law to take a
life, so you cannot compare someone who is
commissioned and hired to do that to someone who is a
civilian, and when you make that conversation, talk
about that 85 percent of whites who are killed by
whites and then you are talking about a common
conversation because you're comparing something to
nothing because I've never seen an African American
male shoot another one and not go to jail for it
unless somehow he went and went to Cuba. I just
haven't seen it.

CHAIRMAN CASTRO: Commissioner Kladney, you
have a question you want to bring up. Then we're
going to conclude with questions from our vice chair.

COMMISSIONER KLADNEY: Thank you. Ms.
Meanes, I actually think that Ms. MacDonald is going
to testify that because there is so much black-on-
black crime that police have more interaction, and
therefore, more problems arise where they have to
use deadly force. I'm just saying.

MS. PAMELA MEANES: No, I understand what
you're saying, but then if that is the case, then
black-on-black crime is actually going down, if you
look at FBI statistics. The latest you have is 2001.
It went down from 90 -- white-on-white crime is going
up, 85 percent, so if that's your rational, then you
should have the more in white community making a force
on that, but when you look at those numbers, what they
say is well, you know, not all white people are out
killing white people. That suggests diminution of
that crime.

COMMISSIONER KLANDNEY: Chief Alexander and
Chief Metzger, I have a couple of questions for you.
You know, police departments are quasi military
organizations, and a lot of officers believe that each
officer has to have their own back, each other's back
and they are brothers, and when it comes before
there's big problems, there are little problems, and
can you discuss a little the problem with being a
chief and supporting your men, at the same time
disciplining, trying to discipline them according to
like progressive discipline rules, things likes that
when you have people who dress together in a locker
room, if that's a fair question?

MR. CEDRICK ALEXANDER: No, it's a very fair
question, and I think to try to minimize the fact that
there is not a brotherhood or sisterhood that exists
would be wrong. It does exist. Any time that you have
people that work together in any occupation, quite
frankly, it is just normal that you're going to
have -- gain some emotional or psychological relationship with them. If you and I rode in a car every day for eight to ten hours on a shift and we have a variety of experiences that we come in contact with and we're doing the job right, we're doing the job the way we were trained to do, we don't need to have the biases that exist among others. We're just good police officers, well trained, maybe live in the community in which we serve, yes, there's going to be a development of relationships that people are going to have, but it does not mean necessarily they have to be unhealthy relationships because if you see me do something wrong, you have a responsibility to tell me I'm not with that, and I also have a responsibility not to put you in a position where you ever have to jeopardize yourself or your career for me either. Those relationships do exist in policing. Those are not the ones that we hear about more frequently because we do know that there are unhealthy relationships. We have people who do lie and do cover for each other. That do exist, and we, I, myself as a chief, as a public safety director over the years, have always been supported my folks, but I am very clear about this that if you go outside of the law, you can expect the same thing you would expect from
anyone else, and the same thing that we're out here trying to enforce we cannot do any different, and you cannot only say it. You have to exercise it when those events do occur, and they will occur over the course of your career because you're dealing with people. Police officers are people, just like anyone else in any other profession. They're gonna come with their biases. We train them the very best that we can. We help people realize what their internal stuff is. And some will learn and grow from it. Others will appear to learn and grow from it and others will just have to do something else with -- more egregious, but I think it's important for any police leader to recognize the fact that any time you have a number of human beings working for you, men and women, you always gonna have those that are going to go outside and you have to deal with them appropriately, and that's what good leadership is because a lot of this does go back to leadership. There's no question about it. It's what my attitude at the top of the food chain and what's filtered down to the last person hired, and it's oftentimes, though, the bigger your department, the more challenging it can be, and then sometimes the smaller your department, the more challenging it can be as well.

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MR. BOB METZGER: I would echo that and just add to it I think there's a couple things we have to as leaders show not only lead -- we have to lead by example, and I think that's very important. Every new officer I hire, I sit down and talk with them and explain to them what my -- what my obligation is, what their obligation is, what my expectation is of them as a police officer, and we've had several incidents in the past, as Chief Alexander was saying, there are times during your career you're going to end up disciplining somebody and you have to make sure they're very clear that when that happens that will be done. I promoted a couple. I fired a couple. I've had a couple that hadn't made it through probation. That's acceptable. As long as those who want to follow you will and those who don't, they will fall by the wayside. Another key issue to that for me anyway is there are a lot of officers that for some reason want to do this job. I'm not sure if I talk them into it or out of it sometimes, but they do want to do this job. So there's career development. They want to become supervisors and captains and managers and part of that is training them when these things happen. It's your prerogative. If I find out you don't, guess what, there goes your sergeant stripes, your whatever
it may be. So I think there's a couple things that
have to be done by them.

COMMISSIONER KLADNEY: Recently in Racine,
Wisconsin there was an article I read and they've done
community policing for about twenty years and they
were a very high crime community at the time, and what
they have done, is they actually, I guess, bought
houses in neighborhoods and they have the officers
working out of them, not -- not living in them, but
working out of them, and it's worked pretty well in
regards to community policing. Are there other
fashions or ways to do community policing that are
effective that either one of you know of?

MR. BOB METZGER: There's a lot of them. We
have a lot of subsidized housing in our city, and a
lot of times an officer wants to live in one of those
subsidized housing, you don't mandate it, but it can
be. We try to spread them around little bit. We used
to have a problem many years ago, but again costs
being what they were because they got it rent free,
but then they were expected to live in that apartment
complex. So that was very successful. I know Jackson,
Michigan has a very successful officer residence
program where they actually lived there, and it was
in low income housing areas and it had a huge

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difference in that. We did that many years ago ourselves. Now it's sort of an informal thing where an officer needs, in transitional housing, for example, we had several officers that buy and sell homes and move into the area, an apartment let's say that's available and they live in one of those for a while, at least until they get a house, so I think that's -- that's certainly something being part of the community. Some will tell you they don't have to necessarily live there to be part of it. I'm not sure I necessarily agree with that. I've always lived in the community I've been a chief police in, even if not mandated, but I feel that's important at least for me, but rules are what they are in most places and you can't mandate it at this point. You can certainly encourage it. We do that for staff, have cars for officers that live in the city, and for those that don't, they don't as an encouragement. Some cities, I'm not sure I'd recommend that, but they offer a lower property tax rate to officers who live in the city. There are other things you can do.

CHAIRMAN CASTRO: Thank you.
Commissioners, now I want to give it now to the vice chair to close the panel of questions.

VICE CHAIRMAN TIMMONS-GOODSON: Thank you
very much, Mr. Chair. The question is for Chief Alexander and Chief Metzger. Throughout our two panels today we have heard the word trust repeatedly. It's throughout, and we all seem to agree that in building community relations between our citizens and our law enforcement trust is an important element of that. We've looked at the report of the task force, and I believe the first pillar talks about trust.

MR. CEDRICK ALEXANDER: Building trust and legitimacy.

VICE CHAIRMAN TIMMONS-GOODSON: Absolutely. So Chief Metzger, when you were speaking earlier about the efforts that were underway in your community to build relationships and to build trust, you mentioned a couple of things. You mentioned a program with the Boy Scouts and you also mentioned the school resource officers. I want to touch briefly on this issue, the school resource officers. In my time as a district court judge in my state, I had a large responsibility for juvenile court, and I saw at that time a few too many instances where I thought that the school administrators were using law enforcement to help them deal with routine discipline, and of course, what I did in the courtroom, I would make mention of that, but I over the years, and that was some fifteen years
ago, but I believe I see rather than a decrease in that kind of action, an increase of that, and so my question is what efforts are you in your department making to ensure that our schools are not calling upon our resources -- our resource officers to handle routine discipline because when you permit that, it's counterproductive. You're working and encouraging a new generation of folks to distrust and not appreciate our law enforcement. So what are you doing or what can be done to ensure that police departments do not allow their school resource officers to be misused.

MR. CEDRICK ALEXANDER: Right. In many departments across the country, and I can go back twenty-five, thirty years, when that first concept first came about in, I was in Dayton County, Miami at that time policing, and the idea was a good one, put police officers into schools, positive role models, you get to know the kids. You work along with them. Maybe you do a class or something around promoting good citizenship, you know, that type of thing, but then it moved to something else and that something else, quite frankly, is exactly what you're talking about where now what we're beginning to see in many part of the country police being used as enforcers as opposed to partners with mentoring young people along
the way. Now in the 21st Century document test, word
document, we attended to that same issue, and what we
recommended in there is to reverse back to what that
position was originally designed to be because there
has been over time that I moved towards being more of
the enforcer which end up doing nothing, but we're
just helping the school throw kids out of school as
opposed to trying to do some work with those kids in a
positive way to keep them in school and then it
becomes -- it becomes a black eye for the police
department.

MR. BOB METZGER: In my past life before I
became a police chief one of my duties and part of my
career was as an SRO, and so I have a heart for school
resource officers and in our case in Pasco we've had
them for longer than I've been there and we originally
brought them in because we had a huge gang problem in
our area, high crime rate and they brought in many
from the state, you know, kids who weren't involved in
gangs. Since I've come there the past couple of years,
we've been able to, now with the gang issue, at least
in schools anyway, we have been able to kind of
moderate that and control it to a great extent. We're
now moving back towards what your thoughts about. One
of the things they do is try to get kids to be

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interested in the explorer program. We try to help those kids. We had one the other day that she was being texted, being bullied through texting by somebody, and she happened to know the school resource person, he's 6'8, so he's pretty easy to be seen in high school and she saw him and sought him out, and this was not a school-related incident. This was actually occurring both in and out of school. So there really there are more of those kids that need that type of help, and we've made it very clear, we also have written MOU that states right in there that we do not handle school discipline.

VICE CHAIRMAN TIMMONS-GOODSON: Okay, that's what I wanted to hear. That's what I wanted to hear. And that's leadership. The law enforcement agency leadership informing the schools that these are the parameters within which we're going to come in and help and we're not going to be handling routine discipline for you and you making us the enforcer. Thank you.

CHAIRMAN CASTRO: Thank you. This concludes our morning session and this panel. Thank you very much to each of you for your participation and your information. We will reconvene here at 1:25. So we ask folks to try to get back here by 1:20 so

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they can be seated. Now housekeeping, any member of
the public can purchase lunch at the cafeteria and
commissioners can purchase our lunch in the staff
lounge and staff will join us for that. So we'll be
back here 1:20 for a 1:25. Thank you.

(Whereupon, a lunch recess was
taken from 12:40 to 1:30.)

CHAIRMAN CASTRO: All right, we're calling
this briefing back to order. Welcome, everyone, back
from lunch. The time is now 1:30. I'm glad to see our
third panel is in place. I don't know if you were all
here earlier today, but the system of warning lights.
Green means you've got your seven minute start;
yellow start wrapping up. Red we ask you to stop.
We'll have plenty of time to interact with you when
the commissioners ask questions.

So what I'd like to do is introduce the
panelists and then we'll get started. Our first
panelist this afternoon is the Honorable Lawrence K.
Mark of the New York Unified Court System. Our second
panelist is Mr. Ezekiel Edwards, with the American
Civil Liberties Union. Our third panelist is Mr.
James Chanin, with the Law Offices of James Chanin,
and our fourth panelist is Ms. Delores Jones-Brown
with John Jay College, and actually our fifth
panelist, Mr. Jonathan Blanks with the Cato Institution.

I would ask each panelist to raise your right hand, and swear or affirm that the information that you are about to provide us is true and accurate to the best of your knowledge and belief; is that correct?

HONORABLE LAWRENCE MARK: Yes.

MR. EZEKIEL EDWARDS: Yes.

MR. JAMES CHANIN: Yes.

MS. JONES-BROWN: Yes.

MR. JONATHAN BLANKS: Yes.

CHAIRMAN CASTRO: Thank you. Judge Mark.

HON. LAWRENCE MARK: Sure. Thank you for the opportunity to testify here today. I'm Lawrence Mark. I'm a trial court judge here in Manhattan. I'm a trial court judge here in Manhattan. I'm also the deputy chief administrative judge for the state court system, which involves me in administrative policy issues within the state courts here in New York. So I'd like to address my comments today to efforts we undertake in the New York State court system to improve public trust and confidence in the justice system. We've taken many steps to do that here in New York under the leadership of our chief judge, Jonathan Lipton, including proposing measures such as reforming
our bail system, preventing wrongful convictions and raising the age of criminal responsibility, to name just a few. But what I'd like to concentrate on here today is legislation we've proposed regarding the grand jury, and I'd like to explain why we propose this legislation, what the legislation would do and why we think it will improve trust and confidence in the criminal justice system. We also think that it could provide a model for other states that use grand juries, and by the way, about half the states in the country routinely, as we do in New York, routinely use grand juries to charge people with felonies. So first why is the New York court system proposing this legislation? As we all know, public trust in the justice system and in the grand jury process in particular has been shaken by the recent cases in New York City, Missouri and elsewhere and as the head of the judicial branch of our state's government, it was incumbent on our chief judge in light of this crisis and confidence to evaluate the grand jury process and determine whether changes are warranted, and particularly so because contrary to what many people think, the grand jury is not an arm of the prosecutor's office, rather under the law in New York, and I believe this is true in most, if not all of the
states that use grand juries, the grand jury is a part of the court. That's actually the term that's used in the criminal procedure law in New York. The grand jury is a part of the court. So for example, under the law the courts in panel grand juries, judges had supervisory authority over grand juries and judges along with prosecutors serve as legal advisors to the grand jury. So when the public loses confidence in the grand jury process, it is very much a problem for the judicial branch, and it is very much the responsibility of the judicial branch to consider appropriate changes in reform. And that is precisely what we've done. We offered a targeted, measured legislative proposal, which we've presented to the New York State legislature, and I have copies that I'll hand up to you today, a proposal that we believe can restore public confidence in this process. The bill has two parts; first it would reaffirm and strengthen the court's supervisory role over grand jury proceedings in cases involving investigation of excessive police force, excessive force charges against police officers and it would do this by requiring the physical presence of a judge in the grand jury proceedings in these cases. So what would the judge do in such a role? Well, the judge would
not be conducting the examination of witnesses, and
the judge would not be deciding which crimes to
present to the grand jury. That's the role of the
prosecutor. Rather the judge would make rulings on the
admissibility of evidence, advise the grand jury on
legal issues and provide legal instructions to the
grand jury. And why does it make sense to have a judge
present in the grand jury in these types of cases? It
makes sense because there's an increasingly held
perception in these cases that prosecutors, because
they rely so heavily on and work so closely with the
police on a day-to-day basis, are conflicted in these
cases and do not objectively and aggressively present
them. Now is that an accurate perception? Maybe, maybe
not. Because there's no question that it is a
perception and an increasingly held one. So we believe
that the presence of a neutral judicial officer in the
grand jury in these cases will help to a great extent
and diminish that perception. And the second part of
our legislation address the secrecy of the grand jury.
Under the law grand jury proceedings are secret,
although technically judges have authority to order
disclosure of the grand jury transcripts. That
authority, at least here in New York, has been
narrowly construed, very sparingly exercised and the

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New York statute provides no guidance on this issue whatsoever, and you may know in the Eric Garner case there was an application made to the court to disclose the grand jury transcript and it was denied. Though it's true that grand jury secrecy can promote some important policy interests, it can prevent tampering with the grand jury investigation. It can encourage reluctant witnesses to cooperate and it can protect those who are not indicted. The secrecy can also have the pernicious effect of invading the public's understanding of and confidence in what transpired in the grand jury, and it greatly diminishes public discussion and debate about cases and issues that can be a compelling public interest. So we're proposing legislation that we believe will promote public knowledge and understanding without sacrificing the valid interest that the grand jury secrecy promotes. Our bill would create a presumption of disclosure in cases in which the grand jury votes no charges where the court finds three factors; one, that the public is already aware of the criminal investigation at issue; two, that the public already knows the identity of the subject of the investigation or the subject of the investigation intent to disclosure; three, that there is significant public interest in disclosure. Where
the court finds these three factors, it would order disclosure of the charges submitted to the grand jury, the legal instructions given to the grand jury, the testimony provided by all public servants and all experts who appeared and the testimony of all other witnesses who appear but with their names redacted and any other information that would tend to identify those civilian witnesses also redacted, and there are further protections built into the bill that we propose. So those are the two components of our legislation, requiring the physical presence of the judge in grand jury proceedings involving excessive police force charges and creating a presumption of disclosure of the grand jury proceedings with certain limitations where the grand jury declines to indict and the court finds that certain factors exist. Overall we believe this legislation will go a long way toward restoring trust and confidence in the criminal justice system and in the grand jury process in particular here in New York and in other states that use the grand jury. Thank you.

CHAIRMAN CASTRO: Thank you, Your Honor. Mr. Edwards.

MR. EZEKIEL EDWARDS: Thank you for having me testify here today. I wanted to focus since we're
talking about procedural justice, on procedural
justice and the police and their interactions with the
community. Tom Tyler, who many of us know, Yale law
school professor, has defined procedural justice as
treating people with respect and in an unbiased
fashion. He has noted that such fairness does not
depend on crime rate fluctuations but on the behavior
of the police themselves. He has stressed that
authorities need to acknowledge the basic dignity and
rights of citizens to account for decisions that
affect them and to make their decisions in a neutral
and objective way, and he has said that without such
acknowledgement of their dignity and rights, people
are likely to feel angry and be resistant to the
police. Procedural justice is certainly not a cure all
for all of problems that we face in policing today,
but certainly treating all members of our community
with respect and acknowledging their dignity and
rights and treating them fairly, regardless of the
color of their skin or the neighborhood in which they
live would take us significantly forward in police
community relations, but what I would like to talk
about today briefly is a broader view of procedural
justice, which is not only how the police treat you
when you're stopped, but about why you're being
stopped, who's being stopped and what for. How can we
achieve procedural justice, how can we achieve respect
for dignity and equal treatment and how can we achieve
legitimacy when we have a system in which too often
the color of your skin or the neighborhood where you
live is a deciding factor in whether you are stopped,
searched, arrested, jailed, convicted too often
without adequate justification and even when often for
minor conduct that goes ignored in other communities.

There is a plethora of data from New York City stop
and frisk, from Philadelphia, Boston, Chicago,
Minneapolis where we and others have documented the
startling racial disparity in who gets stopped, who
gets frisked and who gets arrested. In New York
between 2004 and 2012 there were 4.4 million stops. 83
percent were of black and Hispanics. Ten percent were
of whites. 30 percent were either illegal stops or
question of legality. Almost 9 out of 10 did not
result in any further law enforcement action because
the person was innocent. You see the same data in the
cities that I mentioned. We looked at Minneapolis
police departments and looked at arrests, not just
stops and we found that blacks were eight times as
likely to be arrested as whites for vagrancy, nine
times for disorderly conduct, twelve times for
marijuana possession. Indeed we put out a report in 2013 documenting shocking racial disparities in marijuana possession arrests in every corner of this country, regardless of demographic. The simple but unacceptable fact is that your fourth amendment right to be free from unreasonable or even sometimes reasonable searches and seizures is different based on the color of your skin and where you live, and the fact is you are more likely to be arrested based on those factors than if you were to live in other neighborhoods for the same conduct. So even if all those stops had been achieved procedural fairness, which of course many of them probably did not, but where the police treated you with respect, explained why they were stopping you, we still would not achieve the procedural justice that we're here to talk about. If you know that in fact if you had a different skin color or you lived somewhere else you wouldn't be getting stopped, you wouldn't be getting searched, your likelihood of getting arrested would be down or the same conduct, the same minor conduct would go ignored, so we can't achieve procedural justice unless we examine who we're stopping, why we're stopping them and what we're criminalizing for.

In this country we have developed now a

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harmful reliance on the criminal justice system to deal with social and public health problems; drug use and addiction, mental disabilities, unemployment, underfunded and overcrowded schools. Indeed as part of our bloated and wasteful expansion of incarceration over the past few decades, which we all now know makes us the world's leading incarcerator by leaps and by bounds which starts with police contact, many police departments have expanded the use of arrests for low level, nonviolent infractions; loitering, vagrancy, disorderly conduct, marijuana possession, trespassing, this arrest first, arrest often approach has needlessly snared tens of thousands of people into the criminal justice system. It has led to arrests and conviction records, jail time and prisons sentences that could and often should be avoided. Each of these harmful, potentially traumatic consequences are followed by more negative consequences that can cut off opportunities for advancement and increase the likelihood of future contact. The number of stops and arrests harms both individuals and communities and along with the racial disparities create a sense of illegitimacy, resentment and distrust. As part of re-envisioning and restructuring their relationship with the communities they serve, police departments
need to change how they do their power to stop and to arrest. Detaining someone and even more arresting someone should be seen as a scarce resource, an expression -- expression of awesome state power and authority, depriving people of their liberty that should be used as sparingly as possible. It should also be understood as an act that can cause harm, disrupt lives, generate negative consequences and as it potentially pushes people away from civic participation when abused or overused, literally fray our democracy. As University of Cincinnati criminal justice professor, Robin Engel, said here at John Jay on a conference on pretrial justice last month, when arrests become systematically viewed by police as a limited and precious commodity to be used sparingly and for the most chronic or serious offenders, then change throughout the criminal justice system will likely resort. In other words, we as a country, just as we as a country need to incorporate restraint in our use of incarceration, the police should employee a principle of restraint in stops, searches and arrests.

I am inspired, for instance, by the law enforcement assistant diversion program in Seattle, a pre-book diversion pilot program developed with the community to address low level drug and prostitution
crime. It diverts people away from the criminal justice system. It doesn't eliminate contact with the police, but it does treat arrest as a tool to be used more sparingly. We must adjust the framework within which police have been operating for many years in which stops and arrests have become cheap commodities, when we must see them instead as precious commodities in order to achieve our goals of legitimacy, fairness, dignity and equal treatment.

CHAIRMAN CASTRO: Thank you, Mr. Edwards.

Mr. Chanin.

MR. JAMES CHANIN: I have spent the last forty-five years trying to make police departments in the San Francisco Bay area accountable to people who pay their salaries and depend on them to bring law, order and justice to their community. I've worked on political campaigns for police reform and represented police officers and police employees. I've been involved in eighteen wrongful death cases involving shootings by police officers and prison guards and litigated the much larger number of excessive force cases. For the past fifteen years I've been involved in litigation with the city of Oakland in a single case, first trying to get compensation for over a hundred twenty victims who served over forty years for
and then for the last twelve years trying to make the Oakland Police comply with a consent to create that would bring contemporary law enforcement standards and constitutional policing to Oakland. There are now signs of real progress in this case. The Oakland Police are now in site of full compliance. There is no one size fits all solution of problem officers and problem police departments. Various options have succeeded or failed due to the quality of police and political leadership, the will to use severe enforcement options where lessor ones have failed and the amount of outrage and publicity over the problems caused by police misconduct. There are, however, basic principles that must be attained in order to have meaningful reform in any police department.

Supervisory accountability is one such principle. We often focus on single officers or groups of officers engaging in acts of misconduct; however, many of these incidents are directly related to poor supervision, lack of leadership and systemic failure to hold officers and supervisors accountable for their actions. Recent incidents involving individual officers shooting African American men are sometimes attributable to one police officer who made a mistake.
of a culture of lack of accountability that leads directly to these tragic and often avoidable incidents. In 1979 Oakland Police killed seven African American men. Many more were killed yearly every year thereafter. In 2014 Oakland Police did not have a single officer-involved shooting. What has changed is the creation of a culture of accountability, including supervisory accountability. In Oakland we insisted that every police officer be supervised 85 percent of the time by a primary or assigned supervisor, and that the assignment detail permit the maximum of one primary sergeant for every officer under normal circumstances. This means every police officer and his supervisor that is clearly responsible for them, and that supervisor thus becomes much more responsible for making sure the officer does his or her job in a constitutional and professional manner. Body cameras have also played a major part in the culture change that is starting to take place in the Oakland Police Department. They were first introduced several years ago and are now required for all police department personnel. They must be turned on for all enforcement stops and other stops by Oakland Police. Perhaps more importantly officers are

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department policy. I believe the widespread use of
cameras is a major reason for the decline of the number of complaints against Oakland Police in 2014. One use of cameras that has not been widely discussed is they're used for training police officers as to how to interact better with the community they are sworn to protect. Supervisors in Oakland are now able to look at videos of the enforcement stops made by those they supervise. They can see things that will help them advise those officers to better interact with the people they encounter. Often the first few seconds of an encounter sets the tone between the police officer and the citizen they are stopping, questioning or assisting. Citizens respond better if they are treated with respect. The cameras can provide a useful tool for helping younger officers do a better job and supervisors get a more accurate picture of how their subordinates are performing in the field. Stanford University professor Jennifer Eberhardt has been retained to help Oakland Police comply with the consent decree requirement that pertains to racial profiling. That task was written to ensure the people of all races were treated equally. Despite improvement in many areas, Oakland Police still search
a far higher percentage of African and American --
African American and Hispanics that they stop with no
 corresponding increase it yields; that is contraband
or some other reason to justify the stop. Dr.
Eberhardt will look at film recordings of enforcement
stops and consensual encounters Oakland Police have
with African American and Hispanic citizens. Her work
will focus on helping officers improve their
relationship with these communities. Police reform is
not easy. There is strong pressures for police to
solve crimes, particularly ones that shock our
conscious. Police officers almost by definition tend
to interact with people in crisis and seldom see the
best in our community. This can have potentially
devastating consequences on the officers' own personal
lives, and in their interaction with the community. We
must remember that many policemen and women are young
and impressionable. They can easily be lead to believe
the sometimes harsh rhetoric in our media and from our
politicians is a call for them to indulge in
unconstitutional behavior. This puts an added burden
on police supervisors who must never forgot they are
part of an organization that has the power of life and
death. We must demand accountability. Thank you.

CHAIRMAN CASTRO: Thank you, Mr. Chanin.

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Ms. Jones-Brown.

MS. DELORES JONES-BROWN: Good morning. I'm Dr. Delores Jones-Brown from the Department of Law, Police Science and Criminal Justice Administration here at John Jay College, and I'm and also a former prosecutor in Monmouth County, New Jersey.

My comments today are intended to actually humanize and individualize the victims of police behavior that is questionable or clearly illegal, and the double victimization of those folks by judicial processes that do not hold those police officers accountable. I want to step back for a moment to conversation from an earlier panel where Ms. Heather MacDonald talks about black-on-black crime and the National Bar Association's president was talking about her failure to look at white-on-white crime. In 2011 there were roughly 4,000 white arrestees for the offense of homicide and roughly 4,000 black arrestees for the offense of homicide. The idea that Ms. MacDonald would concentrate only on black arrestees for such offenses is an indication that white supremacy lives and white privilege is not recognized. To attempt to tell a group to which you do not belong what they should be concerned about is inappropriate.
and offensive. My comments today hopefully will help
to, again, individualize and humanize the individuals
who have suffered at the hands of those who are
charged to protect and serve them. So what is most
disturbing for me at this juncture where we are today
is that we've been here before and we've been here
repeatedly. My interests in this topic began in 1997
when I learned that four different cases that were
decided within one month of each other, three of them
decided in one week, which all involved black
civilians dying at the hand of the police, none of
which resulted in criminal responsibility for the
police officers. So during a single week in November
1996 the criminal justice system in three different
states failed to hold police officers criminally
liable for killing three different people under
circumstances that had the victims lived, been tried
and convicted, they would not have been subject to
the death penalty or even lengthy prison sentences.
Two of the victims were shot. One was suffocated.
Their names were Johnny Gammage, Carolyn Adams and
Tyrone Lewis. The deaths occurred in Brentwood,
Pennsylvania, New Brunswick, New Jersey and St.
Petersburg, Florida. They ranged in age from 18 to
39. Their underlying offenses for alleged traffic

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violations, a simple assault and car theft. Each one was African American, and the officers who killed them were white. Each case resulted in local protests and did not result in the officers being punished via the courts. In the Pennsylvania case an unarmed motorist, Johnny Gammage, died while being held down by multiple officers, including John Vojtas, who was acquitted by a jury. Carolyn Adams was shot by New Brunswick police officer, James Consalvo for allegedly biting his finger. A grand jury determined that the shooting was justified. A St. Petersburg, Florida grand jury similarly refused to indict Police Officer James Knight for shooting 18-year-old Tyrone Lewis when he was seated in an alleged stolen car only one month prior. New York officer Francis Livoti had been acquitted by a state court judge in the choking death of Anthony Baez, a Latino, even after he found that Baez's death was unnecessary and avoidable. The case that would have prevented these offenses from occurring was a case of Tennessee versus Garner, so I take exception to the National Bar Association's president's notion that it's Tennessee versus Garner that leaves us where we are today. I would allege that the case is Graham versus O'Connor, which shifted the focus of the priority for safety from that of

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individual citizens to that of the police. In fact, the impact of the Garner decision when it was made in 1985 was immediate and substantial. In Memphis where the Garner killing occurred, the number of blacks and whites killed by police while unarmed and not assaulted dropped to zero. That number had been one white and thirteen blacks during the period of 1969 to 1974. Even in New York City the number of suspects killed by the police dropped from 26 in 1984 to 11 in 1985, but rose to 30 in 1989 when the Graham V Connor decision was announced. The Graham v Connor decision allows the police deference in making decisions about when to use deadly force, and that is the focus of that case. After that case was decided, the cases that I was investigating went from 4 to 11 to 24 in 2001, and as we see the continuing footage over and over recently the idea that the police decision making is given deference in such cases continues.

In the little bit of time I have remaining for those of you who may not be familiar with the Graham versus Connor case, I'd like to read this segment from the case. The case involved a person who was a diabetic, attempting to stop himself from going into insulin shock. Police officers who followed him simply because he went into a convenience store and

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came back out without purchasing anything said that
I've seen a lot of people with sugar diabetes that
never acted like this. Ain't nothing wrong with the
MF but drunk. Locked the FB up. Several officers then
lifted Mr. Graham from behind, carried him over to
his friend's, Mr. Perry's, car and placed him face
down on the hood. Regaining consciousness Graham
asked the officers to check in his wallet for a
diabetic decal that he carried. In response one of
the officers told him to shut up and shoved his face
down against the hood of the car. Four officers
grabbed Graham and threw him head first into the
police car. Mr. Graham suffered a broken foot and
several other injuries, and his case was never
resolved in his favor. In the Q&A I'd like to talk
more about the kind of implications of allowing that
kind of behavior by police officers in 1989 and how
it affects where we are today.

CHAIRMAN CASTRO: Thank you. Mr. Blanks.
MR. JONATHAN BLANKS: Thank you for
inviting me here today. Police interact with the
public in many different ways, and fatal incidents
are one extreme of the spectrum of interaction. How
police officers conduct their daily interactions with
the public and handle misconduct with officers across

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the line in those interactions is vital to establishing trust within the community. The best way to build this trust is to make officer discipline public, transparent and effective. The focus of my testimony is on the legal regimes that hinder transparency regarding police misconduct and how to address them. Incidents of misconduct will happen, but how any given department handles that misconduct is of utmost important. As Maurice Punch wrote in his book, Police Corruption Exploring Police Deviance and Crime, he said, quote, police agencies are not held to be irredeemable when found to have committed offenses, but are assumed to be capable of reform and having public confidence in them restored. In this process the crucial test for policing in a democratic system is accountability, but without genuine accountability there can be no legitimacy and without legitimacy police cannot function effectively in a democratic society, but as we've seen in the black lives matter activism and we've heard a lot today, there is a perception of lack of accountability all over America. Establishing accountability at all levels of police interaction with the public is imperative to restoring police legitimacy and increasing public safety.

We should stop and think for a minute about

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the data that we do not have. The FBI director Comey recently made a speech about the hard truth America must face about policing. Specifically he mentioned that the data on officer-involved shootings is unreliable because reporting is voluntary and consequently inadequate for an inaccurate national measurement. Data on other uses of force and misconduct were even more difficult to glean due to various policy and legal hurdles to information.

The National Police Misconduct Reporting Project is an effort by the Cato Institute to gather reports of credible allegations of police misconduct to policymakers and others to make informed assessments of the nature and circumstances of police misconduct. At PoliceMisconduct.net we rely primarily on local media outlets to do the legwork when combing through police blotters for arrests, tracking local police press releases and covering court proceedings to their final resolution. Our data too is incomplete, but we do not often lack troubling stories to put on our website nearly every weekday.

Unfortunately, all but a handful of states have considerable restrictions on access to police disciplinary files. In some states even prosecutors who naturally rely on police -- rely on police

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testimony to make their cases either cannot either review those files or must overcome substantial evidentiary hurdles to do so. At least one author has questioned whether these restrictions violate the affirmative prosecutorial duty to provide defendants with impeachment evidence as demanded by Brady versus Maryland. The ideal way to get more data is to expand the access to police disciplinary files. This expansion, however, will be difficult, as many of the legal barriers to disciplinary information are state laws that prevent disclosure without a court order. Even then sometimes the information can only viewed in camera and in discrete cases, thus the changes will primarily need to come legislatively on a state-by-state basis, but that brings us to the data that we do have. Even in states like New York that withhold personnel records from public view, alternative data can reveal problems waiting to happen. For example, here in New York City, there's a group, presumably a rather small minority, of officers that exhibit behavior that can be detected and addressed by early intervention strategies. According to an investigation of New York City's Civilian Complaint Review Board records, about 40 percent of the 35,000 New York police officers have never

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received a civilian complaint, but roughly 1,000
officers have more than ten complaints on file. One
officer has over fifty complaints, but somehow still
remains in his position. Institutionally the New York
Police Department knows these 1,000 officers are repeat
offenders several times over. Multiple complaints
against a single officer over a period of months or
years implies that the officer must at times operate
too close to the line of impropriety. Those 1,000
officers represent fewer than three percent of New York
police officers, but can damage the reputation of the
rest of the department. Clearly some portion of these
1,000 officers are abusing their authority and the NYPD
is either unwilling or unable to remove them from duty.
And because the public can't know their names and
records, we cannot measure how effectively the NYPD has
addressed these incidents with any given officer.
Outside of the personnel records and complaints office,
there's another measure to determine which officers are
more likely to abuse people with whom they come into
contact.
Criminologist Jerome Skolnick noted that police
officers -- police supervisors sometimes look at
resisting arrest statistics to determine which
officers are often crossing the line. The thinking
goes if an officer wants to mete out punishment for
disrespect, a resisting arrest charge can justify a
night in jail. It can be used to explain why a suspect
came in with a few bumps and bruises or worse. Just as
civilian complaint numbers revealed a small minority
responsible for a disproportionate amount of
complaints, it appears that a small percentage of the
force generates the most resisting arrest charges in
the NYPD. The WNYC study I mentioned earlier found
that roughly five percent of NYPD officers account for
40 percent of resisting arrest charges since 2009 and
15 percent of officers account for nearly 75 percent
of them. In the legal regime in which their personnel
records were public, the names in each of these groups
can be cross-referenced. Public pressure could force
the department to take appropriate action against
specific officers to correct the behavior, if
possible, or move for termination; however, the
officers' disciplinary records remain off limits and
their questionable behavior continues to be tolerated
in precincts around the city.

Police -- excuse me, the alternatives to
legislative reform are as follows: Passing meaningful
legislation is going to take years of grassroots
effort and campaigning. In the meantime, citizens,
journalists, governments and lawyers can compile data that is publically available to use to shine light on misconduct in their jurisdictions. Here in New York the Legal Aid Society is compiling a database of misconduct allegations against NYPD officers to act as a clearinghouse for defense lawyers. A database like this warehouses publically available information from court proceedings so it can be used in future cases as Brady material. After a six month Sun investigation showed how much money police brutality lawsuits has been costing the city, Baltimore in Maryland started its own of publicly searchable database civil suits and publishing the results of those cases. The city should go further by removing the nondisclosure clause it typically attaches to settlements that prevent plaintiffs from discussing the facts of the case rather than after accepting the settlement. Americans cannot effectively address police abuse of deadly force without first addressing police violence, and we cannot hold police accountable if we cannot even measure how often they are acting inappropriately. Policies and laws that shield officers from consequences of inappropriate violent behavior or abuse of authority produces a culture of tolerance, if not encouragement, of that behavior. Data indicates
that only a small minority of officers repeatedly
abuse their authority, but the laws that protect those
officers' anonymity make them indistinguishable from
the majority of law-abiding officers. This minority's
tolerated presence in the ranks tarnishes the
reputation, legitimacy and authority of their fellow
officers and their departments. For these reasons
making police discipline more transparent and more
effective across the board is in law enforcement's
interest and public interest alike.

CHAIRMAN CASTRO: I'd like to start
the questioning with Commissioner Yaki.

COMMISSIONER YAKI: Thank you very much, Mr.
Chair. I'd like to address this to Judge Mark about
your proposal. Somewhat interesting, but I'm -to me
the devil might be in the details. You're talking
about the procedure of using a judge as a sort of
neutral third-party presence there. I presume that
part of the intent is to try and chill any overzealous
activity by a prosecutor?

HON. LAWRENCE MARK: Or maybe the contrary.
Prosecutors don't present cases as aggressively.
Maybe they would if they didn't have this what's
perceived as a conflict of interest, a case involving
--
COMMISSIONER YAKI: I see what you mean. I guess my mindset is viewed -- has been skewed by reading the Ferguson transcript of the grand jury where the prosecutors there seem to be rather zealously promoting one view rather than the other. Would your judge be able to -- would your judge be able to step in and ask the prosecutor why are you cross examining, essentially cross examining some witnesses and not cross examining others? We know one of the criticisms in Ferguson was that the officer, Darren Wilson, was allowed pretty unfettered testimony, but in the circumstances of unidentified witnesses it appears the prosecutors were indeed trying to undermine, undercut or otherwise diminish the value of their testimony.

HON. LAWRENCE MARK: Well, look, the role of conducting the examinations would remain with the prosecutor, but if there were obvious questions, and I don't know that this has happened, I mean I can't say I read the transcript of the Ferguson case. I read a lot of news reports about it, but if there were obvious questions that the prosecutor was not asking of witnesses, sure, the judge can ask the obvious questions. Just as -- as is true with -- with a trial. If judges don't conduct the examinations of

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the witnesses but if there's a question the judge
thinks is an important question and is -- thinks that
the -- the jury, might be helpful to the jury to hear
the answer to that question, well, judges ask
questions.

COMMISSIONER YAKI: So your proposed
statutes would allow that kind of
intervention? HON. LAWRENCE MARK: Yes.

COMMISSIONER YAKI: Okay. Again, going to
the details of your -- of your -- of your proposal,
I'm sorry, I don't have it in front of me, would the -
- would the judge be able to say, I don't know if it
would be in camera, whether it be a sidebar, whether
it would be in front of the jury, if -- if he or she
felt that the prosecutor was as you were -- to go to
your first point, vastly underplaying some parts of
the testimony or if you knew in fact from media
coverage that there seemed to be a glaring omission in
-- in some parts of evidence or testimony that seem to
be out there in the media but were not being presented
to the grand jury, would that be something that the
judge would be able to bring forward or ask why -- why
this wasn't done, and I guess in the end would the
judge be able to essentially testify at a future -
future hearing, whether it's the U.S. Attorney or

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whether it's the FBI, saying that I don't think that
this prosecutor did a good job in making the case?

HON. LAWRENCE MARK: I don't see the judge
becoming a witness as a result of this.

COMMISSIONER YAKI: But wouldn't that be a
natural and result in the case of what some might call
a gross miscarriage of justice?

HON. LAWRENCE MARK: I think that the
transcript will be available for subsequent review by
the justice department, for example, but I don't know.
It's an interesting question, but I don't -- I'm wary
of setting judges up, you know, so that they become
witnesses.

COMMISSIONER YAKI: I guess that's why I am
a little worried about this proposal. I understand
the nature of it, but I would say that at some point
if there was serious and substantial questions
regarding the role that the grand jury and the
prosecutor played and your judge was there making
rulings or making questions or not asking questions,
then that judge -- the judge, him or herself, becomes
part of that, the next level review.

HON. LAWRENCE MARK: Of course, but
whatever happened would be recorded in the transcript
which would be available to the Justice Department or

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an independent monitor or anyone who was scrutinizing
what happened within --

COMMISSIONER YAKI: Well, everything
but state of mind.

HON. LAWRENCE MARK: Right.

COMMISSIONER YAKI: Thank you.

CHAIRMAN CASTRO: Commissioner Kladney.

COMMISSIONER KLANDNEY: Judge Mark.

HON. LAWRENCE MARK: Right.

COMMISSIONER KLANDNEY: Judge Mark, thank
you very much for coming and your testimony. I found
the proposal very interesting. I actually thought that
a proposal would be just conduct the grand jury
proceedings in public, but then when I read your
statement, you talked about trying to keep witnesses' 
names out of it or like you said before, redacting
them out of the transcript. Do you think, and of
course I think grand jury transcripts become public if
there's an indictment, correct?

HON. LAWRENCE MARK: If there's an
indictment, yeah.

COMMISSIONER KLANDNEY: Right, okay and so.

HON. LAWRENCE MARK: Well, actually New York
has another issue in New York. We have very narrow
criminal discovery rules and they do -- in some

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cases the grand jury testimony is never disclosed to the defense if there's a plea, but if the case goes to trial, certainly the testimony of witnesses who testify at trial, their grand jury testimony will be disclosed to the defendants and will become public.

COMMISSIONER KLADNEY: Thank you. Mr. Blanks, you talked about and we're starting to get into this now, the data collection portion of this information, and you spoke mostly about, I think, and when I read your statement, shooting cases, death cases. Do you believe that we should be collecting all sorts of other kind of data regarding police stops and minor infractions as well?

MR. JONATHAN BLANKS: Well, absolutely. I mean police conduct on the website that we run in Cato, we track pretty much any kind of police misconduct, whether it's a DUI off duty or if it's, you know, a domestic violence, anything like that because it also -- collecting this data not only just shows what the individual officer is doing, but it shows how that officer is treated within the judicial system that he's in. So sometimes you'll see cases that seem like really serious offenses, but because of whatever reason, the charges that were very serious get knocked down to something that doesn't even get
them fired, and so I think being able to track every sort of misconduct that police -- that police commit is very important.

COMMISSIONER KLADNEY: Have you ever seen towns where officers don't get charged with DUI unless they're in an accident?

MR. JONATHAN BLANKS: Yeah.

COMMISSIONER KLADNEY: Mr. Chanin, I have tons of questions for you, but the chairman is not going to let me ask them all.

CHAIRMAN CASTRO: I'll let you ask one.

COMMISSIONER KLADNEY: Well, of all of them here, the one I am most interested in the distinction between the executive force and the force review boards. We spoke this morning about independent review boards for police misconduct and we never got into how they're appointed, how independent they can be. How do you make sure they're independent because it seems in my mind that the city council would appoint these boards and the police unions as well as the police associations have big influence with the city councils because of elections and things like that; am I wrong or am I not looking at it correctly?

MR. JAMES CHANIN: Well, executive boards, review boards are actually police reviewed, police --
police only organization -- they're not organizations. They are review of serious incidents by the police themselves, not -- not civilian review boards, which is like the one I was on, so this is -- this -- this --

COMMISSIONER KLADNEY: Like a debrief situation.

MR. JAMES CHANIN: The debrief and also identifying training matters and other important things, and we've been looking at these executive and force review boards very carefully in our consent decree because when they're properly done, they look at training matters. They look at all sorts of matters that officers can actually learn from and not repeat, and we have strict requirements that they be very carefully prepared, but the union has no choice but to engage in those. Civilian review boards, I've never seen a union support one yet of any kind.

COMMISSIONER KLADNEY: Are they, these debriefs, are they ever made public or are they confidential privileged, the result?

MR. JAMES CHANIN: California, as far as I know, is the most restrictive state in the nation about disclosing any police activity. For example, in the shooting of Tamir Rice in Cleveland, you saw the
Town of Independence, Ohio came up and they said well, we fired this guy because he freaked out on the range. In California they would be arrested for that. Even though we are considered a liberal state, the assembly and senate are more or less bought and paid for by the police union, so you would never see a -- a force review board made public. When I was in Detroit, they had that kind of thing where they have command accountability sessions where they would discuss complaints and incidents in public and then they'd have private sessions as well, but not in California.

COMMISSIONER KLAND: And one last question, Mr. Chair, one last question. Your independent review board that you sat on, how did it work and how effective was it and why was it effective, if it was effective or ineffective?

MR. JAMES CHANIN: Well, at the time I was there I believe we were effective because we had wide scale public support. It was a valid initiative that actually passed by the voters when I lived in Berkley many years ago, and we were successful, for example, in abolishing the SWAT team because they didn't believe in hostage negotiation in those days at all. The FBI didn't train them at all and we flew out a police officer from New York, actually, who was a

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psychiatrist who trained our officers in hostage
negotiation. That was a long time ago. So we had our
successes and we had our failures. Our discipline
process, I don't think, worked very well. It didn't
succeed to the degree that I would have liked to have
seen, but it was -- it was good, at least people got
to see, but since Copley Press, which is a California
Supreme Court case, no civilian review board in
California can read publically on discipline at all.

COMMISSIONER KLADNEY: Thank you.

CHAIRMAN CASTRO: Commissioner Achtenberg.

COMMISSIONER ACHTENBERG: Thank you, Mr.
Chairman. Mr. Chanin, anyone who can tame the
Oakland Police Department has my undying respect.
I'm wondering was it the supervisory accountability
construct that was -- sort of turned this around or
could you delineate the elements that you think were
dispositive, and also you said that for the longest
time your consent decree went un -- unenforced,
essentially, but as of late, you're getting pretty
close. What changed?

MR. JAMES CHANIN: What changed was we made
a motion before Judge Henderson in Federal Court to
put the whole department in receivership because the
monitors who -- we had two teams of monitors, they
were very good, but all they could say was you're
doing badly, and then they would say well, we'll never
do it again, and then three months later so on and so
forth, so and finally we created a position where they
would have the power to hire and fire the police and
not only criticize, but make changes, so we got a new
police chief, Sean Whent, with the body cameras and —
and the focus on supervisory accountability, I think
are the main things.

COMMISSIONER ACHTENBERG: How significant
is executive leadership? Is the role of the mayor in
that situation particularly significant or not?

MR. JAMES CHANIN: Well, the mayor appoints
the police chief, so in that sense it is, but to have a
good police chief is — is very important. I -- the
chief of Berkley once said to me, said isn't all this
stuff you do, wouldn't it be better if you had a good
police chief, and I said yes, but what if you don't. So
I mean I think it's critical to have really good
command staff.

COMMISSIONER ACHTENBERG: Given that you've
been involved in so many of these cases, are there
basic principles that you extract from your experience
that if they were to be more widely publicized might
be helpful to others who have a genuine desire to

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reform their agencies?

MR. JAMES CHANIN: I think for too long I
looked at individual officers and didn't look at who
was supervising them. So for example, when two out of
three of every warrant in Oakland was based on false
information or perjury, that was an internal affairs
conclusion, I never looked -- they only looked at the
officers who did it, but they -- I never knew who was
in charge of training police officers for writing
warrants, and that's what I think has changed for
myself.

COMMISSIONER ACHTENBERG: Very interesting.

Thank you very much.

CHAIRMAN CASTRO: I've got a couple
questions. Mr. Edwards, when you talked about in terms
of about procedural justice, questions about why
you're being stopped, who is being stopped as a
precursor to the discussion that we were having here
today what happens when you are stopped, really
resonates with me personally as a Chicagoan. Many
years ago when I was a young lawyer, I from a very
economically depressed community in the southeast side
of Chicago, I was coming home for the weekend to visit
my parents and on the way back north I got pulled over
by an unmarked police car, and as a young man of
color, I was always taught do not get out of your car.
If you're ever stopped by the police, keep your hands on your wheel. Do not step out of the vehicle. So that's what I did. The officers immediately came to my door with their hands on their holsters, demanding that I get out of the car, which I did. One officer took me to the back of my car while the other officer proceeded to go into my passenger compartment and begin to search my glove compartment and other areas. As I was presenting -- finding my license and looking at what was going on, they popped the trunk, and when I asked the officer what are you doing, he said don't worry about it. We're searching your vehicle. I said well, you know what, this is an illegal search of my vehicle. How do you know that. Well, I'm a lawyer. The officer that was with me called into his other officer who was already inside my glove compartment and said let's go. This guy's a lawyer. Now at that point in time, still running through my mind, even though I'm a lawyer, even though I know this is happening in violation of my rights, the first thing I think about is they can plant something. Next thing I think about they can say I reached for something. So I was very cautious and nervous. So I didn't even want to ask them for their badge numbers or their

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names. As soon as they began to withdraw, get into their unmarked vehicle, I decided that I would follow their vehicle and got their plate number. I had a friend in media. We were able to track down who the officers were, and I submitted a complaint to the Office of Police Review in Chicago. Months later I got a letter saying, one paragraph, we looked at this, there's no basis. So I know that this happens many times in America, and luckily for me I was a lawyer and able to advance my rights and luckily nothing happened as a consequence, but I know all too well that that's not the case for many people of color in the United States, and recently ACLU did a report on stop and frisk in Chicago, and the point that you made today about people being picked up and -- and ultimately no action is taken, we had, I think it was 250,000 cases of that in Chicago where resulting in no action. Could you speak a little bit more because that's even -- yeah, 250,000 cases where no action was taken as part of the stop and frisk, which I think was even worse than what was going on here in New York. Could you speak a little bit to that issue, if you have some --

MR. EZEKIEL EDWARDS: Sure. I mean well, first of all, it goes a little bit, I don't know, Mr.

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Kladney, you asked about data collection and should
the police be collecting other data, and certainly the
ACLU advocates for comprehensive uniform data
collection of stops, frisks, searches, hit rates,
meaning contraband, which was brought up earlier, for
police departments around the country. It's somewhat
stunning that if you ask a police department, even mid
major police departments around the United States can
you tell us how many people you stopped last year by
rates, can you tell us how many people you searched
and what your hit rates were, many of them can't do
that. And one of the reasons we want to know that is
so that we can document, as we've done in
Philadelphia, in New York, in Chicago, in Minneapolis
these kinds of vast disparities, and what you often
find is so many times people are stopped and no
further action is taken. Many times the hit rates are
higher for whites than for African Americans. Someone
asked me why that is. I don't know empirically, but I
have a suspicion, and maybe I'm wrong, that when
police generally stop white people that they are using
better police training, reasonable suspicion, looking
for actual kind of real sort of conduct and they're
more likely to be right than if they are saturating
communities and stopping folks like you because you're

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driving at a certain time in a certain neighborhood
and look a certain way. That's not generally how they
-- they -- they deal with other communities, and so I
think data collection is a big part and we've even
worked with police departments that weren't aware of
how bad their disparities were. When we showed them the
data, it puts them on alert but also motivates them,
and particularly the police chief to go for reform, but
it's also why I talked about looking at arrests and
stops really more as precious commodities, not
something to be treated as we're going to stop everyone
in this community, but something that needs to be much
more protected, and if you want to have better police
community relations in addition to treating people
fairly when you stop them, you really have to think
about is this a good use of police resources. I also
think quickly that how police evaluate their
productivity and their success needs to change. It
can't just be -- certainly crime rate is important, but
number of arrests I think is overvalued. It has to be
about how are we relating to the community. Are we
arresting fewer people, diverting more people could be
actually signs of progress and productivity in a
different way. So we have to kind of reevaluate those
metrics.
CHAIRMAN CASTRO: I definitely agree that we need more data collection, but I think there's a further step, and I'd like you to comment on this. The next step is what do we do with that data. So for example back in Illinois we have a state rule that says any police officer who does a stop has to report the race and ethnicity of the person that they stopped. A couple years ago the Chicago Tribune did an investigative story on McCreary County, which is a county that's increased in its Latino population that many of the stops were of whites, and when you look at the data, the actual cards they were filling out, you saw a checkmark white and it was Arturo Hernandez and another white was Mario Moreno, and it turned out that they were miss marking the ethnicity or the race of that person in order to make it seem like there wasn't disparate impact. So in Illinois there's no accountability. We collect the data but it sits there and unless a newspaper investigator looks at it and even then there are no consequences, so just collecting the data is not enough. Is there anything else you would suggest?

MR. EZEKIEL EDWARDS: Well, I think I mean there are a number of things. First of all, there's certainly if you find looking at the data that there are stark, racial disparities that might be
unwarranted racial disparities, then clearly there has to be a conversation with the police department that can involve much better training, implicit bias training, which is, I think, important, but also what I'd like to see, and it's hard to, you know, this may sound more touchy-feely, it's hard to evaluate in a quantitative way, but, you know, to have police departments sit with the community and the data that we've collected, you know, with the kind of data that we put out has nice colorful charts that shows these vast racial disparities for low level, nonviolent offenders, and we sit with community members, and I don't just mean community members, you know, older community, younger community members, people from all parts of the community, people -- gang members, the whole community, sit and look at the disparity and talk about why are we arresting people for this, why are we stopping people for this, and is it working and how does it feel for the community, how does it feel for officers. I mean really have a more integrated and collaborative approach. I mean I know it sounds all very nice, but in Cincinnati this is something that to some extent was done through a collaborative agreement that was prompted by a lawsuit in Federal
Court, et cetera, but where there was a collaborative agreement that involved the police. It involved business community members, healthcare professionals and also the community's civil rights group to figure out why are relations with the police and the black community so bad. Why are the police shooting so many unarmed African American men. We have to solve this. The police are part of our community and so are the community, and I think that kind of re-envisioning a shared community goal and approaching it from that angle using data and discussing it, it takes a long time, but I think that's something that we really need to do as -- as local community.

CHAIRMAN CASTRO: One question --

COMMISSIONER ACHTENBERG: You kept saying Chicago, I mean which is great, they're a part of America too, but I was wondering if we've got anything west of the Mississippi as well?

MR. EZEKIEL EDWARDS: Well, I would defer to, Mr., is it --

MR. JAMES CHANIN: Chanin.

MR. EZEKIEL EDWARDS: -- Chanin about northern California, but Seattle Police Department, which I was mentioned was a lead program, has also been involved in lawsuits due to excessive force and
racial profiling, same with the Portland Police
Department. The LA Police Department, of course, has
been under a consent decree for many of the same
problems and so you certainly see racial profiling
run amuck in places like Phoenix with the Latino
community and so many police departments I think are
–certainly have these problems and others have been
looking at ways to solve them. And if you go down to
Florida, we’ve seen a similar kind of outrageous
disparities in places like Miami Gardens. So this is
a national problem. It’s just that the data that we
focus on right now is more in the northern cities.

MR. JAMES CHANIN: We focus more on the hit
rate. They have to fill out every single stop and
every person in the car for every stop and we focus on
the hit rate and make them justify why they stopped
these people, and we say the hit rate has to be the
same for all races.

CHAIRMAN CASTRO: When you say we, who is
the we?

MR. JAMES CHANIN: Mr. Burris and I in our
meetings with the police department and Judge
Henderson, and by -- by focusing on the hit rate and
making them justify it, we have brought down the
number of people stopped without ever dealing with,

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you know, calling them racist or things like that
which are sort of conversation stoppers. We focus on
the law enforcement aspect, what -- why are you
stopping this person and what have you found from
stopping them. If you can't justify that consistently
the same for whites and Asians as you do for blacks
and Hispanics, then you have to change.

MR. EZEKIEL EDWARDS: Just quickly I would
also say that I would just, you know, want an honest
conversation because when I was a public defender in
the South Bronx, and I arraigned countless people for
marijuana possession and then I'd go back to the
upper west side where I grew up, and I have friends
who would buy it and have it delivered to their home
and they're two very different worlds, but so why are
we -- why do we think it's okay to jail back in 2006,
'7 and '8 a black man who's 19 or a black woman who's
30 and crisscrossing the train, switching train cars
because she's uncomfortable with a guy who's on the
car, why are we arresting and throwing those people
in jail if we're not willing to do it to white folk
who are doing the same thing, and if the answer is
from the police it's a crime fighting tool, right, we
don't care about marijuana. This is how we bring down
crime, then let's talk about it. Let's at least

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acknowledge yeah, we do treat African Americans
differently in the South Bronx for the same thing because we think it's an effective crime biting tool. I don't agree with it, but let's have a discussion about that and -- and we the community certainly about how they feel about that instead of somehow pretending that it's okay.

CHAIRMAN CASTRO: Commissioner Narasaki. COMMISSIONER NARASAKI: Thank you, Mr. Chair. I have a few questions. So my first question is are there studies that exist that look at the efficacy of independent review boards as it relates to use of force? So are there studies that, for example, would show that if you have an independent review board that has all of the power it needs to function effectively, do -- does use of force, does racial profiling, do complaints go down or not? The second question is according to the DOJ Office of Community or Anti-Policing Services, they said one of the challenges has been that there's no accepted official definition of racial profiling, much less an operational definition that describes exactly what collected data and results would clearly identify racial profiling, so there's a challenge in terms of what this data means, and I'm wondering what -- what the different view points are and what's the stark difference of opinion about what racial profiling
should mean from a police perspective? And I'm assuming the difference is from a police perspective and from a civilian perspective, but maybe it's somewhere else. What is that difference, and how do you get everyone to actually collect data because I know I worked on hate crime data collection for a long time and a lot of law enforcement agencies didn't want to do it because if they collected it and did it well, it would show a high number of hate crimes. So you would have Massachusetts with forty hate crimes and Alabama with zero because Alabama wasn't collecting it, but you knew that probably that was probably an accurate reflection of what was actually going on in the state. So, you know, is it tying data collection to receipts of whatever the federal programmed funding extremes are?

And then my last question is to Mr. Chanin. You made a number of references to unions, right, the unions, and there is kind of a sense that police unions may be have been in many cases part of the problem and not necessarily part of the solution. So I'm wondering what is the -- what is the challenge with unions and have there been effective ways to
really get them involved in a constructive way? One of the readings we had said that the Department of Justice reviews were a very important tool for police chiefs because that enabled them to be able to leverage the Department of Justice's basically bad cop in order to get some of the changes through.

MR. JAMES CHANIN: Well, the unions -- what I tried to do more recently is figure out anything that we have in common with unions, and there are some things. One is the early warning systems which are the -- the systems, we have a computerized system in Oakland, which we're building a new one now, which basically identifies outliers based on certain things that go into this early warning system, such as resisting arrest, automobile accidents, all sorts of different things. There's a long list of them, and then it looks at outliers, and then the outliers are -- they talk -- their cops have to talk about them, and some of them are okay, their reasons; they're in the SWAT team or something like that. Some of them are not, and then they work with those officers before they get in trouble with themselves, say through alcoholism or some problem they're having domestically or with the community before they do something horrible to somebody, and it's nondisciplinary and
we've gotten union on board for that. I've also worked with them on the radio systems which are defective in Oakland and gotten them and spoken for them. So those are things that I've tried to do, but very often it's kind of hopeless in the wrong leadership and the wrong unions.

COMMISSIONER NARASAKI: So you've said that you never seen one support a civilian review board? MR. JAMES CHANIN: No.

COMMISSIONER NARASAKI: Why would there be opposition to an independent review board?

MR. JAMES CHANIN: Because they're afraid of outsiders. They just won't see the civilian, I mean -- I mean in -- in the United States Barack Obama has never been in the military, but fired the direct chief, but somehow that analogy hasn't quite made it to the police setting and they just won't support them at all.

MS. DELORES JONES-BROWN: I'd like to jump in on the data collection discussion because the National Science Foundation has appropriated $1,000,000 to the Center for Policing Equity, UCLA, to collect data from police departments on pedestrian stops, vehicle stops and the use of force. Currently the idea is that departments volunteer to provide that
information. One of the suggestions I put in my statement is that, as you mentioned before, any department seeking federal funds, they should volunteer to report their information to the national database, is what it's called.

On the issue of defining racial profiling, the mathematicians have gotten, I think have overly - have made this issue overly problematic. Constitutional rights are private and individual. Social scientists tend to aggregate data and so the notion that if I have the experience that the chairman had and I perceive that it involves some racial profiling the mathematicians say that they really can't measure that, and so we've gotten caught up in who -- who is at risk for being stopped, the innocent -- behavior of innocent people of color as compared to behavior of folks who happen to be of color and also be involved in criminality, and that also is determined to be part of the equation of whether or not a stop that might be based on race, that the person who stopped believes it's based on race, whether the perception of the person stopped or the perception of the police officer or what the police officer says is what is actually racial profiling. There are ways in which clearly disparate racially and
ethnic disparate stops get explained away by really complex mathematical equations and I think therein lies our problem in trying to define what actually constitutes racial profiling. However, in cases like in New Jersey where we have police officers dealing what the chairman who talked about they plead guilty to falsifying the records about the racial identity of people being stopped so that they can cover up the fact that they were engaged in racial profiling, they didn't get a lot of media attention, but it certainly indicates that we've had those examples take place in other police departments, and so the notion is if they weren't racially profiling, why are they falsifying the information then.

MR. EZEKIEL EDWARDS: I would just add also if you read, you know, Judge Scheindlin's decision in the Floyd case, you know, while it can get overcomplicated, you also can use data to do sophisticated analyses to show that in fact what is driving police behavior, even when you take into account other factors like crime rates, demographics, neighborhoods, it's race, and so that like goes to what's the dictionary definition, but we can use data to show, and then this was done also to some extent in Seattle that people who are similarly situated are

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being treated differently because of the color of their skin when you control for other factors.

COMMISSIONER NARASAKI: I'm sorry, I'm still not clear what is the difference. I mean cops -- the Cops Office will be testifying, so maybe they can tell me as well, but I was just wondering if you had a perception about what the difference, why there isn't one universal definition?

MR. JAMES CHANIN: Well, I -- I think there are racial profiling that are very clear. It's not complicated. If you're searching twice as many of one race and finding in percentage wise the same amount of contraband or reason for the stop as you are with white people, that means that you're racially profiling because you should find twice as much --

COMMISSIONER NARASAKI: Does everybody agree to that, that's like universally -- she's like shaking her --

MR. JAMES CHANIN: I mean -- I mean I don't know about everybody, but we agree with it, and we just can't -- and it's -- and it's resulted in pounding away in a sense, lowering the number that have been stopped in the first place because now they know they have to justify it with something that they find or see or do.
COMMISSIONER NARASAKI: I just have one more question. Someone suggested to me that one possible intervention would be to tie salary raises of the entire department to overall reduction in complaints of, you know, excessive use of force or complaints in general of how police are treating community members. Have you seen that in practice? How does that strike you; bad idea, good idea?

MR. JAMES CHANIN: I've never seen it.

COMMISSIONER NARASAKI: I was told it was explored in discussion in San Francisco, which is why I was raising it.

MS. DELORES JONES-BROWN: I think one of the reasons that it becomes problematic. In my statement it talks about the fact that there are some individual officers who can be driving the majority number of complaints, and as has been said on other panels, the fact that there are officers who consistently operate within the law and restrain themselves, that suggestion could overshadow or serve as a disincentive for those officers.

COMMISSIONER NARASAKI: Well, I think the thinking is that it might serve as an incentive for the good cops to have maybe less of a blue line and drive out the bad cops, because, you know, so it's an
overall team effort and it creates incentive for people to do what's in their individual best interests in terms of taking a harder stand against -- because my -- the sense I get, whether it's border patrol or immigration, you know, or in this context, people pretty much know who the bad people are. They've seen it. They know it. They talk about it, and so the question is how do you get them to do something about it?

MS. DELORES JONES-BROWN: I think it can be a double-edged sword because one thing I didn't talk about is in terms of what I do here is to teach some police officers in graduate classes and when you watch the dynamics, I think that there definitely will be officers who will never be comfortable with intervening. There are certain safety considerations for officers who intervene and I think the proposition could cause more harm than good.

COMMISSIONER NARASAKI: Can you elaborate on safety, like police are afraid of each other?

MS. DELORES JONES-BROWN: Right, police are -- quite frankly, yes, the fact that they all have guns and they depend on each other to have their back and so the notion that an officer could get keyed out, you're going on a call and you need backup and the
other officers don't come to back you up and then they
prevent you from getting back up by keeping your radio
tied up, and so those safety concerns are really
cogent with police officers.

I want to go to also a point that the
chairman made about having to follow the police to get
the license plates in your incident. There is
legislation pending here before city council in New
York called the Right to Know Act, and it would
require that police officers as a matter of routine
identify themselves during any encounters that they
initiate with the civilians, and so it takes away the
tension of having to ask for a badge number and a
name. It would also require that the police advise
people that they have a right not to consent to a
search, and that would be a matter of routine, and so
it would have helped you in your situation.

CHAIRMAN CASTRO: Yeah, I mean if I hadn't
had a friend in the local newspaper who did the search
for me, I would not have known.

COMMISSIONER NARASAKI: I mean you have a
right to be afraid. I was in the back of a cab in
California near Disneyland and the cab got pulled over
for speeding on the freeway even though he was going
the rate of speed, and I was annoyed by this fact, and
I asked for the cop's badge number, and he went at me.
He refused to give me his name and number and tried to
intimidate me and threaten me with arrest for -- and I
was just the passenger in the back of the cab.

MR. JAMES CHANIN: That's a penal
code violation in California.

COMMISSIONER NARASAKI: Yeah, so I think
they count on you since you don't have their name or
badge number, not being able to do anything about it.

CHAIRMAN CASTRO: So we're going to go to
Commissioners Yaki, Kladney and the last question will
go to the vice chair, but before that I want to make a
point, Mr. Chanin, that in your example in response to
the question from Commissioner Narasaki about police
not wanting to go to outsiders and again certainly
comparing that to the commander-in-chief having the
right to file military, I think that distinction is
not necessarily apples to apples because when we had a
hearing about a year and a half ago, two years ago on
sexual assault in the military, the generals that were
sitting in front of us like you were resistant to the
idea of having civilian oversight of the commander-in-
chief, but that's in the constitution. I think when
you get to issues of policing themselves, it becomes a
little more challenging.
MR. JAMES CHANIN: I agree with you.

CHAIRMAN CASTRO: Commissioner.

COMMISSIONER YAKI: Thank you very much, Mr. Chair. The first is more of a statement, but if Mr. Chanin has a comment on it, I appreciate it. You worked with Michael Haddad in Oakland a lot, I presume.

MR. JAMES CHANIN: Yes.

COMMISSIONER YAKI: And I bring this up because I was a little -- I was a little disturbed by a comment that a previous panelist had made, Mr. Smoot, about an expert named Bill Lewinski who testified about use of force by cops -- by police all the time, and he made it seem like he is the expert on the subject of how reliable testimony is 48 hours after the fact. I just wanted to point out that, Mr. Haddad, who your friend is, has disqualified Mr. Lewinski from testifying before and has made -- has raised the issue that Mr. Lewinski is someone who testifies routinely on behalf of police officers in excessive force shootings, so I'm not sure how independent an expert he may be, but I just wanted to raise that issue.

This is for Mr. Blanks. You raised about the data issue and about the disproportionate number

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of complaints related to rogue, rogue cops and I think part of our problem, I wonder if part of our problem is the fact that we tend to glorify some of these individuals, whether it's our own acceptance of Dirty Harry movies or Vic McCahon in Shield or others that we can talk about where the ends justify the means for some of these individuals, but what do you think about a proposal where the federal government would essentially start tying federal funding to police departments enacting strict review and disciplinary procedures for officers who exceed X number of complaints a year? I mean would that be effective? Would that work at all?

MR. JONATHAN BLANKS: I'm not against tying federal funds to -- to compliance with, you know, federal prerogatives; however, I, getting back to a point earlier, with a data collection of how many complaints they have, what you have is an incentive for the police to then start cooking numbers about what -- you know, what they're going to report. Like you had the case here in New York, I don't mean to be picking on New York; they're really good at -- at documenting it here, Adrian Schoolcraft was an officer in Bed-Stuy and he had a tape recording of what the police within his own unit were doing to drop down the
severity of crime because they wanted to keep the
crime numbers down so they started kicking it down to
like misdemeanors instead of really grotesque assault
and battery. He recorded it and then the retaliation
against him was severe. They actually had him
involuntarily committed and he had a recording of that
incident when they said they oh, he was suicidal. It
was absolutely not true, and his lawsuit is still
pending, if I'm not mistaken. And so any time you have
these sort of like hard lying stats and benchmarks
that you're asking to be fulfilled, I'm afraid of the
unintended consequences of the lengths that they will
go to and the lengths that they will use to enforce
blue wall when they're talking about the civilian
complaints. I mean even there's a human rights watch
paper from about ten or fifteen years ago that
discussed the various levels of difficulties of filing
a complaint and if you go into an independent board,
that's fine, but not every jurisdiction has that and
so if you have an intake officer who's going to take
the complaint, they are going to severely - they very
often they are going to severely dissuade the person
from filing the complaint and if that person has a
record or if that person has maybe friends or
relatives that don't have documentation to
be in this country legally, they are going to use intimidation against those people. So I'm not against it in theory, but I think in the process that I'm afraid of the unintended consequences.

COMMISSIONER YAKI: I guess I'm just concerned that there's really no real answer to this question at all because even in my own experience with civilian review boards, depending on who appoints a civilian review board, that can be a politicized issue as well, especially with union support and different elections, so if this is a conundrum that we're going to have to face and the more that we get some information from you folks to help us think about it, the better. Thank you very much, Mr. Chair.

CHAIRMAN CASTRO: Commissioner Kladney. Commissioner Kladney and then we'll close with the vice chair.

COMMISSIONER Kladney: Thank you, Mr. Chair. I think this question is going to be directed to Judge Mark and Professor Jones-Brown because I think it focuses more on New York than anywhere else, but the chair spoke about possible opportunities. He talked about that example when he was stopped as a young man, possible police misconduct, and I've always felt there's a real question as to whether the fourth
amendment exists anymore when it comes to vehicle searches. If a policeman is going to write you a ticket and you don't allow him to search your vehicle, he says he's going to arrest you and impound it, he can search it on the impound, and today the FBI lab situation came up where, I can't remember it exactly in the news; it was 250 plus people were convicted on evidence out of the lab that was testified to by FBI officers who were -- was inappropriately done or wrongfully done. I really can't remember. I heard it in the news this morning at 6 o'clock, and here in New York you've had quite a few cases, especially in Brooklyn, of people being convicted on wrongful evidence. I guess my question is are officers being charged when this is found or is there a crime actually committed by them that they are being prosecuted for or is it just that these folks are let out of jail?

HON. LAWRENCE MARK: Well --

COMMISSIONER KLANDNEY: Or prison, I should say.

HON. LAWRENCE MARK: I don't think there's one answer to that question. I can say, though, that if a police officer violates a citizens's rights, there hasn't been a real effective solution to that
problem, and I can tell you the exclusionary rule

where when the court finds that there's been a

violation of the Defendant's rights, evidence has to be

excluded. Sometimes that's the end of the case for the

prosecution. Sometimes it's not, but it's never been a

particularly effective remedy for addressing people's

violation of their constitutional rights, which isn't
to say that, therefore, the evidence should be

admitted. I'm not suggesting that at all, but U.S.

Supreme Court sanctioned remedy for violations of

constitutional rights, people's legal rights has never

been an effective solution. I think that as a society

we have to look at ways that where the police violate

people's rights that there's an effective remedy for

that.

COMMISSIONER KLADNEY: Any ideas?

HON. LAWRENCE MARK: I think ultimately, you

know, lawsuits against police officers, it's not the

easiest thing in the world. People who -- more often

than not when people's rights are violated, they're

poor people, powerless people and bringing a lawsuit

is not an easy thing for someone in that situation,

but I -- I think ultimately police departments have to
take action against their -- their officers when they

violate people's rights, and that

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may be wishful thinking, but -- but maybe there's some
creative ways to -- to provide incentives for them to
do that. You know, there have been a number of
suggestions here this afternoon about that federal
money, salary increases. Those are very interesting
ideas that I think could be seriously considered.

COMMISSIONER KLANDNEY: Thank you, Your
Honor.

MS. DELORES JONES-BROWN: I think the onus
is on prosecutors. I think what's going on in
Brooklyn with DA Thompson will certainly be a
precedent for what happens when there is a large
scale, a determination that the police or prosecutors
have engaged in misconduct in the conduction of
trials. The New Jersey case that is mentioned in my
statement, what happened to the police officers were
simply they were charged with making false
statements, and I think that that will -- that minor
level of prosecution may serve as an incentive or
disincentive for officers to engage in that behavior,
but I think ultimately it is on prosecutors to be
willing to go after police officers when it is clear
that they have engaged in misconduct that amounts to
illegal behavior.

CHAIRMAN CASTRO: Thank you.

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MR. EZEKIEL EDWARDS: Sorry, very, very quickly on a point. I worked at the Innocence Project at one point, and I just wanted to respond that in hundreds of cases where people have been exonerated through DNA testing, there's almost never the kind of I guess the kind of strong accountability for officers or prosecutors. In fact, it's hard enough for people who have spent decades in jail to even get compensated, just get compensated, let alone accountability. I do think, and again this is somewhat off script, but when we talk about accountability, while of course, we want to have there's a certain vengeance involved there. Each time you have a wrongful conviction or somebody's rights are severely violated, it's a learning opportunity and a teaching opportunity for police, for prosecutors, for the community. Every time a plane crashes, you know, we have sent investigators in to try to figure out everything that went wrong so we make sure it doesn't happen again, and we don't do that in the same way with wrongful convictions and violations of rights, and while I think certainly we want to find out how can you, you know, bring in sometimes harsh remedies to bear, which is very hard to do with qualified immunity and absolute immunity and, I think
it's also again a larger community-based discussion
that should happen with prosecutors, the wrongly
convicted, the defense lawyers about how this went
wrong so we can try to get it right and have a more
kind of holistic idea of -- of -- of accountability as
opposed to just how do we then throw another person in
jail, et cetera.

CHAIRMAN CASTRO: Thank you. Madam
Vice Chair, you can conclude the panel.

VICE CHAIRMAN TIMMONS-GOODSON: Thank you
very much, Mr. Chair, and I'll try to do that
promptly. I've indicated before that I am a former
state trial and appellate judge, and as we've been
looking at the issue of police practices and the
excessive use of force, I've given, and as we've given
thought to possible solutions and recommendations,
I've -- I've found myself faced with the thought that
well, what about judges in all of this. Our justice
system in fact does make it extremely difficult to
hold police accountable, and that judges and then the
courts do have a role in -- in all of this, you know.
For example, I think one of our other panelists spoke
to us about the doctrine of qualified immunity. I'd
like Judge Mark, please, to comment, if he would,
about judges and the role we play or don't play in all

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of this. Do we have a role to play in police accountability and helping police get to where we would want them to be in terms of safeguarding and protecting all of us?

HON. LAWRENCE MARK: Well, I think judges absolutely have a role. Really the courts are the ultimate guardians of people's rights, constitutional or otherwise, but I think this is a problem that too many problems end up in the courts in our society, problems that legislators and executives can't seem to resolve, can't agree on and then the problems get dumped in the course and your experience over the last twelve years is probably a good example of that. So I think courts absolutely play a role. I mean if evidence is unconstitutionally seized and someone is charged with the crime, courts have to be vigilant in seeing through that and excluding evidence, but of course that's the tip of the iceberg. As we know in New York City, only 10 percent of the searches resulted in evidenced being -- being obtained and charges being brought, if it was even that much, even less than 10 percent. In the end I mean I don't see the court as -- the courts play a role here, but I don't see the ultimate solution with the courts. I think the ultimate solution is with -- with police
departments themselves, and police departments have to
police themselves and --

VICE CHAIRMAN TIMMONS-GOODSON: But when
they don't, what role do the judges have in making
sure that it happens throughout qualified immunity and
there are other doctrines that we're all familiar
with?

HON. LAWRENCE MARK: Again, judges play an
important role in the -- in the federal decision in
New York, the lawsuit that was brought on Judge
Scheindlin's decision that it's had an extraordinary
impact. I think stop and frisks were clearly being
overused in New York for many years even before her
decision started to decline and since the decision it
decided tremendously and very interesting because one
would think even if you felt that the police
department was overusing that technique and -- and you
would think, though, that the overuse of that
technique would lead to less crime, that even if less
than 10 percent of the people that you're stopping and
frisking are carrying a gun or some other contraband,
you would think that that would reduce crime, it would
be effective in reducing crime. The remarkable thing
is thanks to a judge's decision or at least in large
part to a judges's decision the number of illegal
stops and frisks has plummeted in this city and crime has continued to go down. I mean it's really remarkable, if you think about it.

MR. JAMES CHANIN: If I can just jump in for one minute or less.

I think judges have a very important role. The use of injunctive release, such as the judge just said by in the stop and frisk and in Maricopa County in Arizona, the judge there has almost single handedly stopped Sheriff Arpaio from some of his more egregious mistakes, shall we say, and Judge Henderson in our court has done a fantastic job in hanging in there for all these years. I think judges are critical because they're the only ones, especially federal judges, when the legislature and the city councils are all being scared off by crime, they're the ones that can come in and really make the changes that need to be made.

VICE CHAIRMAN TIMMONS-GOODSON: I agree with you.

MS. DELORES JONES-BROWN: Can I please comment?

VICE CHAIRMAN TIMMONS-GOODSON: Please, Professor.

MS. DELORES JONES-BROWN: So the bulk of my statement has to do with the shift in the Supreme
Court, the United States Supreme Court's reasoning about these issues, and I think that the Connor decision, the Graham versus Connor decision was a mistake, and I think that it has contributed to the rise in incidence or the number of incidence or the frequency of incidence that we see. I think the other challenge is when officers choose to have a bench trial, that judges have to be willing to say that the officers have done something wrong that is illegal and I'm most disturbed by Judge Sheindlin's, that's Gerald Sheindlin, his decision to say that Anthony Baez's death was unnecessary and avoidable and then to acquit the officer of wrongdoing. I think that kind of -the announcement itself confuses the public because how can you say that it's unnecessary and avoidable, but then not hold the officer criminally liable, and I think that local judges are under pressure, just as prosecutors are under pressure, to stand by the police and I think that they have to be brave and when wrong is wrong, they have to be willing to find criminal liability or else the system will never have the kind of legitimacy, particularly for people of color who need most to trust in the system.

COMMISSIONER KLANDNEY: Especially elected judges.
CHAIRMAN CASTRO: Thank you. We really appreciate this panel. The information was extremely helpful to our end goal here. So we hope you'll be able to stay and watch the next panel. As you step down, we're going to ask the folks from Panel 4 to begin to make their way toward the podium. And our staff will change the name cards. I see some are stepping away, but we're going to continue to move forward. I will take a break between this panels, the end of this panel and the beginning of the next, but we'll continue now.

Okay, great. Thank you. So we are going to continue now with Panel Number 4, and I'd like to introduce the members of the panel. Our first panelist is Mr. Grande Lum, with the U.S. Department of Justice Community Relations Service, and I promise you we will not hold against you the fact that you've stolen our former staff director, who I'm sure is doing great service there with you.

Our second panelist is Mr. William Sabol, with the U.S. Department of Justice Bureau of Justice Statistics, and our third panelist is Ms. Ellen Scrivner, with the Police Foundation.

I'll ask each of you to raise your right hand to be sworn and swear or affirm that the

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information you are about to provide us is true and accurate to the best of your knowledge and belief; is that correct?

MR. LUM: Yes.

MR. SABOL: Yes.

MS. SCRIVNER: Yes.

CHAIRMAN CASTRO: Thank you. Mr. Lum. You each have, by the way, seven minutes. Green light go. Red light stop.

MR. GRANDE LUM: Thank you, Commission, for allowing me to speak today. As a representative of the United States Department of Justice and a member of the Obama Administration, it's an honor to share with you the great work that the men and women of the Community Relations Service provide to communities across America.

In some ways the missions of CRS and the Commission I think compliment one another. The Commission seeks to inform the public of developments in national civil rights policy and improve the enforcement in -- in civil rights law. CRS on the other hand, we seek to address the tensions that come from the community conflicts that necessitate those laws. So while our missions are different, both organizations share a vision to preserve the
importance of justice and equality for all. And just recently I and your former staff director, Marleen, had the distinct privilege of being in Selma, Alabama to help commemorate the 50th anniversary of Bloody Sunday and the historic voting march from Selma Montgomery, so violent resistance when state troopers attacked the nonviolent with whips, batons and teargas as they tried to cross the Edmund Pettus Bridge. It was on March 7, 1965, arguably marked one of the lowest points for law enforcement community relations in history, and actually during that important time in history, CRS was there to resolve conflict and reduce the tension. CRS's first director was a man named LeRoy Collins, and he worked behind the scenes to ultimately help broker the agreement for the second march that's between King and the Alabama state troopers, which helped keep the peace the agreement held. Because you remember in the movie which was shown, the marchers stopped in the middle of the Pettus Bridge, kneeled down saying we shall overcome, and King then turns the group to go back to Selma. That was an agreement that CRS helped mediate in that day. And one point raising is that law enforcement community relations are strained and compromise and communication are just not easy in those situations.

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The marchers were trying to cross the Pettus Bridge were inspired in part by the February 1965 shooting of Jimmy Lee Jackson, an unarmed, young African American man by an Alabama state trooper. Selma marchers traveled a long distance to protest police brutality, and this scenario continues today. As we examine Ferguson, when another deadly confrontation between police and young unarmed young African American man, Michael Brown stir nationwide protests and demonstrations. Both cases sparked an important national dialogue about community police relations, and from Ferguson, to Sanford and back, here it's New York and Eric Garner, CRS was on the ground from the date of each incident. CRS worked with all the involved parties, the elected officials, law enforcement and community groups to coordinate effective community dialogues with the goal of prioritizing issues and developing action steps that all the parties could take to improve partnerships and strengthen mutual trust going forward. CRS has actually played this sort of roll in local and nationwide dialogue by facilitating discussions that help communities develop community capacity networks and plans to promote peace and resolve conflict in neighborhoods and schools. I would say similar to
Selma today, self-diplomacy, self-marshall training remain useful tools during large planned protests. In 2007/2008 CRS assisted local law enforcement officials after the shooting death of Sean Bell in Queens, New York. Those who are here today and locally you probably remember the chaos that happened at that time. Streets were closed. Bridges were blocked. CRS provided contingency planning assistance, self-marshall training with community organizers and police in preparation for some of the those events. We responded to twenty-five -- we were involved in twenty-five community events and there were six highly publicized civil disobedience demonstrations. CRS helped the community leaders and police restore peace in the city at that time.

Following the September 11 terrorist attacks and with the increase in violence and misunderstanding against Arabs, Muslims and Sikh intensified, the need to promote and educate understanding became apparent. As a result at that time CRS developed and Arab, Muslim and Sikh cultural awareness training program, and what we call our AMS program. CRS/AMS program is a four hour program that brings together law enforcement, government officials and Arab, Muslim, Sikh communities together to foster
mutual understanding of strengthened police community
relations. It covers cultural behaviors, sensitivities, stereotypes and expectations during police community interactions, individual interactions, and to supplement that training, we also created a rollcall video for law enforcement called The First Three to Five Seconds. The video was developed to provide officers with fundamental understanding of Arab, Muslim and Sikh cultures during nonemergency interactions. Also following that model in 2014 CRS created a transgender law enforcement training, and it's finally analyzing a rollcall video as well. It's been very well received. In developing the program we brought together roundtable meetings, transgender leader, law enforcement representatives, with the goal, again, of improving relationships between transgender communities and law enforcement.

Currently we're also developing a program for dealing with individuals with intellectual and developmental disabilities. I know this was mentioned in earlier panels as well. It's my hope that that program too, like the other programs, will enhance law enforcement's ability to recognize nonthreatening behaviors from those with disabilities and help prevent tragedies like the death of Ethan Saylor, a
26-year-old Maryland man with Down syndrome who died while being restrained by police. The incident was a callous case. People with cognitive disabilities are increasingly being secluded in communities and no longer confined to institutions. The world is changing and our law enforcement must be better equipped and trained to serve its community members.

We have a variety of other trainings, including law enforcement mediation training. I know we talked about earlier a racial profiling training as well. So there are a number of things that we do. We're also offering a training with the FBI and civil rights division as well. So I will stop there, and thank you very much.

CHAIRMAN CASTRO: Thank you, Mr. Lum. Mr. Sabol.

MR. WILLIAM SABOL: I'm Bill Sabol. I'm the Director of Bureau Justice Statistics. BJS is the principal Federal statistical agency in the Department of Justice, and core to its mission is developing national statistical programs that describe criminal events, offenders, and the operation of justice agencies at the federal, state and local level. Important to understand about BJS is that it's enabling legislation to data collected by BJS should
be used only for statistical purposes, shall be

gathered in a manner which precludes the use for law
enforcement or other purposes relating to private
person other than statistical research purposes, and I
mention that because a lot of the discussion today
named names and one of the challenges for us is to
gather data, describe patterns and trends,
relationships between organizations and agencies, what
our outcome is while protecting the privacy of
individuals. BJS maintains a variety of programs
covering all aspects, as I said, of the Criminal
Justice System, but when it comes to police use of
force, there are four in particular. I'm going to
focus on two of them today. I apologize for getting
this to you late, but you'll get the gist of it now.
But four in particular or two of the four that I want
to focus on, one is a survey of citizens. That's part
of the National Crime Victimization Survey. It's
called Police Public Contact Survey. It asks a
national representative sample about 90,000 people, 16
and up, about contacts they had with police during the
past year and asked them to describe those contacts
and whether force was used in the contact. Another one
is called the Arrest-Related Deaths Program, which is
part of a program that BJS started in response to

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Deaths in Custody Reporting Act in 2000 to capture data on persons who died in the custody of prisons, jails, en route to an incarceration or in the process of arrest. In general our approach to measuring force, just like lots of our statistics, is through a combination of administrative data and survey data so that we can -- so that we can compare what we get from official sources with citizens' perspectives, just like the dark figure of unreported crime where you see our crime data come only in terms of crimes known to police and the National Crime Victimization said they'd get the information of crimes not reported to police. We adopt that same perspective and force, citizen reports versus to the extent we get them, official statistics. So the citizen reports come from this survey called Police Public Contact Survey, and to keep it on force is to try to understand the nature of the interaction between the police and the public. So it tries to capture the events. It tries to capture what the police do and what respondents did in that contact. So for example, it asks respondents about whether the police shouted at them, cursed at them, threatened them, used electric shock or pointed a gun. It asks respondents whether they disobeyed or interfered with the officer all the way to whether
they physically did anything to the officer. We implement these surveys every three years since 1999. The most recent one between 2011. We're fielding the current one, and just a couple statistics in terms of what we found. According to PPCS there are about 47 million people who were 16 and above who had at least one contact with police for a traffic stop, pedestrian stop or other type of contact. That number ranged between 40 and 47 million between '99 and 2001. The data showed that in less than 2 percent of those cases did the police use force in the most recent contact with -- with civilians, so that amounts to over time to between 400 and 800,000 incidents of force. Given that force is used in those incidents in the majority over three quarters of them, citizens said the force was excessive. The PPCS captures a range or a continuum of force of nonfatal forces, including, shouting, cursing and things along those lines and typically the most common use of force is threatening, pushing or grabbing. In about a quarter of the cases respondents report police pointed a gun at them. They used pepper spray or shock devices in about 9 percent of the incidents. So the picture is that a lot of the contacts, relatively small -- relatively statistically small fraction of cases the citizens report police use
force.

Jumping to the back end in the data we capture on the deaths in the process of arrest, in response to the Deaths in Custody Act we started collecting data through state reporting systems in 2003. We collected them through 2011. Suspended the collection because of concerns about methodology, and we'll come back to what we're doing on that. But between 2003 and 2009 we captured the data on the civilian deaths, and one of the things we found was out of about 4,800 deaths we captured over that period, about 40 percent of them were due to a cause other than a law enforcement officer homicide. The majority of non-law enforcement homicidal causes were suicide or intoxication deaths. Our data are similar to what the FBI collects in supplementing homicide reports in what they call justifiable homicide, and they show some similar patterns and trends. For example, both sources show that about 30 percent of the persons who die as a result of law enforcement homicide are black. About 42 or 45 percent are white. However, we had concerns that both our data and their data weren't capturing all of the deaths that were occurring, so we did a study where we matched cases, made comparisons and during that period between '03 and '09. The data
we're capturing only about half the expected number of deaths. In the later years by 2011 we reduced that to
about 30 percent or so by using alternative methods.
So our intention is to spend our resources starting in
May with some pilot studies that will combine, I think
it was mentioned by the Cato Institute, open-source
data that takes into account all these types of things
to cases that are potential cases and follow up with
direct reporting on the cases with law enforcement
data. So we're working, as I said, on both ends, the
citizens' side, and the deep end, the arrest-related
death process to try to improve those, the data on
what we have on this topic.

CHAIRMAN CASTRO: Thank you. Ms. Scrivner.

MS. ELLEN SCRIVNER: Okay. Can you hear
me?

CHAIRMAN CASTRO: Yes.

MS. ELLEN SCRIVNER: Okay, thank you.

CHAIRMAN CASTRO: You do need to get a
little closer to the mic.

MS. ELLEN SCRIVNER: Get closer, okay.

MR. CHAIRMAN: Might go closer to you.

MS. ELLEN SCRIVNER: Maybe that's a better
idea. All right. Is that better?

CHAIRMAN CASTRO: Try the button again I
think maybe. There you go.

MS. ELLEN SCRIVNER: Yes, that's better.

Thank you for the opportunity to be here, and as I read the panel names, this was the federal officials panel. In the interest of full disclosure, I am no longer a federal official. So we have to get that out of the table. I did have that experience, but right now I'm working in police reform, and all of my experience really tells me that's where we need to be, and what I've heard here today just confirms that we really need to be focusing on police reform because simply changing a particular practice, such as a different training program, implementing a new program to respond to complaints or bringing on new technology, they will all have specific results, but that will not get us to the results that we're seeking. The reason being I, in my view, we are really at a very pivotal point in policing in terms of the relationship of the community and we need to be talking about the need for systemic organizational change, and I've not really heard a lot about that today in terms of changing not just different programs and different initiatives, but really changing organizations across the country, and of course, we're then talking about cultural change as well, and that
change needs to be embedded in a court philosophy that has the capacity to change the direction of the culture of police community interactions, and that it will start to become a cohesive organizational change strategy that can be implemented across the country, but what we're really looking at it would be embedded in constitutional policing. Clearly not all police departments have cultures that are an affluence to the community, but those that do, we've heard many examples, your examples today, and what was so recently seen are characterized by racist messages, overreliance on tactics and harassment. They do not represent the community, and they tend to use force rather than words. Until Ferguson I think many of us, myself in particular, really believed we had witnessed a history of civil rights gains, and that culminated in the Violent Crime Control Act of '94, which introduced community policing and achieved a number of objectives that improved relationships between police and the communities they served, and that included the introduction of the community policing philosophy. That was built upon community engagement and collaborative problem solving, and those are two key foundations of community policing, and they have very, very specific kinds of meaning. However, many of us
saw community policing losing priority status after
the event of 9/11, which I think everyone could
understand, but then also what became known as the
metrics issues or the numbers game where departments
used analytics to identify potential crime hotspots
and realistically they did start to bring crime down;
however, if you lived in one of those hot spots, you
may not see it as all that great and you may question
yes, it's bringing it down, but what is it doing to
bring it down. So over and above those events I don't
think we had any idea, however, just how serious the
situation was becoming until the national spotlight
was focused on Ferguson and here in New York City,
Cleveland and then when you think it cannot get any
worse, we see what happens in North Charleston and
then Tulsa where, again, unarmed men of color are
being murdered, and watching those events transpire
when you're talking about Selma, it kind of like
brought tears to my eyes as I watched this, realizing
that we were celebrating the 50th anniversary of Selma
and so many of us thought we had really made such
tremendous gains since that time and since the days of
that policing and to find out that maybe we hadn't
made the gains that we thought we had and then maybe
we were kind of kidding ourselves was kind of

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difficult to accept, but we have to accept it. We have to move on. As Delores Jones-Brown talked about in her testimony, we've been there before repeatedly, and now we need to move forward and do something very different. We need to face what we thought was happening and hope for what was not necessarily reality and we need to lay a groundwork for new initiatives within a framework of 21st Century policing strategies where the protect part of serve and protect does not mean harassment that generates nothing but anger, resentment and lack of trust. You've heard here today many of the directions in which we need to go. There are a lot of great ideas, but we need to do it within a comprehensive way that touches all of the bases and not just the police but the Criminal Justice System as a whole. As body cams are great for transparency, technology can decide hotspots all may be acceptable to prosecutors and courts, but if we do not have real collaboration with the community as to their use, will we ever really know their true value, and that's true of probably any implementation, even some of the you've heard about great training programs here today. You can have the best subject matter experts, very persuasive speakers, but we need national leadership to really start making
the kind of changes that have to occur and within that context the community's voice needs to be heard. It needs to be more than just sitting at the table. It needs to be actively involved and in decision making and reshaping the culture, and so we're talking a whole lot more than a citizen review board or citizen training program, and one of the things that would be recommendations that I will be making will be that we really start to need to look at how we can put together a regional kind or concept of a regional system of institutes across the country, organizational change institutes where police and community go there together, police leadership and community leadership go there together to start to learn how can we change the culture of these organizations. We've got very smart people in many of these communities. They can contribute their ideas and their knowledge. Hopefully the task force on 21st Century policing, as it is the final recommendation, are released. Hopefully that too will add to this whole notion of creating comprehensive change and will open the opportunity for a very new kind of dialogue on race and policing because in my view that's where we need to be if we're going to really move forward and have true constitutional policing. I offer to all
of you that this -- this dialogue that we've started
today is a really critical first step in making those
changes occur. Thank you for the opportunity
to be part of it.

CHAIRMAN CASTRO: Thank you. Twenty-nine
minutes ago CNN posted an article online that says
we're not seeing more police shootings; just more news
coverage. I don't know how that conclusion could be
made, particularly if we know that it's difficult to
collect the statistics as to what's happening, but any
thoughts on that kind of a perception from any of the
panelists?

MR. WILLIAM SABOL: It's definitely
difficult to collect the data, but I do think it's
true, we are seeing a lot more coverage.

CHAIRMAN CASTRO: But do you think that
implies that it's not that we're seeing more
misconduct, just more coverage or is it that we're
seeing more coverage because we're seeing more
misconduct?

MR. WILLIAM SABOL: When I look at the
trends there's been in terms of the number -- okay, so
we know that the data we have, both the data that BJS
has collected historically and the number of homicides
are underreporting the total number of homicides, but
relative to the expected numbers in '11 or so or between 2009 and 2011, that number of homicides is relatively flat, so that would lead me to believe there's definitely more coverage going on, but the answer to the question is more complete data on the number of homicides by law enforcement officers trying to get that number down, and then a corollary of that, I think, it ties both of my panelists' comments together is understanding the characteristics of the police departments where those things occur at higher than expected rates or lower than expected rates, whether that's the composition of the police force relative to the community or different policies and practices they might implement, whether it's proactive policing, community policing, trying to understand what's associated with that. One of the challenges is that these are, quote, statistically rare events, so we're at a floor that where things, you know, if you have one or two in one year it could be high in some communities. If it goes down to zero the next year, you know, that just could be natural variation, so it's just a real challenge to try to detect those things, and it's going to take a lot of work, but I think looking for the underlying patterns of the relationship between the characteristics of the
organizations and how they reflect the community to try to find out where the anomalies might be, I think is a starting point in that.

MS. ELLEN SCRIVNER: I think maybe it's both. There's clearly more coverage. I'm told that right after Ferguson occurred CNN had a hundred people on the ground there to cover what was going on in Ferguson, so yeah, there's definitely more coverage, and you've got more people using cellphones to film things, but with all of that said, I don't think we would have had a national task force on policing if this wasn't an issue, and the issues that we're seeing spring up across the country, they're happening in many different kinds of places. They're not all happening in just a small, rural area. They're kind of across the board, and what people have witnessed and seen, I think they've been pretty shocked about it and so I think -- I think most police chiefs as well who are involved in leadership positions will acknowledge the fact that there are things that are going on that are wrong and that they need to change. So I think it's, in answer to your question, it's both there's more reporting, but it's not magnifying issues out of perspective. I think the issues are there.

MR. GRANDE LUM: I would just add that I'm

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not gonna make a judgment as to whether it's happening more or less, but it's clear there's a lot more coverage above the fold. CNN covers Charleston. I don't even know the difference, you go back to the case of the Trayvon Martin case, which was the first big case that really propelled this, it took much longer for that case from the moment the situation happened to the protest. It's just telling about the difference that social media is making and how quickly and creating more transparency clearly.

CHAIRMAN CASTRO: Thank you. Commissioner Kladney.

COMMISSIONER KLADNEY: Mr. Sabol, so has anyone, one, made a recommendation of tying federal funds to reporting of all sorts of crimes to your office?

MR. WILLIAM SABOL: No. So Division of Labor, the FBI collects data through the New York Crime Reporting Program. Has done so for eight years, and is directly reported by local law enforcement agencies to the FBI through state programs. BJS administers national crime victimization surveys, which is a household survey of 190,000 people that are interviewed annually to ask about their victimization experiences. So that's how we get crime data versus
the FBI.

COMMISSIONER Kladney: And do you understand it to be true that the FBI doesn't all get these crimes -- these crimes don't all get reported?

Mr. William Sabol: That's correct.

COMMISSIONER Kladney: And have you ever thought yourself about what your recommendations would be or anybody else on the panel to make sure that these crimes get reported? I mean we heard testimony this morning 18,000 police departments, a million police officers or sheriffs, deputies, whatever. Do you have any opinion on that?

Mr. William Sabol: Well, statistical agencies in the country typically operate under the presumption that participation involuntary, and it's based upon a concept of trust and credibility, that is that we're honest, credible brokers that people give us the data. We'll treat it appropriately and put it out, and I think that's really a core principle, a good principle as opposed to simply mandating things. We have, BJS has done mandated collection. We do that, and one of the things we've learned even under that some people don't participate when it's mandatory even when the commissions had -- when they were calling out people at high rates. So mandating
doesn't necessarily ensure compliance. I think the voluntary participation kind of goes to the core of one of the principles of our country of democratic participation, and personally I prefer people want to give us the data. We treat it appropriately, that they're responding, you know, as part of their civilian, their civil responsibility it to provide accurate data to inform the nation about what's happening in crime. There are police shootings or whatever the statistic of interest might be.

COMMISSIONER KLADNEY: So what you're saying is if it remains voluntary, you're going to get about as much response as you've got?

MR. WILLIAM SABOL: Well, again, in terms of --

COMMISSIONER KLADNEY: The FBI numbers.

MR. WILLIAM SABOL: Well, the stuff we're getting from the arrest-related deaths it's interesting the fact reads that Congress is providing encouragement to the states to provide data on the deaths in the process of deaths. The encouragement is a penalty potential reduction in funding through one grant program, and that's a discretionary penalty for the Attorney General. Our approach is essentially to try and use modal methods to try to identify, capture
events and then follow up and confirm them and capture the data on those. I think that we can do well with that methodology. I say that based in part in the last couple of years of the program before we temporarily suspended the methodological work, we were seeing improvements particularly where our methodology was applied more clearly consistently across state, and we were using more open source to nominate and follow up. So I think there's value in continued in this -- in this vein. As said, you know, or the mandate doesn't necessarily ensure compliance and the mandate raises a whole bunch of issues about what compliance means. So for example, even under the Deaths and Custody Act it's a little unclear what compliance is. So if through the states or the law enforcement agencies they provide a count of the number of deaths but not every element that congress has specified, is that full compliance? Is that good faith effort? Is that partial compliance, and it raises a lot of questions about how one measures that, particularly said with a potential penalty so that we reward good faith efforts or do we punish good faith effort in these issues.

COMMISSIONER KLANDNEY: Okay, let me try it this way. What percentage of compliance do you think
you have in your programs?

MR. WILLIAM SABOL: In the BJS programs, quite high. For example, we survey law enforcement agencies. Well, we actually conduct a census of them to capture data on their characteristics, and we get about 99 percent response rate. We do a sample survey of about 3,700 agencies periodically, and we get over 99.5 percent response rates and we're asking questions about, you know, programs, policies, practices, things along those lines. So we have very high compliance in the surveys that we do in those programs.

COMMISSIONER KLANDNEY: Any idea with the FBI or I know that's not your agency?

MR. WILLIAM SABOL: Yeah, well, so in the UCR, vaguely. I don't remember the details off the top of my head, so.

COMMISSIONER KLANDNEY: So we should ask them?

MR. WILLIAM SABOL: Yeah.

COMMISSIONER KLANDNEY: Yeah.

CHAIRMAN CASTRO: Commissioner Yaki.

COMMISSIONER YAKI: Thank you very much. Just to follow up on something Commissioner Kladney had to say, I asked the previous panel the question about is there a way to condition federal funds on,
and I wasn't even talking -- I was talking beyond
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data. I was talking about its tuning procedures by
which to discipline police officers with high number
of complaints or something along those lines, but I
think it's applicable to this situation as well, which
is how much -- how confident are you that the data
that you're getting is accurate and true versus there
may be some cooking of the books, as one person put
it, to make sure their community wasn't number one or
number 2 in these kinds -- these kinds of reports or
they didn't want to show up on some top ten list,
whatever it is that communities do because they don't
like to be -- be -- be seen as the bottom feeders of --
of any particular societal problem? I'd just like
your comment on that.

MR. WILLIAM SABOL: Sure. So with respect to
the, quote, deaths in the process of arrests part,
just in this case to give one example, between -- in
the middle 2000s when we had lower participation rates
versus by 2011 we had used modal methods, the
estimated reliability or accuracy or actually the
technical term is scope of coverage went from about 50
percent coverage to 70, 75 percent coverage, so -- so
again we use various methods to try to estimate how
well we're doing. So yeah, I think we've improved it

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with enhanced methodologies and again the concept is modal methods to capture the same type of thing so it allows for external corroboration in any particular numbers. Now one of the challenges implicit in your question is what do we report out. So we don't report a roster of agencies and their rates. Not that we're precluded from naming agencies, but the modal number of deaths that we collected from some agencies that we collected over the years was one, so if we name an agency, we're essentially naming the people, and I know they're all public, but our statutes precludes us from identifying persons, and there are the families of the decent and folks like that to consider. So our challenge --

COMMISSIONER YAKI: Let me just ask, I mean do you think that in the -- in the age of Twitter and in the age of Facebook and in the age of social media is that as relevant now as it was when the statute was first enacted because it seems like everyone knows something may or may not happen, and I raise a point about what the chairman said about CNN, that headline because just to make a very clear point, Walter Scott in North Charleston would never have been reported but for the fact that someone was standing by there with a cellphone camera? That would have never made it
anywhere, and on another set of statistics that I know that our Dr. Goliday was struggling with has been working with in terms of a report we're also doing on stand your ground, is the absolute positing of statistics on when police use their discretion to determine that a homicide is deemed lawful and therefore not entered into the books as -- even though the police may make that conscious decision, that may be wrongful in that instance. How many times is that happening and not being reported as well? So I mean there are a lot of -- I just wonder how relevant it is now in when in the pursuit of transparency and accuracy we want, and quite frankly, what other panelists talked about, which was the public shaming of some of these departments to get their acts together, why -- why we would want to hold back that kind of information.

MR. WILLIAM SABOL: So other information that I think that would be informative is is there something about the North Charleston Police Department that's similar to other police departments, and there are groups of police departments that are behaving in the same way. That's an important finding that we're trying to undertake. We're planning to data mine the data or study or whatever to try to look at those. I

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think that would be an informative contribution that,
I'm just making this up because I don't have the data,
departments without community policing or proactive
policing where the racial imbalance between the police
department and the community is such and such and such
are more likely to report.

COMMISSIONER YAKI: True, but the fallacy
of that approach is that but for the person with the
cellphone camera, there would be nothing to report.

MR. WILLIAM SABOL: We would still patch
that data at the death in the process of arrest and
try to capture that information. And you are pointing
out a really important point, which was what I said at
the outset, when we think about data collection, we
want to try as best we can; we don't do it all the
time, to get a public and police perspective. So in
that survey that we do, you know, we have information
on a continuum of force, police yell at you, kick you,
point a gun at you. In principle, administrative data
you're going to hear from Dave Klinger and other folks
who have captured that data and a similar type of
continuum force is measured from the police
departments we can assess whether or not there's
corroborations between the two. You're absolutely
right, but in the Scott case, the video camera showed

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something that we would not have seen from official
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statistics. That's an ongoing challenge that we're
trying to get, but I go back to what we're trying to
do in these cases now by relying on open source,
whether it's a news media report or something like
that, we capture an element that we can use and we
then contact the police department for confirmation or
not. We don't necessarily take the report as gospel
because we have this other information, and we try to
do some kind of forensic audit to try to figure out
what's going on with it.

COMMISSIONER YAKI: Thank you very much,
Mr. Chair.

CHAIRMAN CASTRO: I had a question. When I
attended a briefing by our Illinois state advisory
committee on hate crimes and the reporting of hate
crimes and there was testimony as to inconsistencies
in how a particular locality might view something or
define something as a hate crime versus a federal
statute. So we weren't looking at the stats that were
there were not apples to apples. Do we have a similar
situation when we're dealing with the use of deadly
force by police officers when comparing federal and
local descriptions or definitions?

MR. WILLIAM SABOL: So what we try to do is

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define a set of elements that would capture in any
event, so that's why this death in the process of
arrest doesn't just limit itself in terms of its
scope simply to what police departments say was a
justifiable homicide. It captures information from
the time of the interaction with the police. So we
try to capture those elements and then we can place
them into a bin, and so we can make some decision
about where we think they fall. So again, by trying
to get at the underlying attributes or elements, it
gives us the opportunity to classify. One of the
challenges it always presents and people have said
this is that our numbers don't match up with theirs,
and that's simply because we're trying to apply to
some kind of uniformed decision, whether it's the
count of prisoners or something like that, across
jurisdictions so we can compare across jurisdictions.

MS. ELLEN SCRIVNER: I have a comment on
that. I reference police reform and the collaborative
reforms that the Cops Office is funding and many of
those collaborative reforms, that's one of the issues
that they're working on, working with the police
department to look at their data, how accurate are
their data. Now we're not talking about data that
they're reporting to the federal government, data that

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they can use themselves to figure out what's actually happening out there on the streets, who are they stopping, how often, what's the level of contraband. But it's more than that type of thing as well. It's how are they using the officers. Are they using the officers in the best way possible, and so you can get an awful lot from data, but the collaborative reform moves in on that, and they've got like six months to really zero right in on that, and then they've got a year to follow that and continue to go back and look at are they still doing what everybody agreed needed to be done, and is it still working out or are there some changes that need to be made. It's a very flexible system, except but it also gives you very solid information.

CHAIRMAN CASTRO: Commissioner Achtenberg.

COMMISSIONER ACHTENBERG: Ms. Scrivner and Mr. Lum. First you, Ms. Scrivner, you said we need systemic organizational change embedded in constitutional policing principles.

MS. ELLEN SCRIVNER: Right.

COMMISSIONER ACHTENBERG: I think I agree with that, but I am not really clear. It sounds -- it sounds very good. What are the elements?

MS. ELLEN SCRIVNER: Well, what I was
talking about is we -- let me back up for a minute.

We've been like talking all day, and so many different meetings that I go to, we're talking about really good things, like implicit bias training, very good, procedural justice training. I'm talking about let's bring that together into a more systemic, cohesive way, and the way we do that is we start to look more at how do you make organizational change within an organization, not just changing a specific program, but really changing the whole organization from top to bottom in ways that need to be changed, and one of the ways that you could do that is if, and but it does require resources, if we develop like a network of, John Jay would be a good example of one, where people could come together, police and citizens together to work on how are we going to change the culture of this organization, and embedded in that cultural change is the constitutional policing, and I think we pretty much know what constitutional policing is based on a Department of Justice pattern and practice initiatives because when they go in and they look at the patterns and practices, inevitably what they're really looking at are patterns and practices that lead to unconstitutional policing behavior, whether you call that misconduct or basically the people aren't being
served appropriately, and so you start to bring all
that together. Rather than -- my concern is we don't
approach it like a bunch of different silos, that we
start to weave it together. And I'm not suggesting
that's easy, but I do think we've really started to
identify the framework and what the pieces need to be
and now we need to start putting that together, and so
I'm going to turn that back to you guys to do that or
help anyway.

COMMISSIONER ACHTENBERG: Well, luckily
for us we don't do anything.

CHAIRMAN CASTRO: We do a lot of things.

We make a lot of recommendations.

COMMISSIONER ACHTENBERG: We make a lot
of recommendations, that's what we do.

Mr. Lum, she also made reference to the
community voice needing to be heard. Could you talk a
little bit more about what such a process might
consist of, capturing the community voice in cases
like this?

MR. GRANDE LUM: I really like Ms.

Scrivner's point of community-oriented policing is
really about collaborative problem solving in the
community, but the communities can be at different
states. It can be a recent immigrant community, the
Somalian community or the Burmese community that's recently moved in, they may not be as ready to engage in that, but I think a group like community relation service can help play the third-party because depending on, for example, there may be great mistrust of law enforcement. There may not be a willingness to immediately come to the table and by first having conversations amongst themselves that bring together leaders that they can identify or to develop leaders, that's the way that then they will be able to engage with law enforcement to come together maybe with a facilitator to increase the ability of true engagement. I think that is an important piece, as Ms. Scrivner talked about, which is if you're going to have cultural change, the community has to engage in it. It can't just be independent, happening without their voices included in that. And I think training can be helpful to folks. Community advocates can be helpful. The community organizations are the ones who have pushed a lot of what's going on here about this issue of excessive use of force, and they're going to have to be part of the answer as well.

CHAIRMAN CASTRO: Commissioner Narasaki.

COMMISSIONER NARASAKI: Thank you, Mr. Chair.

Sorry. So I have a few questions. One for
Mr. Sabol, are the studies that are done, I'm very interested in the surveys that you do, are they done in Spanish or are they done in other languages?

MR. WILLIAM SABOL: Spanish language. So the Census Bureau conducts it, and they have an Asian language. They have a call-in service to help translate, but Spanish language is one of the instruments that's used uniformly.

COMMISSIONER NARASAKI: Okay, thanks. And have you seen any difference in terms of -- because I used to be with an organization and we would do some public opinion research focus groups with the Asian community. We would find that you had to be really careful how you translated the questions and how you asked the questions because as Mr. Lum pointed out, many are new immigrants and, you know, see civil rights terminology in a different way?

MR. WILLIAM SABOL: With respect to Asians in the sample, I can't -- I don't point -- specifically I don't know. I mean I can get you. I can talk to the census bureau folks to find out what challenge they have had. With respect to the Spanish language we've measured a change in improvement in response rates simply by translating surveys into Spanish. So we've seen improvements in doing that.
fairly short notice. The Pasco chief of police noted that they had reached out to CRS to ask for help in facilitating community conversations, given the recent incident that was there, and the heightened tensions there. I'm wondering the degree to which the various parts of the Department of Justice who work on these issues are working together. I know this administration has done a lot to try to break down the silos among the agencies and provide a more holistic approach to things, and we read a lot of positive things about the cops program being sort of the intermediary step between a Department of Justice investigation, which by its nature is a little bit adversarial, cops which may be coming in and being seen as a technical assistance provider, and then what would the CRS role be, and how do you get to the holistic change that Ms. Scriver was talking about?

MR. GRANDE LUM: Right. Thank you, Commissioner Narasaki, for that question. So I think there has been an attempt within the Department of Justice to break down those silos. I think that's very much the case, whether it was in Ferguson or in Sanford or in Pasco, Washington and other situations

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like that, and it's important. There is a lot of federal resources that can be brought to bear on these situations and it's important because the community that's involved, they don't see different components. They just see Department of Justice, so I think that's true. I do want to say very carefully, though, for CRS we have to be very careful to stay within what I would say our lanes are. We do not litigate. We do not investigate, we are there to be an impartial third-party. So we in certain situations have to act very separately and keep confidentiality and not seek publicity for working, which you're trying to work between parties, say law enforcement, government officials, community because you're trying to help them work through a situation. We stay away from the other portions of our investigation and prosecutorial, but in those situations where the circumstances are appropriate, we're trying to help them work out their own problems. We're trying to help them work solutions when -- when appropriate to the issues that they face around these issues.

COMMISSIONER NARASAKI: And we had -- we had people testify about the important need to bring in line officers as well as chiefs of police. I'm wondering if you've seen good examples of that, anyone
on the panel in terms of, you know, really trying to
drive change, not just as the chief -- leadership is
always important as well, but leaders can only lead if
people actually want to follow them, right.

MR. GRANDE LUM: I'll speak really quickly,
and I think some of my colleagues on the panel might
have some things to say as well. You certainly need it
driven from the top, and in our work, at least at CRS,
it's certainly the middle management matters greatly
as to what the actual patrolman on the street is
actually doing. The positive story I would have is I
mentioned all the trainings that we have before. We
provide them for all levels, and even when they're
coming out of the academy, we've done training on -- on
say the Sikh cultural competency where they learn
something. You can see that when you increase
knowledge, people will act differently or when you
reduce ignorance, there can be change in that, so I
think it does have to be throughout the organization.

MS. ELLEN SCRIVNER: I would agree with
that. I've had a lot of experience of sitting down at
the table with all the stakeholders from the community
and the line officers, the officers who were working
in that community, not just the police chiefs or the
supervisors or the captains. I think you heard Sean

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Smoot talk early today about the union needs to be at
the table. If you're going to have buy-in, that's
pretty critical, and I will tell you right now,
initially those meetings can be very uncomfortable.
Nobody trusts each other. Nobody really likes each
other, but over time they start to build up some
respect for one another's position because they begin
to realize that they're all after the same thing. They
want safe neighborhoods and neighborhoods where people
can see their kids playing out in the street or they
can walk to the grocery store without worrying about
being shot or harassed by police, and so as they start
to learn that from each other, you see a lot more
engagement. When I talked earlier about collaborative
engagement, that's not just a nice term. That really
means we're going to work together. This is not
cooperation. This is not coordination. This is you and
me working together to create something that's going
to make it better for all of us, and it takes some
time to get there, but that was really a foundation of
community policing, and once that starts to happen,
then you will see change begin to occur and we were
seeing it all over the country really but then things
changed, unfortunately. Really it hadn't gotten the
roots that it needed, and hopefully we can

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try to re-root it.

COMMISSIONER NARASAKI: I have one final
question for you, and that is because you're not in
government, so you don't have any personal interest in
this, but so the Department of Justice seems to -- the
investigations they bring seem to play a very
important role in trying to help drive change, right.
In fact, they can be a tipping point with
organizations. What's your sense in terms of -- it
doesn't seem like they have capacity to bring that
many lawsuits, and I'm wondering what your sense is in
terms of whether there is sufficient funding for all
the different parts of the Federal Government that
need to be playing a role, and how important is the
litigation because usually, you know, people a lot of
times when we have hearings people have different
viewpoints about whether it's a good thing or not and
are aggressively litigating something, and I was
really struck by the fact that so many chiefs of
police were actually saying it was a good thing so?

MS. ELLEN SCRIVNER: Well, not telling you
anything that you don't know, that initially really
all we saw were consent decrees until the '94 Crime
Act. That's when the pattern of practice initiative
was part of that Crime Act and not the Justice

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Department could go in just based on a series of complaints that they were hearing. They didn't have to have somebody file an actual suit. So that became very different than the consent decree, and they still have people out in the departments working with the department and police chiefs like this. Now it's turned to the point where the Cops Office and the Civil Rights Division are encouraging police officers to ask for that kind of assistance rather than they go out there first. So that's kind of a seat change. The consent decree is still out there and there are probably some issues that the only way they're going to get solved are through a consent decree. Consent decrees are costly, but the cities really have to come up with that money or the counties. Somebody has to come up with it, not the Justice Department. So they will go out there and do that work and they usually last longer, probably much longer than anybody ever anticipates they're gonna last, so I think given the length of time, the cost and the fact that change is relatively slow with consent decrees because of all the different people that have to weigh in, my sense, and this is not my -- this is just my sense of what I'm seeing based on my own experience having been in the Justice Department, but also what I'm seeing now,
I think there are many people that are really moving in the direction of the pattern and practice initiatives and trying to avoid the consent decree, unless it would be absolutely necessary and that's the only way you can go.

CHAIRMAN CASTRO: I got a few extra questions. Mr. Sabol, you mentioned in your remarks that there are a number of changes that are gonna be happening at BJS or fixes that you're going to make. What's the timeline that you anticipate for that to be completed?

MR. WILLIAM SABOL: Well, we're doing the one pilot study. That starts in May. Hoping to have some results by December. In terms of capturing data on a wide array of force from police departments, this is long-term effort, and again, I know you'll hear some more about this in the next panel. So we'll be having expert panel meetings later this summer or fall to help identify what's important. I think there's been a lot -- I think the survey work we do shows something about the extent to which force is used in traffic stops. I think there's a question about what's important to capture and improve policing, like what are the -- what elements are important for training or changing police behavior. So that's kind...
and then pilot tests. I want to rely on some of the results that the researchers who are working on use of force are fielding right away just in terms of saving money. So probably wouldn't be fielding surveys for a year and then later this year we'll implement -- we'll survey between July and December, we'll do that Police Public Contact Survey again. So those are the basic things in the next year. Oh, and then the fourth thing is even though we know that both our data and SHR data, Supplementary Homicide Reports data, are limited, we're gonna conduct that study, start looking at the relationships between agencies and characteristics.

MR. CHAIRMAN: Can you just restate the last part?

MR. WILLIAM SABOL: The Supplementary Homicide Reports on justifiable homicide that the FBI collects, our study and our data to try to understand if there's any relationship between characteristics of police departments and these law enforcement homicides. We'll start that this fall.

CHAIRMAN CASTRO: Now the FBI data that's collected only includes police shootings that result in a fatality. So this additional force data that
shootings that don't involve or don't result in a death and as well as other officer-involved shootings?

MR. WILLIAM SABOL: In principle that's what we would like to try to do to capture the array of uses of force, but yes, but, you know, going back to the comment made before, and this about the 18,000 police departments, collecting data from 18,000 police departments is expensive and challenging, so we want to start small with sample-based methods, maybe limit our efforts to the largest hundred departments or something that --

CHAIRMAN CASTRO: But that type of data from those departments.

MR. WILLIAM SABOL: That type of data, yes, but then there are comparability scope and measurement issues that we have to work through, but I'm sure in the next panel I'm sure you'll hear more about this, so we've got to build slowly on that. So yeah, in terms of a broader array of off-the-wall shootings, that would be the longer term goal.

CHAIRMAN CASTRO: And then a question for any one of you, our Advisory Committee points out to us in their preliminary advisory memo that the U.S. lags behind in international standard regarding police
accountability and the use of force. Do any of you have any knowledge about international standard and how maybe there's some best practices there that we could apply here?

   MR. WILLIAM SABOL: I only know about the statistical standards.

   CHAIRMAN CASTRO: The what?

   MR. WILLIAM SABOL: The international statistical standards.

   CHAIRMAN CASTRO: Okay. Maybe I'll ask the next panel.

   MS. ELLEN SCRIVNER: I think one the difference is many parts of other countries, they have like a national police force where we have the, you know, 18,000 and they're all over the place, have different ideas on how things should be done and I think that is a major difference, that it may be easier for them internationally to do certain things that it would be almost impossible to the U.S.

   CHAIRMAN CASTRO: Good point.

   MR. GRANDE LUM: International Association of Chiefs of Police, organization like that might have some data on that.

   CHAIRMAN CASTRO: Good idea.

Commissioners, any other questions? Commissioner

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COMMISSIONER KLADEY: I believe Sean Goliday of OCRE has a question.

MR. CHAIRMAN: Okay. Do you want to come up here?

DR. SEAN GOLIDAY: Thank you. My questions is for Mr. Sabol, and I know BJS supplies roughly statistical analysis into grants, which I believe range in between 60 to $150,000. Is there any way that those grants can be, at least special I know a lot of times they have special issues that they encourage states to tackle statistical analysis of states around the country and local jurisdictions, is there any way that we can -- or those grants can be leveraged to kind of help local jurisdictions to collect data on police shootings or fatal and nonfatal police shootings?

MR. WILLIAM SABOL: Yeah, so there are two parts to that grant program. One is the one you identified where the statistical analysis centers can get 50 or 60,000, and the topics they work on are open to that, and we've identified police fatalities as a priority area in the past and it still is. A second opportunity is we have what we call an enhancement grant, which is essentially a three year program at
about 150 a year to develop statistical
infrastructures that's informative for the state and
locale, but also it helps us understand data that
might be available that we could capture. So that
program can be used in that way. The summations are
closed or just closing. I haven't seen what people
have come back with this year in terms of
applications. In the past folks have collected data
in terms of use of force, but they definitely can.

THE WITNESS: Is there an effort to
courage states and local jurisdictions to do just
that?

MR. WILLIAM SABOL: Well, there are a lot of
priorities, and so our goal has always been to state
priority areas. So for example, we want to know a lot
about what happens in the courts. We don't have good
court data for a variety of reasons. So that's a
priority area. We want to improve the use of criminal
records for understanding flow through the system. So
that's a priority. So we're really leading up to the
states to negotiate that with, whether they're in the
governor's office or universities, with the agenda
that's really important for them, in part because we
always view this funding as seed money and not
permanent money, where it's an opportunity to take, I
know it's not a lot, but over three years to sort of
expound on something and hopefully establish its
relevance so that either the state supports us or if
it's data that we can use, we can support it. So it's
to allow that kind of experimentation.

DR. SEAN GOLIDAY: Thank you.

CHAIRMAN CASTRO: Commissioner Narasaki.

COMMISSIONER NARASKI: Thank you. I just
had one more question, and that is we talked a lot
about what the Federal Government role is, what the
police chief's role is. I'm wondering what, if any,
the role is of governor's of the states, what could be
done more on a state level to really help police
departments be successful to set them up for success?
Do they play much of a role now?

MS. ELLEN SCRIVNER: In the experience I've
had, no. They play a big role at the state police,
but in terms of local police, no. You're talking
really the mayor, city council, but that's -- that's
-- I'm just basing that on my own experience. Others
may have had very different experiences.

MR. WILLIAM SABOL: I'm probably going out
of my area of expertise, but I agree with Ellen.
Policing is local. It's not primarily a state
function, except for the state police, but the state's
Attorney General can set priorities and establish what, you know, at least go on record as saying this is important stuff to bring forward in an investigation. So they can have a role. Now it's not the governor. It's the governor's office.

COMMISSIONER NARASAKI: Do local police get any kind of state funding for anything?

MR. WILLIAM SABOL: There might be grants.

MS. ELLEN SCRIVNER: They can get some state grants, depending on what are the nature -- the nature -- the level of how the grant is set up. It's only for state initiatives whether it can go into local or they can be partners with somebody.

MR. WILLIAM SABOL: They can also get federal grants through the state portion that they can apply for federal money.

COMMISSIONER NARASAKI: It seems to me when you end up with a horrific, tragic incident happening, even though it's happening in the city, sort of tars the state as well, right, the reputation of the state and there might be more of a role for governors or attorney generals or others to be playing.

MS. ELLEN SCRIVNER: And some of the homeland security grants are administered statewide and they -- but they cover local expenses.
COMMISSIONER NARASAKI: Thank you.

CHAIRMAN CASTRO: Seeing no other questions, I think we're going to thank this panel for their participation and what we will do now is take a ten minute break while panel -- our last panel is set up. Thank you.

(Whereupon, a recess was taken from 4:13 to 4:22)

CHAIRMAN CASTRO: All right, we're calling to order the last panel of the day. Thank you. I know some of you have been here all day. Some of you have probably just gotten here recently. A series of warning lights. Red means stop. Green means you started and yellow, try to wrap it up as quickly as possible.

Before we begin the process, I want to introduce all of our panelists and then we'll begin your presentations for seven minutes each and we have to swear them in as well before we begin to question them here.

So our first panelist is Ms. Heather MacDonald, from the Manhattan Institute. Our second panelist is Mr. Fritz Umbach, with John Jay College. Our third panelist is Mr. David Klinger, from the University of Missouri St. Louis. Our fourth panelist

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is Jon Shane, with John Jay College, and our fifth and final panelist is Mr. Sam Walker from the University of Nebraska.

       I'll ask each of you to raise your right hand to be sworn and swear or affirm that the information that you are about to provide us is true and accurate to the best of your knowledge and belief; is that correct?

       MS. HEATHER MACDONALD: Yes.
       MR. FRITZ UMBACH: Yes.
       MR. DAVID KLINGER: Yes.
       MR. JON SHANE: Yes.
       MR. SAM WALKER: Yes.
       CHAIRMAN CASTRO: Thank you. Ms. MacDonald, please proceed.
       MS. HEATHER MACDONALD: Thank you very much, Chairman Castro. This is a great honor to be testifying before the U.S. Civil Rights Commission. It must be the most incredibly resilient body I've seen, and if any of you keel over during our presentations, we're not going to take it personally. It's been a long today.

       Any police shooting of an unarmed, innocent civilian is a tragedy. The police should constantly refine their tactics to try to ensure that such
mistakes never happen. Moreover, the police have an indefeasible obligation to treat everyone with courtesy and with respect and within the confines of the law, but while we need to make sure that the police are properly trained in the constitution and courtesy, there is a larger reality behind the issue of policing and raids that remains a taboo topic, and that is black crime. Unless we bring down the black crime and victimization rates, policing is going to be heaviest in black neighborhoods, increasing the chances that when an officer's use of force goes awry, it will have a black subject. Every year approximately 6,000 blacks are murdered nationally. This number represents a homicide death rate six times greater than the whites and Hispanic death rate combined, and that black death by homicide rate is a function of the black crime rate. Black males between the ages of 14 and 17 commit homicide at ten times the rate of white and Hispanic male teens combined. The black homicide rate for all age groups is seven times that of whites and Hispanics combined. That crime rate means that police presence and use of proactive tactics will be heaviest in black neighborhoods. In Brownsville, Brooklyn, for example, the per capita shooting rate is 81 times higher than in nearby
Bayridge, Brooklyn. Brownsville being predominantly black; Bayridge being predominantly white and Asian.

Every single one of those shootings is going to draw police into the neighborhood where they're going to be looking to make proactive stops to prevent a retaliatory shooting. Now for the reasons that we have already heard today, saying anything definitive about police shootings is difficult. Historically around one-third of the 400 police homicides reported to the FBI each year have black subjects. Such a figure is easily consistent with the black crime rate. Blacks make up over half of all homicide perpetrators in the country, and in 2013 were 42 percent of all cop killers, despite being merely 12 percent of the population. From 1980 to 1998 young black males murdered police officers at almost six times the rate of young white males.

According to Gary Kleck, a criminologist at Florida State University, police officers are less likely to kill a black suspect threatening or attacking them than a white suspect. Kleck's findings comport with other research on officer behavior. In New York City in 2011 police officers killed nine suspects, an extraordinarily low number when compared to the size of the New York police department and the city population itself.

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Blacks were 22 percent of those fatalities. Whites
were 44 percent of those police fatalities. Yet
blacks were 67 percent of all suspects who fired at
the police. No white suspect fired at the police. A
2014 simulation study out of Washington State
University found that officers waited longer to assess
the situation when confronted with black suspects than
with white suspects. Who are some of the victims of
the elevated black crime rates? On March 11 of this
year as protestors once again converged on the
Ferguson, Missouri Police Department, a 6-year-old boy
named Marcus Johnson was killed a few miles away in a
St. Louis park, the victim of a stray bullet fired in
a dispute. There were no mass protests over his
killing. Al Sharpton did not call for a Justice
Department investigation. Few people outside of St.
Louis even know the boy’s name. As heartbreaking as
such killings are, crime rates were much higher twenty
years ago. Over 10,000 minority males are alive today
in New York City who would have been dead if the
city’s homicide rate remained at its early 1990s
levels. Behind this historic crime drop lies a
policing revolution that began in New York and spread
nationwide. In 1994 the New York Police Department
started intensely analyzing crime data on a daily

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basis, deploying police officers accordingly and

holding police commanders accountable for crimes in their precincts. This data and accountability revolution known as Compstat created the longest and steepest crime drop in record. For decades the rap against the police was that they ignored crime in minority neighborhoods. Today thanks to Compstat, the NYPD and other data-driven agencies are focused like a laser beam on where people are most being victimized, and again that's in poor minority neighborhoods. The other determinant of police deployment is community demands for assistance and enforcement. Go to any police community meeting in Harlem, the South Bronx or central Brooklyn and you will invariably hear some variant of following requests: We want the dealers off the corner. You arrest them and they're back the next day. Kids are hanging out on my stoop and smoking weed. Can't you arrest them for loitering. The irony is that the police cannot respond to these heartfelt requests for order without generating the racially disproportionate statistics that will be used against them in an ACLU or Justice Department lawsuit. Nearly all police officers choose their careers out of the desire to serve and a vast majority continue to believe fervently in the good people in the community

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who support them. These community members are rarely heard in the national media. By all means, let us do everything we can to make sure that police departments use force only as a last resort, but there is no evidence that police shootings of blacks are on the rise or that they are a function of racism, explicit or implicit. In fact, the government agency most dedicated to the proposition that black lives matter is today's data driven police department exemplified by the NYPD. If we spent as much time figuring out how to lower black crime as we spent talking about alleged police racism, the alleged policing problem would melt away. Thank you.

CHAIRMAN CASTRO: Thank you, Mr. Umbach, you have the floor.

MR. FRITZ UMBACH: Thank you, Chairman Castro.

Anyone with a conscious viewing the video of Michael Slager killing Walter Scott must share North Charleston Police Chief Driggers' response of being sickened by the event, and the personal testimony today confirms the reality of police use of excessive force, but much about such practices is unknown. Today I want to briefly map out what we do not yet know about the problem and its solutions and
what we do know what is going to get us the systemic change we all want. The first questions are obvious. How frequently do police use lethal or excessive force, and are they doing so more frequently. Certainly widespread use of camera phones and social media have brought a welcome national focus on the problem, but is it the focus or the problem itself that is growing? The answer is we don't know and likely cannot know the scope and trajectory of the problem until we construct a comprehensive national database. It is revealing of our moral compass that we track so much about law enforcement and crime in America but do not reliably collect data about the police use of serious force. The shortcomings of the DOJ database on officer-involved shooting, the FBI's numbers on justifiable homicides and the 2014 Death and Custody Reporting Act are all well known, and I need not repeat them here, but until we have reliable numbers, however, it will be irresponsible to speculate about the size and nature of the problem and certainly the incomplete data we have points in many different directions. Here in New York City, for example, where the police have been exceptionally transparent in their annual shooting report, the incidence of police use of lethal force has been low
for decades and shows no sign of increasing. The next obvious question is do police officers subject minorities to disparate treatment when using serious force. Again, we do not really know. As even ProPublica acknowledged in their off-sided study of the alarming racial disparities in police killings, although they, quote, found evidence of disparity in the risks faced by young black men and white men, this does not prove that police officers target any racial group. The data is far too limited to point to a cause for disparity. No doubt as Stanford University's Jennifer Eberhardt has demonstrated in her careful studies, implicit bias does shape police officers' behavior. They judge, for example, faces that are the most stereotypically black as the most likely to be criminals, but while implicit bias is certainly real, how much of the clear racial disparities in the police use of serious force it can explain, and how much is best explained by other factors is simply unknown. Implicit bias might contribute significantly or negligibly to police use of force. We just do not know. So if we know so little about the problem, what do we know about the solution? There are solutions we know work and then there are solutions that we know don't work or yet

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have not yet worked. One of the most frequently cited solutions to problems with police brutality,
increasing the diversity of police forces has an intuitive appeal and so it's played a central role in
call for police reform for a half century. But the
evidence or the value of this goal is rather mixed.
The most rigorous studies have shown that increasing the share of black officers on a police department has
only a very modest impact on the frequency of the use of lethal force by that department and at the
individual level, the research consistently demonstrates that black police officers are no less
likely to use physical force than are white officers and some studies shows they are actually more likely.
And at the recent DOJ study of Philadelphia's police department reveals, black officers were nearly twice
as likely to misread a harmless object and weapon or innocent act as threatening when often called by
police scholars as threat perception failure, than were white officers. In short, while cities with more
minority residences experience a greater rate of police use of deadly force, police departments with a
greater share of minority officers do not experience a significantly lower rate. Of course there are many
arguments for greater diversity in our nation's police
forces, but there is not yet evidence that reducing
police use of lethal force is one of them. Another
frequent proposal of community policing has also not
lived up to its promise for reducing police violence.
In a careful study of sustained excessive force
complaints in 232 cities of more than a hundred
thousand residents, researchers found that the extent
to which individual police department embraced
community policing had no impact on that department's
use of force. And as a recent DOJ report on the San
Diego police department reveals, even that
department's comprehensive and brazen community
policing, sometimes hailed as the best of its kind,
did not inoculate that force against persuasive sexual
abuse of vulnerable citizens by its officers. So what
does work? Four decades of consistently rigorous
studies consistently demonstrate that cops who have
been to college are much less likely to use force and
are more likely to deescalate risky encounters with
citizens. Recent events demonstrate just how important
those findings are. Because the current legal
justification for the use of force is so very broad,
we should aim to reduce not just illegal or
illegitimate police use of force, but also what cops
among themselves call lawful but awful use of force.
And education seems the way to do so.

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As one methodologically study found -- study recently found, even after controlling for a host of demographic and social factors, encounters involving officers with any college education result in significantly less force compared to those with just a high school education. Critically, however, only those encounters involving officers with a four year degree result in significantly less physical force. A two year cop shop apparently doesn't help much. And all of this makes sense in the perspective of organizational behavior. Policing is a notoriously difficult activity to supervise. A cop on the beat is about as free from direct immediate supervision as any employee in America is likely to get and when organizations take steep, challenging managing outputs, they frequently turn to managing inputs, and requiring a four year college education for police officers might bring about the greatest bang for our buck in the often frustrating world of police reform. Of the 18,000 police departments in the United States, only about 50 percent of police officers have any college education at all and only 1 percent of all police officer forces require a four year college degree. So while the best evidence we have contradicts the often simplest media portrayal of the
problem of police brutality, the evidence does point to a rather simple solution, require cops to have a four year college degree.

CHAIRMAN CASTRO: Thank you. Mr. Klinger.

MR. DAVID KLINGER: Thank you for having me here. Real briefly, Mr. Castro mentioned this piece on CNN that just showed up. I just want to let everybody know that I was misquoted in that piece. So when it says in there that Dave Klinger says police officers shoot to kill, I did not say that. Second thing I wanted to say before moving into the bulk of my testimony, the previous panel there was a discussion about attempting to get better data on police use of deadly force and the argument that we need to get information about situations not just where officers killed people, but also situations where they shot people who survived and shootings where no bullets struck, and to make a very long story short without getting into it, but I would entertain any questions you might have, I put in a grant proposal to the National Institute of Justice last week to pilot a study that would look at all police shootings in three major police departments across the country that we then would hope would serve as a platform for this type of effort that you were talking

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about and one of the previous panels was talking
about. What I want to focus on today basically
piggybacks upon what Fritz was talking about in terms
of trying to figure out ways to reduce the use of
deadly force. And the starting point for understanding
deadly force is understanding that law enforcement is
a dangerous business, and every year we have some
dozens of police officers murdered in the United
States, and so we cannot look at the use of deadly
force in a vacuum. We have to understand it as a
response to the danger that police officers face. With
that said, there are ways that we can reduce the use
of deadly force because not every time a police
officer shoots he or she should absolutely have done
so, and I'd like to break up shootings that didn't
need to happen into really three types. The first is
what I call a bad actor, a police officer who is a
bad, evil individual who wanted to kill somebody,
simply a murderer, for lack of a better term. The
second type of situation we have police officers who,
for whatever reason, make poor choices. They misread
the situation. They believe their life is in jeopardy.
They believe that someone is presenting a threat and
they just are simply wrong, not excusable wrong, but
simply wrong; they made a really dumb
choice. And then the third situation, which is what I want to focus on for the rest of my testimony is what police officers and Fritz alluded to is poor tactics. And these are situations where police officers, not because they are making a bad choice in the final frame, but rather the way they set up the encounter, find themselves in a situation where a reasonable officer confronted with a particular situation would reasonably use deadly force. And in my written testimony I talk about the Tamir Rice situation in Cleveland, this tragedy, as an example of that where the driver officer places the patrol vehicle about ten, twelve feet away from an individual who has been reported to have a gun. The passenger officer spots an individual with a gun and he's ten, twelve feet away without any cover and he goes ahead and shoots. The analysis that most people have been taking on that is that the passenger officer made a mistake. He didn't know that the gun that Mr. Rice was carrying wasn't a real gun. Had that been a real gun, we can have two dead police officers. So what I want to do is I want to step back and talk about how it is that when police officers approach situations improperly and place themselves in danger, this can lead to shootings that can otherwise have been prevented. Now
this is not something that is rocket science. This is
not something that Dave Klinger made up on the fly.
This is something I was trained in thirty plus years
ago as a young police officer with the City of Los
Angeles, and something that I was reminded of as a
young police officer in the City of Redmond,
Washington, and this is how police officers structure
things can create situations where shootings might
occur and can preclude situations from evolving to
points where police officers need to use deadly force.
And I wrote a piece about a decade ago for something
called Ideas in American Policing with the Police
Foundation where I talk about police shooting of this
ilk as what Charles Perot calls normal accidents. That
is when things become tightly coupled and when things
become interactively complex, bad things are gonna
happen. And once again, that's in my written testimony
for anybody who cares to look at it. And so if we
think about police work as complexity interactive
social circumstances where one or two or three or five
police officers, one or two or three or five citizens;
some may be suspects, some may even be hostages, some
may be innocent bystanders, whatever the case might
be, we can see that Charles Perot's framework makes
sense that we can have bad things
happening. So what can we do in law enforcement, we can teach officers and remind officers to de-couple, to reduce the interactive complexity. And there's another line of literature from organizational sociology, social psychology called Higher Liability Theory that talks about the way that you can reduce situations where bad things happen is by creating particular types of culture, which is a term that we have heard about a lot today, and they talk about the notion of mindfulness, that when police, excuse me, when members of organizations are mindful, and there's five things that I lay out in my written testimony; preoccupation with failure, refusal to simplify interpretation, sensitivity to operation, commitment to resiliency, and then deference to expertise. When we have organizations that operate this way, we reduce bad outcome, and if police departments can develop this type of mindfulness, my argument goes, they will in fact be able to reduce the number of situations where officers shoot where they didn't need to have to, and I'm gonna take -- I'm gonna challenge Fritz's argument about the need to have college educated police officers. I think that's a good idea for all sorts of reasons, but in terms of the use of deadly force, one of the things that we know is that the most

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dangerous job that any American citizen can have is being on the flight deck of an aircraft carrier. You've got flight operations where people are loading high octane jet fuel. You've got 500 pound bombs. You've got missiles. You've so on and so forth. You've got planes that are taking off. You've got planes that are landing, and you know what, the U.S. Navy has found out ways to not have accidents, and the last time the U.S. Navy had a fatality in terms of a mass conflagration on an aircraft carrier flight deck was literally decades ago. And one of the ways that they've been able to avoid this is through the process of developing mindfulness among everybody who is on that flight deck. The average age of the people that are working on that flight deck 19, 20 years old. So organizationally we can create mechanisms to avoid bad outcomes in situations that are inherently complexity interactive and tightly coupled. Thank you.

CHAIRMAN CASTRO: Thank you. Mr. Shane.

MR. JON SHANE: Commissioner Castro, thank you. I approach the issue from a knowledge perspective, one where the use of force and information become part of an embedded part of management and are routinely used to examine police policies and practices relative to legal principle and
community sentiment as a matter of police performance.

It has been said that measurement is the first step that leads to control and eventually to improvement. If you can't measure something, you can't understand it. If you can't understand it, you cannot control it. If you cannot control it, you cannot improve it. The intent is to control police use of force through training, supervision and policy development, which is likely to produce less incidence as well as prevent organizational accident, related to it by capturing, analyzing and reporting on data to ensure a complete picture emerges about trends and patterns across the nation that can inform local policies and practices. So what is the problem? At present we do not have good national understanding of police use of force because we don't have good data. Most of what is known about police use of force is the result of sporadic and piecemeal research, funded by The National Institute of Justice, the Bureau of Justice Statistics and research agendas of a few scholars involving a few cities or single cities. This lack of data and information has led to a fundamental and public misunderstanding about police use of force which is the final feature of the police role. As a result the emotional arguments filled with red herrings,
ad hominem attacks and non sequiturs replace logic and
reasoning that is grounded in fact. Compounding the
problem is the present use of force data system
compiled by the FBI Uniform Crime Report, Justifiable
Homicide is meager and relies on summary data.
Summary data or aggregate data, as we call it in
social science, is a problem defined as information
loss which occurs in the substitution of aggregate or
macro-level data for individual or micro-level data,
and this limits utility. For example, aggregate data
can summarize average characteristics for a group, but
cannot assume those characteristics apply to every
member of a group. The reverse is also true, which is
reaching a group conclusion such as a national picture
based on exceptional cases which are individual and
local cases. Both of these errors point to traps in
every day reasoning, which leads to stereotyping and
hasty judgements. We need to determine empirically
what individual incidents look like, not just rely on
one group averages, one proposed solution. The United
States law enforcement community needs a more flexible
and in-depth data system, a more comprehensive
incident-based data system that is disaggregated with
micro-level details about the use of force and
available for law enforcement executives, researchers,

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legislators, criminal justice students and the general public. The best analogy I can offer is uniform crime
report versus the National Incident-Based Reporting System, where the UCR is a data summary of crime that
occurs across the United States, and NIBRS presents intimate level information about crime. NIBRS enables
interested parties to examine crime from its lowest level which unmask relationships between victims,
offenders, locations and other incident level details. NIBRS has been superior at inferential purposes and
has been widely used to uncover relationships involving sexual assault of young children,
prostitution of juveniles, predictors of homicide clearance, kidnapping of juveniles, child pornography,
violent crime among the many. A similar system would provide the ability to link and analyze detailed
incident-level information so we can understand and control the sequence of events that lead to police use
of force. That is the who, what, where, when, how and why of use of force transactions. So how would such a
system work? Participation would be mandatory for all U.S. law enforcement agencies at all levels. Full
participation is required for a national outlook. Even large cities, such as New York, Los Angeles, Houston
and Philadelphia will not produce enough data

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in one year to make a statistically reliable comparison to identify trends and patterns because police use of force is a very low frequency event. The data would be entered into a system similar to the National Information Crime Center, which is known as NCIC, through a web-based application housed at and maintained by the FBI. Legacy data could eventually be migrated to the interuniversity consortium for political and social research for archive. Such a data system would be consistent with the national research platform funded by the National Institute of Justice, the National Data Collection Committee of the Division of Policing at the American Society of Criminology, the findings from a joint report issued by the National Sheriff's Association and the Treatment Advocacy Center on justifiable homicide by law enforcement officers involving the mentally ill, the findings from a recent police executive research forum study on being proactive about preventing use of force situations, and the Police Foundation report titled Five Things you Need to Know About Open Data in Policing. So what is the intended outcome? An indispensable tool for managing a police agency is a steady flow of information that indicates performance. Armed with such information, law enforcement
executives can proactively manage community expectations and reactions improve training, supervision, agency policy and make a stronger case to require the resources it needs to be more effective and efficient at delivering police service. Policing community can use the data to confirm or dispel any doubts and answer mutually important policy questions, such as where does the perception of widespread or epidemic of police citizens -- of killing of police citizens originate. Is it the media, community rumor, outright lies? How can we control this perception? What can the police and community members do together to reduce hostility and misunderstandings between the police and the community. What can the police and the community members do together to reduce violent crime and antisocial behavior, which often occasions negative police interactions? What can police and community do to maintain open communication about police use of force, particularly involving officers and citizens of different racial groups or ethnic groups, which is a perennial source of tension. Lastly, unarmed does not necessarily mean not dangerous. So what are the implications for the community when an officer resorts to deadly force after perceiving a dangerous threat from an unarmed
person? What are the implications for the officer as well? An incident-driven use of force reporting system is such a tool because it will produce more detail, accurate and meaningful data than is currently produced by traditional data summary system.

Some final thoughts. The media frequently seizes on isolated use of force episodes which distorts the public’s perception about the justifiability and rate of use of force. Only with sufficient and reliable data can we estimate the incidence of prevalence of use of force, and only after we have a factual understanding of the nature and extent of use of force the term such as crisis, epidemic, widespread, discrimination and disparate treatment be applied in the public discourse. To do so beforehand, as has been done in the recent past, is irrational, irresponsible and counterproductive to promoting desirable police-community relationships. As a nation we are best served by experts who act and opine from the head based on attributes that are directly relevant by those who have devoted themselves to understanding complexity of police work and who can guide rational discussion toward a productive outcome. We are not well served by dilettantes who act and opine from the heart based on attributes that are easy
to evaluate or with incomplete information. Thank you.

CHAIRMAN CASTRO: Mr. Walker.

MR. SAM WALKER: Good afternoon. I want to thank the Commission for this opportunity to speak today on this very important topic. You'll pardon me if I tell you if I've been telling my friends back in Omaha that the Commission has saved the best for last.

I want to begin my -- my testimony by associating my remarks with the testimony of Ellen Scriver in the previous session. She is absolutely right when she says they we are at a pivotal, historic moment in the history of policing in this country. The moment is here. These hearings are extremely important in that regard, and I also want to associate myself with her view that we need to think in terms of systemic police reform, systemic organizational reform. Now I have chosen on this occasion to focus on three specifics, but I believe that they work and are effective only in the context of broader reforms. What I have to offer you today is a three part recommendation. One involves a respectful policing initiative. The second involves deescalation policies for police departments and the third early intervention system. Now respectful policing
initiative, I gave similar testimony to the President's task force in January. What it means, that we have a serious problem in this country of officers using offensive language, including racial and ethnic slurs, common vulgarities and worse. This happens all the time. This is a national problem. This happens day in and day out, and it has several different harms. First of all, it's an injury to the person to whom it is -- it is directed. Second, it harms the community because these events accumulate over time, particularly in African American communities and low income, high crime neighborhoods. Third, many of these incidents escalate up into more serious incidents involving the use of force or even deadly force. Third, when they go unpunished, and that does appear to be the case, it undermines the standards of professionalism within the department. So there are four specific harms. Now how do we achieve this? Well, the President's interim report adopted the recommendation we put a stop to this problem. They did not accept my recommendation that all departments be required to conduct annual in-service training on respectful policing, and that they do that by making federal funds, federal Justice Department funds contingent upon the certification of
that that training program occurs annual in-service training. I didn't think they were gonna accept that part of the proposal, but I thought I'd put it on the table and make them think about it anyway. So I think what it can do, respectful policing, it's not soft policing. It's not being nice. It's being firm. So for example, in a jaywalking incident an officer can say sir, I want to ask you to walk on the sidewalk; you are a danger to yourself and a danger to traffic. I'd like to ask you to move now. That's not disrespectful. It's not offensive. It's firm. It's law enforcement and it's maintaining order. What I believe can happen is that if officers in a department and in communities over time are respectful in that regard and not using the offensive language, you will begin to develop a culture of mutual respect and trust and we will have fewer confrontations between police officers and citizens. We'll have fewer instances of use of force and so on, and that will build legitimacy, trust and legitimacy in the police. The President's task force put huge emphasis on legitimacy because that leads to cooperation by people with the police in terms of reporting crime, reporting neighborhood problems, becoming witnesses in -- in criminal cases. So respectful policing is effective
crime control. It's at the cornerstone of effective
crime control. Now the second part of my
recommendation is deescalation. That is where officers
respond to a perceived, you know, disrespect or
hostility without escalating up. We have a very
unfortunate tradition in policing in this country.
That acquired a label a number of years ago called
contempt of cop, and so police officers sees, you
know, a little disrespect, noncooperation or hostility
and officer says to himself okay, I'll show you who's
in charge here, and the force then escalates. So
deescalation is -- goes hand and hand with respectful
policing, and you'll get all of the same benefits,
especially in terms of crime control and community
trust and legitimacy. The third part of my proposal
calls for early intervention systems. I don't know if
anybody has testified about them so far, but they are
computerized databases of officer performance. There
may be as few as five. There may be as many as twenty-
five performance indicators, uses of force, citizen
complaints, outcomes of the investigation of those.
You can put in arrest. Resisting arrest charges are
always a good indicator, traffic stops and so on, and
then when you run the numbers, it always turns out
that at the far end you have a small group

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of officers with higher problematic incidences, we'll call them, than the average officer, and especially if you do a peer analysis. So, for example, in Omaha those working south Omaha the 4 to midnight shift need to be compared with themselves because those are similar work environments and you can identify them. You can then dig deeper into their records. It turns out for really bad officers, all the other officers in the department know who they are and they don't want to work with them, and you can then tailor an intervention, whether it's counseling or by supervisor. It might be retraining on a particular tactic. It might be professional counseling on substance abuse, on family problems and so on. And then those officers are subject to monitoring, say for maybe six months or a year, and you see if their performance has improved or not improved. So those are three specific proposals, but again, we need to put that -- those in the framework of a comprehensive organizational reform; the key elements of which are policy, training and supervision. So all three of those. I -- I created the acronym PTSP, policy training supervision and review. Departments need to become self-reviewing, self-monitoring to see what they are doing. Thank you.

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CHAIRMAN CASTRO: Thank you, Mr. Walker.

Just folks may have noted, Dr. Goliday from our Office of Civil Rights Evaluation joined us here on the podium. I invited him to participate in this section because it involves researchers of data, and that's his job for us at the Commission. So when I open it up for questions, I want to also give Dr. Goliday that opportunity.

Mr. Shane, I want to make sure I'm understanding what you were testifying. I believe you indicated that, you know, as it relates to solution we really can't opine until we have complete information. Now if we were to follow that line of thinking, there's so many things that I can imagine we would not have addressed. For example, when we had our hearing on sexual assault in the military, there's questions as to whether or not the full universe of violations there are being reported or not to not take any action or come up with solutions in the interim, even though we may not know the full extent of the problem would leave many people still subject to rapes and abuses.

If we looked at educational access, I'm the product of head start and affirmative action, which is based on testing for disparate impact and access to education. Without those programs, which I benefitted from, I
wouldn't be sitting here asking you those questions.

So I think there is an important steps and solutions we can take short of knowing the full gamut of a problem. Wouldn't you agree or am I misunderstanding what you're suggesting?

MR. JON SHANE: Well, slightly. I don't want to give you the impression that we have to have one hundred percent information because that answer never happens. We never have one hundred percent information. There's always a dark figure, something that's not reported, something we don't know about.

What I am suggesting is that without data what happens is the heart fills in the blanks. We fill in things through vicarious experiences. We look for variables and attributes that would be easy to fill in that are known to us, such as age, sex --

CHAIRMAN CASTRO: But we do have data.

We just maybe not have all the data.

MR. JON SHANE: We don't have very good data because it's at the aggregate level. It's not at the fine intimate level where we're able to measure interactions between the officer, the offender, the location and all the other situational aspects that go into use of force. It's not enough to say we have a hundred fifty police officers killed every year and we
know nothing about the various incidents that take place or the offenders that do these things or the environment under which these occur.

CHAIRMAN CASTRO: So in the Jim Crow South, if we were to go back in time and this Commission was down there at the time and say well, we may not know all the reasons that a particular local jurisdiction is denying those black voters the right to vote, we do know that there does seem to be some disparate impact, but we don't know what the registrar is saying, what's happening when that person comes to register, what all these additional details are. I would not take action under your description.

MR. JON SHANE: No, I'm not suggesting that you don't take action. What I'm suggesting is that the action be predicated on the best data that you have. And we know we can get better data. We don't have it, and what happens is when we don't have it people fill in those attributes with things that are completely inaccurate, and we're seeing a lot of that in policing today. A lot of people have a fundamental misunderstanding of how policing works, the interactions that take place, all on the contextual variables. We jump to conclusions about the fact that someone is unarmed, that suddenly means they are not
versus Garner incident today, some of which has been flawed. Those people don't know what they're referring to. They don't understand the facts and when we have facts, we makes better decisions than we do when we rely on emotion.

CHAIRMAN CASTRO: I'm sure some of my colleagues will follow up. I'm going to move on to Mr. Umbach. Interesting proposal you have about college education. Were you table to look at in this study, I think you also mentioned a little bit about not having all the data, not coming up with solutions, but you come up with a solution saying hey, let's have all cops have a four year degree. Do you look at where those police officers are deployed? Because you indicate they, therefore, have less likelihood of being involved in lethal interactions with the public. Does it mean that maybe they're being deployed because they have a college education to more affluent communities or perhaps they're not no longer beat cops; maybe they're a desk sergeant or they're a captain or something else. Do you account for that in your study or your proposal?

MR. FRITZ UMBACH: All good questions. First of all, I want to make clear that this is not my
the past fifteen years on this. And yes, they are controlling for deployment practices, experience. Obviously, a officer with a college degree is likely to be older than an officer without a college degree. If you have to compare apples to apples with officers of the same age, the same length of experience, and the same deployment practices and the most methodologically sophisticated studies do all of the things that you suggest, and the finding holds true throughout. In addition to the reduced use of force, to piggyback on Ms. Scrivner's comments, if we want systemic cultural change, what we know is that cops who have been to college are more amenable to change. They take direction better. They understand institutional goals better and they're willing to change. We often talk about changing police culture as bending granite. Well, it turns out that cops who have been in college are a little softer. They are willing to change. And so it's not just reducing use of lethal force or deescalation, all which the evidence makes clear, but it's the systemic culture change that we're all after that's going to be easier with a police force that's more educated.

CHAIRMAN CASTRO: Commissioner Kladney.

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COMMISSIONER KLANDNE: Thank you, Mr. Chairman. Mr. Klinger.

MR. DAVID KLINGER: Yes, sir.

COMMISSIONER KLANDNE: I read with great enjoyment your paper.

MR. DAVID KLINGER: Thank you.

COMMISSIONER KLANDNE: These highly reliable organizations, I mean I got like a whole thing I can talk about before I ask you the question, but the question basically is you want to change the entire culture of the police department.

MR. DAVID KLINGER: Yup.

3 COMMISSIONER KLANDNE: The way they look, the way they operate and all that, and just like Professor Umbach wants all these policemen to have a college education. Well, that's not gonna happen 'cause it's too expensive. You got to pay them more money. You got to educate them. I mean if that's what you want, that's what it is, and I'm just talking off the top of my head, of course, but with you it's changing the entire culture. It's changing a culture that has been, like you said, bending granite; it hasn't changed a lot in many, many decades and even Mr. Walker, Professor Walker, he was quoted yesterday in the paper talking about police unions having to
change. He says it's important for unions to become honestly self-critical about police conduct and not blindly defend each and every egregious incident by officers. And officers defend each and every -- I mean I forget who just said this, but officers on the police department know who the bad officers are, and so my question is how do you propose to go into the depth of detail and change that you have put forth in your paper?

MR. DAVID KLINGER: Basically what I would argue is that the fundamental and tactical training is something that every officer in the United States gets to some degree or another, and so the first step is to make sure that every officer who goes through a basic police academy gets the appropriate tactical training about creating distance, time and space, how to interact with people. This includes some of what Sam was talking about in terms of deescalation because when you think about it when there's a distance between you and an adversary, then there's going to be less of that personal involvement, but at any rate, get everybody trained up. One of the things that we know is that some states around the country do not require satisfactory number of hours in fundamental tactical training. They might get a little bit of it
in the academy, but no force-on-force training, not appropriate scenario-based training, and then what you start to do in terms of building up the organizational culture aspect of it, is you have to make sure, one of the things I talked about was up and down the entire chain of command. The chief needs to understand this. His or her underlings need to understand it. The patrol supervisor needs to understand it, the watch commander lieutenant and the line supervisors need to understand it, and then what you do is you start to create an environment where if Klinger and Shane are on patrol and Walker is our sergeant, he rolls up as we are just done with a situation where there's a call with a man with a gun or something, he debriefs us. He makes sure that we did the appropriate stuff. If we didn't do the appropriate stuff, he goes hey guys, remember, you pulled up a little bit too close. You engaged this individual too quickly, whatever the case might be, and once you start getting that ingrained in the culture, you know, talking about bending granite, if you engrain that, that becomes the granite, high expectation of appropriate tactical performance, and we're not going to put up with inappropriate tactical performance. What we're going to do is we're gonna teach you how to do it right and we're gonna hold you
accountable, once again up and down the chain.

Oftentimes what happens is the chief says I wash my hands of this. My guys should know better. Well, sometimes the chief doesn't know what he or she is talking about, and so what we need to do in my opinion, national academy. We need to talk about this at the FBI. We need to start promoting people based on their capital acclimate instead of their ability to know the manual, so on and so forth.

COMMISSIONER KLANDNEY: Well, I understand that, but is that, debriefs and people doing stuff wrong, is that done, when you talk about accountability, is that done in an environment where the police officers are able to be open without disciplinary problem unless, of course, it happens over and over again where Professor Walker talks about the early warning -- the early intervention system or I mean because that's what police officers are going to be concerned about when they have to -- they want to back up their mates? They want to make sure nobody gets in a jam, at least even in the Navy.

MR. DAVID KLINGER: You're absolutely right, and that's one of the things that James Reason wrote about that I mentioned at the back half of my written testimony about creating a just culture, and a

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just culture is one where the basic assumption is that
the officer is trying to do his or her job correctly
and so when there's a tactical miscue, we correct the
tactical miscue. Only when someone is acting in bad
faith do we then move towards discipline, and without
getting into the weeds too much, James Reason talks
about this in his book. It's cited in there. I'd love
to talk to people ad infinitum.

One last thing, sir, I've taught this
normal accident theory and this higher liability
organization to cops in Texas. The light bulb goes
on. They get it.

COMMISSIONER Kladney: Professor Shane.

MR. Jon Shane: Yes.

COMMISSIONER Kladney: Do you agree with
that approach or an approach like that? Do you think
that officers can honestly approach issues of tactical
or strategic problems?

MR. Jon Shane: Yeah, I do; a couple of
reasons why. First let me add just a little bit to
what you were talking about in this non-blaming
culture. I'm involved in a project right now with the
Police Foundation who is looking at organizational
accidents and we are piloting a system that allows
police officers around the country to anonymously

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report near-miss accidents, borrowing from the aviation industry, the oil and petroleum industry, medicine and all these other areas that have had near-miss accidents so we can get a better handle on the finite details of how these accidents actually evolve and play themselves out. That's number one. Number two, I wrote a piece recently, a monograph that was published about organizational accidents, and I borrowed from Reason's theory and I applied it to a case where someone was mistakenly arrested, held for prosecution, ultimately released before the prosecution took place, and when we apply Reason's framework, we find out that there were about forty-five different pieces or errors of information took place and more errors of omission were prevalent than were acts.

COMMISSIONER KLADNEY: So it would be fair to say that even though we don't have enough data, you believe there should be some change in the culture?

MR. JON SHANE: I believe that there should always be the continuation to search for better data and to bring things down to its lowest level, not stay at a high aggregate level, and I do agree that there should be things that you approach and make change on.

COMMISSIONER KLADNEY: Thank you.

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MR. SAM WALKER: I want to comment on that. I'm a little dubious about the reporting anonymously. I think police officers with awesome powers, law enforcement officer with the power to take human life, they need to answer honestly to supervisory for their action. Now, There's a different way of getting at that. Because I mentioned this PTSR, you know, framework review means department on a regular basis annually, do a review of incidents that have occurred. Maybe there are a few high speed pursuits and accidents and so on and/or shooting incidents and you go back and reconstruct, this is internally; this is not just department, this is internally and you're looking at is officers do things, make decisions that could have been different that would have had a different outcome of that incident that might have, you know, avoided the tragedy that occurred. So I think that's the way you get at the kind of information that -- that you're talking about there. Three's different paths to the changing the culture of a department.

COMMISSIONER KLADNEY: I think that people should stand up and say what they believe, but I think police officers and that department kind of mentality
is very difficult to change. I think -- I actually
represented a police department at one point, and boy,
to discipline an officer, you got to have him in a
corner for other people to come on board.

MR. SAM WALKER: Can I comment on that?
COMMISSIONER KLADNEY: Sure.

MR. SAM WALKER: Police departments are not
granite. They're organizations. They're organizations
of people, and are very complex. They're far more
complex than granite. Granite is a rock, and just I
began my -- my career in 1974, teaching, and in 1974
the -- the -- the -- the current deadly force policy
was just beginning. It actually originated with the
New York City Police Department. That's common. That
changed. That changed a lot of behavior. I do believe
that actually we got rid of a lot of bad shootings,
some other things that happened along the way, but in
1974 the term domestic violence was only just
beginning to appear in the field of criminal justice.
Well, today probably every police department has, you
know, some domestic violence policy, guiding officers
on how they should handle those kind of incidents,
major change. In 1974 few departments had really
restricted policies on high speed pursuits, very
dangerous, and we brought those under control in
many ways. In short, police departments are not
granite. They change. They have changed, and all of
the three that I mentioned have changed the culture of
departments in the sense of what officers know what
they can get away with and what they can't get away
with. So I am guardedly optimistic about the future
because departments ain't granite and the
possibilities of change are very real. We just have to
take advantage of this opportunity to continue the
reforms that we have made.

CHAIRMAN CASTRO: One more -- well, I want
to move on. We'll come back. I think we'll have some
time.

Commissioner Timmons-Goodson will be
followed by Commissioner Yaki, Dr. Goliday, and
Commissioner Achtenberg.

VICE CHAIRMAN TIMMONS-GOODSON: Thank you
very much, Mr. Chair, and thank you to our panelists.
We all recognize that there's someplace else that you
could have been rather than being with us, but you
chose to be with us, and we are in your debt for that.

My question is for Ms. MacDonald. I
listened to your oral testimony and I read your
written testimony, and is it your position that the
Commission should not be spending our time on this

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issue of policing and excessive use of force?

MS. HEATHER MACDONALD: I think it's a worthy topic to look at. Every police shooting that is unjustified of an innocent person, as I say, is an absolute tragedy.

VICE CHAIRMAN TIMMONS-GOODSON: Now a part of your testimony seems -- not seems to say, it actually says that two parent households or the lack of them in black communities is the reason or the major cause for the problems that you see in the black community. I was wondering in many of the recent cases involving excessive use of force by law enforcement against black males, I'm going to presume that, unless you tell me otherwise, I'm going to presume that the police officers didn't know whether the black males came from a two parent versus a one parent household, and so how is coming from a two parent household going to prevent a police officer from using force or excessive force on an unarmed black male walking or riding in the neighborhood?

MS. HEATHER MACDONALD: Well, my point was that the black crime rate, which is very, very elevated, compared to the national average needs an explanation. There are young black men who are being killed at ten times the rate of white and Hispanic
young black men combined. I think that is an equal problem, at the very least, to unjustified police shootings. There are many, many more thousands of black men who are gunned down by other blacks than by the police, and again, every time a representative of the law uses force without justification, that is a horrific abuse of power, but if you want to bring down the black crime rate, which I think is the reason — it's not I think, it is the reason why police are overwhelmingly more disproportionately represented in black communities, you're going to have to ultimately, I think, make sure that more young black men are being raised by their fathers. So that's not -- your question is bringing together two different phenomenon. I'm not saying that any police officer is engaged in a use of force justified or unjustified based on whether the target comes from a fatherless home, but I am saying that ultimately I think any discussion of policing crime and race cannot ignore the black crime rate, and if you want to look at causes, I think family breakdown is for me the most salient.

VICE CHAIRMAN TIMMONS-GOODSON: For you, okay. Correct me if I'm wrong, but I believe that the statistics show that folks are more likely to be

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victimized by individuals that they -- they know, that
they're familiar with. So that's in the white
community as well. Is not -- isn't that the case?

MS. HEATHER MACDONALD: That's certainly
true in gang shootings, it may be the case. I --

VICE CHAIRMAN TIMMONS-GOODSON: So it is
not your understanding that individuals tend to be
victimized by individuals that they're familiar with,
that they know?

MS. HEATHER MACDONALD: That's true, but
the rate of victimization by people that you're
familiar with is when you take all ages combined when
it comes to homicide, it's seven times higher for
black males than for whites and Asians and Hispanics
combined. I would say that is also a problem worthy
of national attention. By all means, let's do
everything we can to bring police use of force down.
I would disagree with the sense of the panel, as I
understand it, except for the last observations by
Professor Walker that police culture has not changed.
I think it has changed enormously for the better over
the last couple of decades. Policing is far more
professional than it ever was. Police corruption is
down. Police use of force is way down. I totally
agree with Professor Walker that police courtesy is a
constant deficit that departments have to work at, but
my -- my point is is that there is a tsunami of
violence in the black communities, and that's why
police are there disproportionately and you are not
going to bring the police use of force to equal levels
as it is against whites and Asians until you bring
down the black crime rate because as justice
department studies have shown again and again, the
most important predictor of police behavior is
civilian behavior.

VICE CHAIRMAN TIMMONS-GOODSON: Do you
believe that if law enforcement were targeted or used
in the white areas more frequently, that there would
be greater incidence uncovered or discovered of crime?

MS. HEATHER MACDONALD: The reports, the
data on crime, at least in New York City, comes
exclusively from the victims of and witnesses to those
crimes.

VICE CHAIRMAN TIMMONS-GOODSON: Thank you.

CHAIRMAN CASTRO: Commissioner Yaki.

COMMISSIONER YAKI: Yeah, I'm not quite
sure how to follow that. You know, one of the reasons
-- the reason why we are here as a Commission, I
believe, and one of the reasons why there's been such
anger in communities like Ferguson and North

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Charleston, Staten Island is because promises made nearly a half century ago with passage of the Civil Rights Act and the Voting Rights Act haven't happened and the anger in the community that was supposed to benefit the most from these programs, the African American community rises from those promises that have been unfulfilled, and that is in part why we are here today because were we to have a different society, we can talk about this in a much different place or maybe not even at all. But here we are in a situation where we have something that comes up time and time again, the issue of, the issue of police misconduct, the issue of whether there's accurate data, the issue of what is it that we're going to be doing about it, and I just wonder at what point are we ever going to get this thing right, and what is it that we have tried in the past twenty or thirty years that has -- that hasn't -- that hasn't worked as well as it should.

By the way, Mr. Klinger, I read your words on CNN. I just want to say I don't see anything really wrong. You may not think they quoted you accurately, and I understand that, believe me, as someone who has been in politics as long a I have, I'm very sensitive to that, but from the testimony given

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earlier today by others in law enforcement, what have
you, I don't think that what you said is too far off.

MR. DAVID KLINGER: I just didn't want
anyone to think that I said the purpose of police
officers putting bullets down range is to kill
someone. That was the only issue.

COMMISSIONER YAKI: No, yeah, I know. I
understand. But when I read what you had to say, and I
-- and I understand it completely, the idea that you
call it the normal accident, I looked at it as the
accident waiting to happen when you -- when
circumstances -- when you create the circumstances
that cause the eventual outcome, whether you call it
the accident waiting to happen, you call it the normal
accident or I call it you sit there and you put
gasoline on the fire when you drive up within three
yards of a 12-year-old holding a mock rifle and you
have no ability to make determination, in the two
seconds it's gonna take that person to turn around or
not and have relatively much higher aim than if you
were twenty-five away, you're putting gasoline on the
fire. Mr. Walker, I've been, even as elected official
sometimes policemen don't recognize you sometimes and
they call you names when they tell you to get out of
your car or what have you, and I understand how that
goes from a personal point of view. From an entire
body of people's point of view I can understand how
that rage would just simmer beyond, but the question
I really want to ask is is this -- is this an issue
of resources because having gone through this in San
Francisco and other -- and in other areas, you always
hear people say well, we could do it but for money or
training, but for we need the 5,000,000 dollar
training simulation center, but for all these things
we could do all these things, but is it -- is it
really possible or is part of the -- part of the
inherent problem the blue wall that will always
continue to be there? Do we need more of what
Mr. Walker calls early intervention, other people call
it early warning. I call it find some way to get
leverage, get some of these bad cops out sooner. How -
- how do you do that? It just -- we seem to be
repeating ourselves on this issue time and again and
it's getting worse and if you measure the sentiment in
the African American community, it's getting worse, so
instead of just talking about data and talking about
training, what is it that we can really do, real
world, realistically? Is it about money? Is it about
leverage, using money on police departments? Is it
about -- is it -- I mean what is it, I guess, because

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I'm grasping for it myself?

MR. SAM WALKER: Well, at the basic level it has nothing to do with resources. It's basic supervision. We have standards of performance involving how to make arrests, how to do search, use of force, deadly force, everything. I'm saying we need to emphasize language, offensive language as something that's unacceptable. You wouldn't accept teachers calling students names in a classroom and so at one level, no, it's not a resource problem; it's a commitment level. It's a commitment problem.

COMMISSIONER YAKI: Mr. Klinger.

MR. DAVID KLINGER: I would say that I agree with Sam in terms of it's a commitment issue largely, but there is -- there will need to be some training done for the tactical part that I'm talking about. Sam's absolutely right. You just tell people don't talk this way. It's not difficult. You just say that in rollcall, don't say these words. If you do, we're gonna get you, right, Sam?

MR. SAM WALKER: Yeah.

MR. DAVID KLINGER: But what I'm talking about is going to take a little bit of time in terms of training. So over the next few years perhaps, curriculum is written in every state, here's what
you're gonna do. As a supervisor you're gonna talk to your troops, don't use this language, and you're also gonna learn how to be tactically proficient yourself so that you know what you are supposed to be doing. And like I said, go back to the FBI national academy. If you want to promote in a major metropolitan police department, you better know about command and control. You better know about what appropriate tactics are, why you don't rush into a house, why you stay outside unless there is a crisis ongoing in the house, so on and so forth. So it will take a little bit, but not a lot.

COMMISSIONER YAKI: I have to disagree.

MR. DAVID KIADNEY: Okay.

COMMISSIONER YAKI: You're talking about individuals who are in -- who are at their most basic in a fighter flight mode in terms of making decisions, just like that when they -- when they encounter a situation. When you look at like an airline pilot who needs 10,000 hours of training in order to react to what happens when something goes wrong, and it's about repetition, repetition. That to me is more than just telling someone how to do it. It's more than just five hours or ten hours of training. It's probably hundreds of hours of training time and again to make
sure these -- these individuals don't react the way we
don't want them to in the situations that you're
talking about.

    MR. DAVID KLINGER: That's a component of
it, but let's think about something as simple as the
South Carolina tragedy where we have what appears to
be a criminal act. Why is that officer by himself
tying up with an individual when he is in foot
pursuit. Why not wait for two or three other officers
to get there. The guy is gonna get tired eventually,
and when he's tired he's not gonna be much good at
fighting, and you take him into custody then. It's
that simple. Those are the types of principals that
you can teach officers. Don't close that gap unless
you have sufficient backup. Very simple. It really
isn't that difficult.

    COMMISSIONER YAKI: I just disagree. I just
don't think that someone in that decision always
makes the smart idea unless they've had it drilled
into them until the point where it's automatic.

    MR. DAVID KLINGER: I don't disagree, but
it is drilled in from day one in the academy while
you're in service and up and down the chain of
command.

    CHAIRMAN YAKI: Okay.

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CHAIRMAN CASTRO: Dr. Goliday, and
Commissioner Achtenberg, Commissioner Heriot, myself
and Commissioner Narasaki.

DR. SEAN GOLIDAY: Thank you. I just have
three questions, one for Mr. Klinger, one for Mr.
Umbach and one for Mr. Walker. I'll begin with Mr.
Klinger. Jon Shane, I'm sorry, Mr. Shane seems to
suggest that we know little about the interactions
between police shootings and the community, mostly the
urban intercity communities. Mr. Shane's comments
seems to suggest that we know little about the
interactions on the microdynamics of police shootings,
which I reviewed your work for St. Louis Police
Department. Can you talk a little bit more about that
in terms of the methodology you used and what we
learned from those police shootings that you studied,
that data you studied in St. Louis?

MR. DAVID KLINGER: Sure, and this is part
of the -- the basic work that launched this research
proposal that I put in last week, and what we did is
we drilled down into the investigative case files for
St. Louis City Police Department, and what we did we
were able to extract all sort of information; time of
day that the situation occurred, how many officers
were on scene, how many suspects were on scene, the

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characteristics of the suspects, the characteristics
of the officers, the weapons involved on both sides,
whether shots were fired by a suspect, how many rounds
police officers discharged, presence of bystanders,
the geographic location, and so what we were able to
do is we were able to then map where in St. Louis the
shootings occurred, and that was the basis for the -
for the report that you looked at and one of the
things that we found was that once you control for
levels of violence across St. Louis neighborhoods,
race washes out, socioeconomic status washes out and
what's really driving the use of deadly force in St.
Louis at least is the level of violence in the
community, and one of the things that we say it was a paper that I did with Rick Rosenfeld, Dan Isom used to be the chief in St. Louis and a graduate student by the name of Scott Decker -- excuse me, Mike Decker, anyway what we were able to demonstrate was that this is what's going on in St. Louis, and then at the end we said we have no idea if this is what's going on in Chicago, Los Angeles, New York, Baltimore, and that's why we're calling for a national database, and we look at not just those shootings that resulted in fatalities, but woundings and off-target shots. So what we're looking at is deadly force, and this is not
something that I invented. This is something Jim Fyfe did with The City of New York literally forty years ago using data from the early 1970s, and Jim called for the national database. Others have called for the national database over the years, and so when you have this fine grained information that Jon is talking about, we're then able to really look carefully at what is going on in the microdynamics of shootings as well as plotting across space and time.

DR. SEAN GOLIDAY: What's the effort to bring such that type of effort to scale, so if you wanted to duplicate that into other areas, what's the needed resources?

MR. DAVID KLINGER: What we would need is we would need literally millions of dollars to get the data collection system up and running, piloted, squared away and then have a computer interface, similar to what Jon was talking about in terms of the Police Foundation process for reporting the near misses, but what I envision is at the end of the month or end of the year, what happens is someone from the crime analysis section of every police department across the country, they go to the computer and it says what day did this happen; you type that in and then you go to the next screen, the next screen, the

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next screen and then it goes to the FBI, the Bureau of
Justice Statistics, eventually going to be archived at
IPCSR, and that's gonna take to some money, and I
think that working with BJS, FBI, whoever, there are
people out there that know how to do this; myself
including at the lower rung, but there are people that
really have a lot of experience with this, but it's
gonna take a few million bucks and a few years to get
it up and running because we want to get all the bugs
worked out and we want to get it so that we know that
once the whole national database system is spooled up,
we've got all the bugs out so that we're not finding
problems with it, and so we have to pilot it and we
have to pilot it appropriately.

DR. SEAN GOLIDAY: I believe you had five
levels or five tiers of neighborhoods that you looked
at in that particular study.

MR. DAVID KLINGER: Right.

DR. SEAN GOLIDAY: My question to you
is was poverty an important predictor?

MR. DAVID KLINGER: No, it washed out. And
one last thing and I think it's interesting is we had
a curve in the relationship. I don't know if you
remember that, but in the highest violence
communities, at least in St. Louis, fewer shootings

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than in the midlevel violence communities. It's an interesting finding.

DR. SEAN GOLIDAY: Mr. Umbach, my question for you, I know that your testimony today focused more so on educational attainment as a way for policy addressing police shootings. So I looked at your published work and it focused more so, I think I looked at, if my memory serves me correctly, that centralization of the NYPD where first you had the Housing Department police and then you had the court police became centralized and somehow that was a factor contributing to the tension between certain communities here in New York, and I just wanted to ask you to talk a little bit more about that and how that can help inform strategies to get us beyond the issue of police shootings?

MR. FRITZ UMBACH: One of the astounding things about the history of police brutality in New York City is the shocking difference between the level of civilian complaints against what was known as big blue, NYPD, and the Housing police. By 1980 about one in three officers in the NYPD had a civilian complaint. For the Housing police it was less than 1 percent, an astounding difference. For criminologists who are used to dealing with disparate rates, that was
astounding. One of the important factors was the fact
that the Housing police had a micro precinct system.
There were reporting rooms that the police turned out
from that were in every Housing development, and as
opposed to a large geographical unit where the cops
were remote, in fact the precinct's local; they can
talk to the cops every day, and this allowed a certain
amount of community leverage and input in the nature
of policing in public housing for many years in New
York City, and until about 1985 public housing was
safer in New York City than the surrounding community.

DR. SEAN GOLIDAY: So the question I ask to
you, I have as a follow-up question, you look at your
concept of, I guess, educational attainment, and what
seems to be suggested in your written work is
community policing. Which one of those would you say
would be important in terms of helping us get beyond
the problems of the, you know, police community
tensions and police shootings?

MR. FRITZ UMBACH: There's any number of
reason why I think educational attainment is
important, but it's because it's so very difficult to
manage output in policing, and I absolutely agree with
Professor Walker that NYPD brought down shootings
dramatically in the '70s as a consequence of Fyfe's

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work, and that police departments do change. But if
we can change the input, we automatically change the
output, and there are times when it's hard to get
college graduates to go into policing, but at levels
of high unemployment among college graduates, now is
an ideal time to require that cops have college
degrees. It makes a big difference. It is, along with
civilian behavior, the next best predictor of whether
or not an encounter is going to end up violent
between civilian and police.

CHAIRMAN CASTRO: Dr. Goliday, I am going
to move on to some commissioners and if we have time,
we'll come back if you have any extra questions.
Commissioner Achtenberg.

COMMISSIONER ACHTENBERG: I just have
two small questions. No, seriously.

So this mandatory nationwide system
database, this aggregated data collection, Mr. Shane,
Professor Shane, we heard from Mr. Sabol from the
Bureau of Justice Statistics, I believe that's where
he's from, that he thought -- I guess it wasn't -- he
thought mandatory might not be a very good idea. I'm
more of the command and control school, even though I
understand that it's not always appropriate. I'm
wondering why you say mandatory nationwide, and what
other attributes of the system does there need to be
in order to get us once and for all a set of data that
we need to have some meaningful analytics when it
comes to addressing this problem?

MR. JON SHANE: Well, in terms of mandatory,
we're not going to reach full compliance, I think,
unless we -- we mandate it. We have relatively good
voluntary compliance with the Uniform Crime Report,
and we know that there are issues with that. I think
if you mandate it and it becomes a routine part of
organizational culture and organizational performance,
you're more likely to go back to the system to pull
data out of it to self-reflect, to look at what
neighboring communities are doing, not necessarily
because it is voluntary. As far as the attributes are
concerned, I think what Professor Klinger said is
correct, you have to get down to the lowest level, and
we're doing that in piecemeal part right now with --
for his research, for example, but we're not doing it
throughout the United States, and that's what's really
important. Most police departments today, as we sit
here, have access to the National Crime Information
Center, which is called NCIC. In that framework
somewhere we can also replicate a system that we are
talking about that
would capture some of the data he's discussed and that I've discussed, and make it available right there on the terminals that they have now, using that current structure.

COMMISSIONER ACHTENBERG: Do you all concur that if that were to be a tool at our disposal, we would be better off as a result with regard to this particular issue? Is that a point of agreement?

MR. JON SHANE: Absolutely.

MR. DAVID KLINGER: Yes, and one point just to piggyback on a point Jon said that he implied is police agencies and police trainers can look at the data, and that will assist police officers doing a better job and make policing safer.

COMMISSIONER NARASAKI: I just wanted to clarify a question, that I had always assumed that the reason we weren't mandating it already was that the Feds -- we couldn't actually constitutionally do that unless we tied it to a Federal program.

MR. JON SHANE: That's probably correct. I think there's federalism issues and federal --

COMMISSIONER NARASAKI: Okay. I just wanted to be clear that it wasn't so easy to say no, let's just mandate them.

MR. JON SHANE: Well, no, I mean --

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COMMISSIONER ACHTENBERG: They all receive federal. If they want to get tanks and bazookas, mandatory report it.

COMMISSIONER NARASAKI: No, I just wanted to be clear that there's --

COMMISSIONER ACHTENBERG: Sure, no, no, absolutely.

MR. JON SHANE: I think that's how we did it with DWY, by the way, we tied it to highway funding. It's easily done in that regard.

COMMISSIONER ACHTENBERG: Exactly. You make a good point. I understand. You had something you wanted to add? My second question.

CHAIRMAN CASTRO: Yup.

COMMISSIONER ACHTENBERG: Jim Chanin, who has done such incredible work in terms of putting the Oakland Police Department in receivership and ten years later actually helping them make enormous improvements in the way they perform, he observed that this supervisory accountability he thought had been a really key element of what had changed, not the only one, but one of the ones. Supervisory accountability is what he identified it as, where the direct supervisors are held responsible for the conduct of their troops, and therefore, you know, every day
they're in there getting reports back and forth, making -- taking small corrective action to make sure that the guys and gals on the ground are doing it according to Hoya (ph), was my understanding of what that meant. I'm wondering, Professor Walker, and the others of you that are familiar with that concept, is -- is that part of what you're talking about when you're talking about responsive -- responsive policing or however you referred to it?

MR. SAM WALKER: Yes, absolutely. You know, really the -- the sergeant with eight, ten, however many officers under his or her command, that's the heart and sole of policing. That's where the action is and that's where we need to focus, so it's what those sergeants do and so whatever happened in Oakland to enhance that is absolutely important and if not essential.

COMMISSIONER ACHTENBERG: Please.

MR. FRITZ UMBACH: But supervisors only became interested in changing policies around police use of lethal force under the threat of legal action and the cost.

COMMISSIONER ACHTENBERG: Sure.

MR. FRITZ UMBACH: And it has to be a good cop/bad cop system with the cops. Legalized
accountability plus supervision is what changed things around in policing with lethal force in the '70s and '80s. No one was listening to Fyfe and the NYPD until Monell claims start to happening and them facing the threat of a Monell claim, police departments changed.

COMMISSIONER ACHTENBERG: Well, what could substitute this, what could substitute you're not gonna be able to put every bad police department, I'm assuming not all police departments are bad, but the bad ones, you're not going to be able to put all of them into receivership the way they -- and certainly it is an expensive and long-lived undertaking. What could substitute for that leverage, that force that they were able to bring to bear through the court order of the judge? I mean what are the other levers that could make that possible?

MR. SAM WALKER: In the end police departments -- the community got the police departments they deserve, and when you find bad police departments it's because not just the elected officials, but the civic leaders, people who have influence over the community take the position and say we don't want this bad policing to continue. We want something different, and once you set on that road, you have no trouble finding some people who will be

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good police chiefs. There are -- there's no shortage of experts who can help a department. You can -- a community can raise private monies from private foundations to support that effort. You've heard from most of the experts, a lot of the experts on today's hearing, so in the end it really comes down to the people in the community because even if you get a consent decree, you know, after five years or however many years, that goes away. The federal judge goes away. The monitor goes away. They're on their own, and it's what people in that community want.

CHAIRMAN CASTRO: Commissioner Heriot.

COMMISSIONER HERIOT: Thank you, Mr. Chairman. I just got a couple little questions, mostly for Dr. Umbach. I know you're getting a lot of this today, but it just happens that way.

First one on the college education point, does it break down by major in any way? Because what I'm concerned about is are we talking about people who are learning something specifically that's helping them become a police officer or are we just talking about a population of people who have managed to get up and get to their 9 o'clock class, you know, had enough sense of responsibility that they --

MR. FRITZ UMBACH: Doesn't matter what you
major in. It has absolutely no impact.

COMMISSIONER HERIOT: Do you think that's then my theory that maybe it's just simply people to get a college education?

MR. FRITZ UMBACH: It's a mystery ultimately what happens with students in college, but it makes a difference.

COMMISSIONER HERIOT: Okay. Okay. You mentioned that increasing the number of African American officers doesn't seem to reduce or doesn't reduce by very much the use of force. Is there any data on Asian officers, on Hispanic officers?

MR. FRITZ UMBACH: So in the southwest increasing the number of Latino officers actually increases the use of lethal force because there's tensions between recently arrived migrants and native born or longstanding Latino communities. We talk about that as a southwest exception. I know of no research about Asians. It might be out there. I don't -- I don't know it, so yes, is the answer to that question.

COMMISSIONER HERIOT: Is there non-southwest evidence on Hispanic?

MR. FRITZ UMBACH: So outside of the
southwest the experiences with Latinos is the same as with the African Americans. Increasing Latino share of the police department makes either no or very little impact on the police use of lethal force or excessive force.

COMMISSIONER HERIOT: What about empirical evidence on training, particular kinds of training, is there empirical evidence that suggests that certain training does work, certain doesn't work? What do we got there?

MR. FRITZ UMBACH: I'll defer to my colleagues on the panel who seem to have more experience with police training than I do.

COMMISSIONER HERIOT: Okay. Anybody want to comment?

MR. DAVID KLINGER: There isn't a whole lot, but what I will say is Jim Fyfe, whose name been brought up a few times, he ran a study back in Dayton County, Florida back in the mid 1980s. To make a long story short, it's the one controlled experiment I'm aware of we're able to demonstrate that officers who went through the training program used less force than the officers who didn't.

COMMISSIONER HERIOT: Okay.

CHAIRMAN CASTRO: Okay. Commissioner
COMMISSIONER NARASAKI: Thank you. I have one theory that maybe because people in college learn to deal with a much broader, diverse set of other students than maybe where they come from that that might help them have actually better skills, but I'm just making that up. So I just have a few things. One is for Ms. MacDonald. I have to say that, you know, I agree with your point that we should really care what's happening with African Americans and, you know, I was pleased to see the administration really lead on a new initiative focused on black men and boys and get both corporations and the philanthropic community more involved in trying to figure out how can we support to make sure they succeed. I think where I part company with you is the notion that somehow it's just about families and a lack of men because as we know we have a growing lack -- we have a growing number of divorced families in all communities, and I hate to think that that's gonna mean that we just are facing a slew of problems. I would invite you to consider that part of it is perhaps the persistence of poverty, the growing resegregation of schools, the kinds of schools that minorities are ending up in. In Philadelphia they've
closed so many high schools that now there aren't even
eight desks for the students going to those schools.
So I think there are a lot more issues than family
structure. I think there's some public policy issues
that have not helped along the way, and I do think
that this focus on policing and the relationship of
police to minority community is actually related to -
is actually not unrelated to the issue, and that is
this, is that to the extent that we don't address the
problem of relationships with minority community and
police, the minority community that you -- that we
agree require and deserve enforcement by law
enforcement to help protect these families, what we
see is a growing disengagement from the communities
themselves and being able to be effective partners
with police. If they don't trust police, they're not
gonna report. They're not gonna be witnesses. There
are a lot of things that are gonna break down in what
happens in the ability of law enforcement to do it's
job. So I don't see it has totally an either/or
proposition, as I am concerned that you may see it as.
We had a lot of testimony today that in fact part of
the challenge is the discriminatory enforcement on the
war of drugs, right. Many former policemen testified
that even though there are high prevalence of drugs in

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more prosperous white communities, that's not where
the police were going, right, because police didn't
want to tangle with families who could defend
themselves and make their life a challenge if they
actually went after their kids, so then they targeted
black kids. We heard testimony today that in fact in
this whole stopping of over stopping and frisking of
minority kids, you in fact saw a higher rate of hits
when you search white suspects than when you search
minority suspects, and that's because some positive,
perhaps it's a lazy shortcut to do racial profiling,
and again just stop all these people and you have to
maybe because you're concerned about really being able
to justify what you did with white kids, you're more
likely to actually have done a good job in trying to
figure out whether someone has drugs. So I think the
way that -- what bothers me about the way you're
approaching this is is leaving out sort of the white
part of the equation and really looking at are -- is
police treating communities equally, fairly and that's
the challenge right. Communities need to feel like
they've been treated fairly, and at some point it
doesn't actually matter whether the reality is of what
police are doing. The perception becomes reality, and
that's what we have address. So I don't want to
engage on that. I have other questions that I want to ask, but I just wanted to lay that out. And I'm sorry that I'm not giving you a chance.

COMMISSIONER HERIOT: Let her answer. Let her answer.

COMMISSIONER NARASAKI: I didn't ask a question.

So my second question is, so we were talking about it -- we can come back to it. I want to get my other questions out because I know the Chair is going to cut me off.

CHAIRMAN CASTRO: That's right.

COMMISSIONER NARASAKI: On the issue of deescalation, what I wanted to ask, so tasers, the use of tasers has been raised as sort of a step short of deadly force, but I've heard concerns about use of tasers may in fact sometimes be deadly because of the way they react to people with certain physical conditions, and also some concern as and I've heard that there might be studies, but I haven't found them yet, that police are in fact more likely to escalate to using a taser than they might be to using a gun rather than deescalating when they could have as an alternative because they see tasing as, you know, less harmful even though it clearly looks very painful. So
I wanted to ask whether there was in fact research on
that issue and whether you had thoughts about that in
how you do deescalation?

MR. SAM WALKER: Well, I think there's some
departments where the taser became an add-on. They
were in fact using it when they otherwise could have
settled the encounter without it. But I think there
are others that where the overall use of force went
down, and especially deadly force and so on, so again
it comes down to the administration of that
department; did they have a clear policy and policy
guidelines for the officers and did they enforce it.

COMMISSIONER NARASAKI: Okay, so it comes
down to training and policy. Okay, and then my last
question is to Mr. Klinger, you mention in your
testimony that organizational inertia is a barrier
that has to be overcome. And how do we -- how do we do
that? Because it seems to me like, and we've been
saying this all day, that many of the recommendations
that are out there are pretty practical, right, and
have been around for a while and yet it's not
happening. It's not spreading. It hasn't gone viral
yet. What is it gonna take for a majority of police
departments to be doing all the things they need to be
doing? What's the barrier? What needs to happen for

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that to happen?

MR. DAVID KLINGER: Even though I've talked about granite, I share Sam's optimism and we have to have both carrots and sticks and we have to explain to police executives people are concerned, and we have evidence from other industries, once again coining one of Sam's terms, law enforcement is an industry; we have evidence from other industries that if you create mindful employees and you hold them to account and you create a safety culture, what will happen is law enforcement will be safer for the law enforcement officers and the use of force will go down because what we're gonna do is we're gonna structure our encounters in a better way, and you keep getting that message out and you keep getting that message out, and that is the argument that says this is what professional policing is, and we are going to reward you in terms of the IACP starts putting out rewards for agencies that are on top of things in terms of safety culture, and then the Federal Government can come in and State Government can come in and kneecap, metaphorically, organizations and police leaders who aren't doing this. And one of the things is states can start taking control in terms of your POST, police officer standard training for your state. This is
what we expect. If you want to get the state certificate, the state POST certificate to be a supervisor, to be a chief, whatever the case might be, you have to have these forms of training. If not you're out.

MR. SAM WALKER: I'm in.

COMMISSIONER NARASAKI: So is that how you get around because we -- I have to say that this panel has restored some optimism because one the earlier panels was talking about the thin blue line and how you really couldn't -- it was too dangerous for good cops to, you know, report on things that were going wrong by other cops and that in fact even if you put incentives there, it would be so dangerous because the other cops would retaliate by not backing that cop up when they got in a dangerous situation, which, you know, lead me to believe if police are actually afraid of each other, then I don't even know how we get to --

MR. DAVID KLINGER: If that's the case, that's a serious problem. I've never heard of that to that extent, but if it's there, it's there.

COMMISSIONER NARASAKI: So how do you break through that?

MR. DAVID KLINGER: Well, my argument is that what they were talking about is good cops being afraid to roll on bad cops. My argument is the bad
cops are a very small portion of the problem. The problem is bad tactics, people not being able to think strategically, people not being able to think tactically. That's not an issue where someone is going to face discipline. It's the corrective action that Sam is talking about, but once again, the sergeant, the lieutenant, the captain up and down the chain they have to understand what appropriate tactical performance is, and you start it out in the academy. Right next week every -- every police academy is going to teach this in the country. Five years from now that's gonna be the new granite. If you don't do this things, you will not get promoted in this police department. You will not have an opportunity to lateral to another police department.

One of the first things I would do, most police agencies hire chiefs. Most smaller agencies hire chiefs who are captains or maybe a commander in another police agency. Start interviewing people not based upon touchy-feely stuff. Hey, tell me how you are going to handle a barricaded gunman. Tell me how it is that you're going to have your officers handle felony vehicle stops, tell me how it is your officers are going to be handling domestic disputes, and if

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they don't know the basic tactics and they don't
understand how the review process should roll, then
you don't hire that chief, and if that becomes the new
standard, then that will be the new standard because
people are gonna start training themselves and getting
the appropriate mindset because they want to be chief
somewhere.

COMMISSIONER NARASAKI: Okay, so I will
derfer to the Chair about whether there's time to let
--

CHAIRMAN CASTRO: No, actually. I'm going
to wrap it up now. We've come to the appointed time,
literally on time, but let me just say that first of
all, thanks to all the panelists. What we heard
throughout the day was fascinating. We saw many
aspects from many different points of view and some
very unique suggestions for solutions, others that
surprise us. So for example, you know, Marcus
Aurelius said that crime is -- poverty is the mother
of crime, but today we heard that single mothers may
be the mother of crime. Again, if you look at
statistics put forward by the Women's Legal Defense
and Education Fund it shows that in 2013 single
parents were -- 3 percent of single parents were
Asian, 23 percent Hispanic, 28 black, yet 46 percent

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non-Hispanic white, but the beauty of having our own
civil rights analyst now is that the data that we've
collected from you, we are now going to have our own
analysts be able to look more closely at some of that
data and see where we go, so we're very pleased to
have the information you presented to us. We are now
going to take this information, the additional
research from our staff and put out a report based on
what we believe to be the findings and the
recommendations that the majority of the Commission
will make. So again, thank you all for being here. I
also want to thank our staff, as did Commissioner
Kladney at the beginning, particularly Angela French-
Bell and Pam Dunston on putting together this
tremendous offsite for us hearing. Give them a round
of applause. They deserve it.

(Round of Applause)

CHAIRMAN CASTRO: Last thing, the record
for this briefing report is going to remain open for
the next thirty days, so panelists, members of the
public, those who may be watching us via live stream
would like to mail their comments to us, they can do
so to the U.S. Commission on Civil Rights, Office of
Federal Civil Rights Evaluation, 1331 Pennsylvania
Avenue Northwest, Suite 1150, Washington DC 20425 or

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via e-mail at PUF briefingcomments@USCCR.gov and that's PUF, and that stands for police use of force, PUF briefingcomments@USCCR.gov. It is currently 6:01 p.m. eastern and I am hearing by adjourning this hearing. Thank you.

(Whereupon, the Commission Briefing concluded at 6:01 p.m.)

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I, Holly Van Pelt, a reporter and Notary Public within and for the State of New York, do hereby certify:

That the witness(es) whose testimony is hereinbefore set forth was duly sworn by me, and the foregoing transcript is a true record of the testimony given by such witness(es).

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

HOLLY VAN PELT

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