

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 ACHTENBERG, Commissioner
GAIL L. HERIOT, Commissioner DAVID
KLADNEY, Commissioner KAREN K.
NARASAKI, Commissioner MICHAEL YAKI,
Commissioner

REPORTED BY: HOLLY VANPELT

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COMMISSIONER ASSISTANTS PRESENT:

2

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

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1 CHAIRMAN CASTRO: Good morning,
2 everyone. My name is Marty Castro. I'm Chair of
3 the U.S. Commission on Civil Rights. Good
4 morning. We want to thank you all for being here
5 and welcome you to the Commission's briefing on
6 police practices and the use of deadly force.

7 I'm going to go into some housekeeping matters,
8 but before I get there, we have two presentations
9 that we would like to share you with. First and
10 foremost, we would like to invite to the podium
11 to share welcoming remarks with us Jeremy Travis.
12 Mr. Travis is the president of John Jay College
13 of Criminal Justice, which is our host today. He
14 is the fourth president of this university, but
15 he also has a distinguished record, having served
16 in the Clinton Administration and been very
17 involved in issues involving anticrime efforts at
18 the federal level, community policing and new law
19 enforcement technologies, which are obviously at
20 the heart of what we're trying to accomplish
21 today, so President, would you please share with
22 us a few welcoming remarks?

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

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

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

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

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

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

21 COMMISSIONER KLADNEY: Thank you, Mr.
22 Chairman.

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

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

1 Pam, thank you very much. Your work is much
2 appreciated.

3 Our topic today is police practice and use
4 of force. I always thought that America is a melting
5 pot, and it's a place where people from different
6 backgrounds come together to build a great nation, but
7 are we a melting pot or are we different cultures and
8 subcultures. Do we look upon each subculture from our
9 own preconceived notion? Division of a melting pot
10 seems far away when citizens of law enforcement have
11 confrontations like we've seen in Los Angeles, in
12 Cleveland, in Staten Island and most recently in North
13 Charleston and Tulsa. These confrontations allegedly
14 range from justified to accidental to intentional, yet
15 each one of them plays into the narrative engrained in
16 the communities that were historically targeted by law
17 enforcement. They also play into the police culture
18 narrative of guardians who are always in danger. When
19 parts of our society feel they are automatically
20 suspected and constantly under threat, it hurts us
21 all. When there are a lack -- when there's a lack of
22 respect in dialogue, it furthers these perceptions.
23 Remember, perception is truth to those with
24 preconceived notions. The lack of transparent
25 investigations with police policing police and a legal

system that keeps the evidence secret feeds the
10

1 narrative impression of minority citizens. Law
2 enforcement is a tough job. A good majority of police
3 do it well. We should, and they should hold
4 themselves to the highest of standards. We trust them
5 to enforce our laws fairly while giving them a
6 monopoly on use of deadly force. It is not just a
7 job. They are professionals and they should be
8 treated that way. Efforts to improve the application
9 of use of force cannot come at the expense of officer
10 safety. Most police officers do their jobs well,
11 treating people they encounter with respect and using
12 methods they have learned to keep themselves and the
13 citizens safe. Police chiefs and sheriffs are tasked
14 with making sure their officers are well trained and
15 conduct themselves appropriately. Failure to monitor
16 officer conduct is a failure of supervision. Both
17 officer and citizen safety are of utmost importance,
18 but what should be done? This is the question we seek
19 to answer today. We know the best and safest policing
20 occurs when there is trust between police and the
21 communities they serve. It is always difficult when
22 cultures face change. Hopefully today we can
23 contribute to the idea of creating a better America.
24 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

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1 interactions cannot be covered up. They cannot be
2 dismissed away. They must be addressed in the light of
3 day by organizations such as ours. And I say these are
4 our police forces because they're made up of members
5 of our community. They're here to protect us. They're
6 here to serve us, yet in communities of color they are
7 becoming judge, jury and unfortunately executioner.
8 Many of us, myself included, have been victims of
9 police overreaching and misconduct that have not been
10 addressed. So we've looked at this issue before. In
11 Missouri they recently held a hearing in February in
12 St. Louis County on what happened in Ferguson as well
13 as other issues involving Missouri, and some of the
14 work that we're going to do today is formed by their
15 work and their initial investigation, and I thank them
16 for providing us with a quick report, interim report,
17 so that we had that in advance of today's hearing and
18 we will expect a more full report from them. But we
19 are not here today to accuse or indict. We're here to
20 educate, learn, elucidate and come up with best
21 practices from each and every one of you that we can
22 then recommend to the President, Congress, to the
23 country as a whole to hopefully, if not eliminate
24 this, but substantially reduce this kind of violence
25 and fatal interactions

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we're seeing between our police officers and
13
communities of color.

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

16 Each panelist during their presentation
17 initially will have seven minutes to speak. You'll see
18 a series of warning lights; green, of course, go,
19 yellow, begin to wrap up and red I would ask that you
20 stop. That doesn't mean that's all you're gonna say.
21 We will then have the opportunity to have
22 commissioners interchange and interact with you
23 through questions and answers, and that is where we
24 usually elicit most of the information that results in

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1 what we consider to be a thoughtful dialogue on these
2 topics. Commissioners will then have the opportunity
3 to be selected by me to speak. I'm going to ask them,
4 as we have in the past, to be mindful of the time as
5 well as the ability to allow the other commissioners to
6 ask questions. So with that done, what I would like to
7 do is just inform everyone that once we're done here,
8 we're going to keep this record open for the next
9 thirty days. If the panelists or members of the public
10 would like to add information, they can either do it by
11 mailing it to U.S. Commission on Civil Rights, Office
12 of Federal Civil Rights Evaluation, 1331 Pennsylvania
13 Avenue, Northwest, Suite 1150, Washington DC 205 -- I'm
14 sorry, 20425 or via e-mail at
15 PUF_briefingcomments@USCCR.gov. That's
16 PUF_briefingcomments@USCCR.gov.

17 With that housekeeping out of the way, I
18 would like to now present our first panel. Our first
19 panelist this morning is Ms. Talila Lewis with Helping
20 Educate to Advance the Rights of the Deaf. Our second
21 panelist is Mr. Richard Davis, with the Arc, the
22 National Center on Criminal Justice and Disability.
23 Our third panelist is Mr. Montague Simmons, with the
24 Organization for Black Struggle. Our fourth panelist
25 is Mr. Felix Vargas, with Consejo Latino, and our

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fifth panelist is Mr. Matthew Fogg, with the Law
15

1 Enforcement Against Prohibition, and our sixth and
2 final panelist from this panel is Mr. Sean Smoot, with
3 the Police Benevolent and Protective Association of
4 Illinois.

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

10 MS. TALILA LEWIS: It is.

11 MR. RICHARD DAVIS: It is.

12 MR. MONTAGUE SIMMONS: It is.

13 MR. FELIX VARGAS: It is.

14 MR. MATHEW FOGG: It is.

15 MR. SEAN SMOOT: It is.

16 CHAIRMAN CASTRO: Thank you. Ms. Lewis,
17 please proceed.

18 MS. TALILA LEWIS: Good morning.

19 CHAIRMAN CASTRO: Good morning.

20 MS. TALILA LEWIS: And thank you for this
21 opportunity to share testimony. I begin with a grim
22 reminder that more than half of the people killed
23 angrily by law enforcement are people with
24 disabilities. Michelle Cusseaux, Milton Hall, even

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1 Eric Garner are some of the names you might recognize.

16

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

9 People with disabilities who belong to
10 multiple marginalized communities are assaulted and
11 killed by law enforcement at disproportionately higher
12 rates than their non-disabled peers, for example, for
13 being a person of color with a disability and/or for
14 being a person of a different class with a disability.
15 It's important to note that one in four people in the
16 United States, at least one in four people in the
17 United States are people with disabilities. People
18 with disabilities also represent the largest, the
19 largest minority group within our prison and jail
20 system, most studies estimating that some 80 plus
21 percent of our incarcerated population are people with
22 one or more disabilities. Police officers also report
23 spending disproportionate amounts of time and
24 resources responding to calls involving people with
25 mental illness and law enforcement's role in

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responding to individuals with mental illness has

17

1 increased over the past several decades, with some
2 cities -- city police departments spending more time
3 responding to calls involving mental illness than they
4 do for investigation of serious crimes. Last year the
5 Senate Judiciary Committee on the Constitution of
6 Civil Rights and Human Rights convened in a bipartisan
7 hearing to address these very issues. The discussion
8 explored best practices, including the escalation in
9 criminal intervention, which we'll discuss and my
10 colleagues here also will discuss more in depth. The
11 importance of the Americans with Disabilities Act as
12 related to the enhancement of police procedures in
13 interacting with people with disabilities, the need to
14 forge partnerships between law enforcement and mental
15 health and disability communities. The role of the
16 United States Department of Justice in ensuring that
17 enforcement of federal disability rights laws and
18 acting in accordance with these laws and setting up
19 procedures and national standards for the same.
20 Despite the prevalence of police brutality against
21 people with disabilities, police officers report
22 feeling under prepared or unprepared to manage this
23 special population. For example, California's police
24 academy recruits spend a mere six hours out of 664

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1 hours that are required for training with each police
2 academy class. Upon graduation there's no requirement
3 by law or even by the Commission that sets up training
4 for periodic review of training or periodic updates to
5 whatever they have learned in those six hours that
6 they spent learning about disability. We've also seen
7 an alarming increase that's worth noting in
8 exoneration of people with disabilities, whether
9 that's people who are deaf, people with mental
10 disabilities. All of those included we're seeing a
11 spike in exonerations of these groups, which really
12 brings to bear questions about not just law
13 enforcement's capability of managing and interacting
14 with people with disabilities, but the entire justice
15 system's ability to manage the same population.

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

21 There are -- there are safe ways to
22 interact with people with disabilities, and -- and -
23 and it's been proven time and time again throughout
24 the nation. There are locations in the nation that
25 are working to implement policies and procedures that

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1 are safe in dealing with people with disabilities.
2 Some of these are crisis intervention, deescalation
3 tools, including calm and diverse methods of
4 communication, collaboration with mental health
5 resources and disability rights, resources, physical
6 containment of individuals from a distance and
7 patience. Perhaps more -- most important is the fact
8 that federal disability rights laws, including the
9 Americans with Disabilities Act requires
10 nondiscrimination and reasonable modification in all
11 policing activities. Law enforcement compliance with
12 the Americans with Disabilities Act is critical to
13 promoting public safety and equal acts as to justice.
14 The ADA has land marked civil rights laws that, among
15 other things, require police departments to take
16 appropriate steps to guarantee that people with
17 disabilities have equal access to programs, activities
18 and services. It's an affirmative obligation that
19 includes providing reasonable accommodations and
20 modifications and adequate training for police
21 officers working with the same population. Some of the
22 recommendations that I've provided include an
23 intentional infusion of diversity and to our justice
24 system, and what that means is that the disabled
25 should be working in tandem with as consultants for

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

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

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1 assigned the ultimate responsibility for care for
21
2 people with mental illness in their communities and
3 held accountable. In addition to that and kind of in
4 tandem is that we want to see more community-based
5 care and funding thereof, and finally we'd like to see
6 legislatures ensuring that law enforcement receive
7 adequate training on individuals with disabilities and
8 mental health crisis intervention, cultural competency
9 and sensitivity, deescalation and intervention
10 training and funding of community-based mental health
11 community.

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

14 MS. TALILA LEWIS: No, thank you.

15 CHAIRMAN CASTRO: We have your written
16 statement as well, so all of these recommendations
17 you have there will also be part of our record. Mr.
18 Davis.

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

25 The Arc's National Center on Criminal

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Justice and Disability or NCCJD is a training and

22

1 technical assistance center, funded by the Department
2 of Justice Bureau of Justice Assistance, and we're
3 thankful for the opportunity to provide testimony for
4 this briefing concerning people with intellectual and
5 developmental disabilities or IDD in relation to
6 police practices and use of force. The National
7 Center is the first national effort to bring together
8 both victim and suspect offender issues with
9 involving people with IDD in one comprehensive effort
10 to educate criminal justice professionals. The
11 National Center partners with criminal justice
12 professionals, including law enforcement and their
13 respective national organizations, such as IACP, to
14 create the pathways to justice training program, fact
15 sheets, white papers and training materials as well
16 as provide information, referral and technical
17 assistance addressing public safety issues. NCCJD is
18 accumulating a robust clearinghouse of information
19 and has already begun investing promising practices
20 regarding law enforcement training on disability
21 issues from across the country. The National Center
22 commends the U.S. Commission on Civil Rights on their
23 recognition of this human rights issue at a time when
24 increasing numbers of individuals with disabilities

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are transitioning from institutional to community

23

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

9 The National Center on Criminal Justice
10 and Disabilities identify three main challenges.
11 First is inconsistency in training. Despite efforts
12 of the Arc, other non-profits and police agencies
13 over the past twenty to twenty-five years, there
14 remains a lack of consistent, ongoing training for
15 all criminal justice professionals on intellectual
16 and developmental disabilities. Secondly is disparity
17 in training contents. There's considerably more law
18 enforcement training available on mental illness than
19 intellectual and developmental disability. People
20 with IDD have the safety both as suspect defenders
21 and victims, different from persons with mental
22 illness; therefore, specific training on IDD is
23 needed if officers don't feel confident when working
24 with this population. Third is an unusually high rate
25 of victimization. People with disabilities are

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1 especially vulnerable to victimization or manipulation
2 by others, sometimes leading to criminal
3 activity or patterns of victimization. Among
4 disability types measured, persons with cognitive
5 disabilities have the highest rate of violent
6 victimization, thirty per one thousand or 3 percent.
7 People with cognitive disabilities, such as
8 intellectual disabilities and developmental
9 disabilities, such as cerebral palsy represented the
10 largest group of victims. When police officers fail to
11 handle emergency situations involving victims with
12 intellectual and developmental disabilities
13 appropriately, the chances of offenders remaining at
14 large and re-offending greatly increases. To protect
15 the public safety, law enforcement needs specialized
16 training on effectively working with victims with
17 disabilities. To foster better relationships between
18 persons with disabilities and law enforcement,
19 effective training needs to focus on relationship
20 building. Training must not focus on law enforcement
21 to diagnose disabilities, but on creating a better
22 awareness about people with disabilities and assisting
23 officers in creating an attitude of doing what it
24 takes to ensure understanding of the citizens being
25 served. Building principles of inclusion into the

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1 training as well as how the training is incorporated
2 into policing overall can help remedy misperceptions
3 from both the officer and the person with the
4 disability and avoid future tragedies from happening
5 in our communities. The National Center's Disability
6 Response Teams or DRTs offer an evidenced-based
7 approached to this issue. When an individual who has
8 different needs or communicates differently becomes
9 involved in a complex system with many moving parts,
10 tapping the expertise of multiple parties within the
11 criminal justice system facilitates the smoothest
12 possible outcome. Utilizing the promising practices
13 seen across person centered planning and healthcare to
14 develop personalized justice plans and also in the
15 Office for Victims of Crime materials on assisting
16 crime victims with disabilities, the National Center
17 of Criminal Justice and Disabilities is supporting the
18 evidence-based approach to training multidisciplinary
19 disability response teams to bring together criminal
20 justice professionals, including law enforcement,
21 legal professionals and victim advocates, disability
22 professionals, people with disabilities and their
23 family members to share expertise on behalf of people
24 with intellectual and developmental disabilities.
25 NCCJD believes that criminal justice professionals who

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1 develop personal relationships with people with
27
2 disabilities in their own communities can make a
3 positive impact that will reduce the number of
4 miscommunications, needless arrests, overlooked
5 victims and possibly deaths of people with
6 disabilities.

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

21 CHAIRMAN CASTRO: Thank you, Mr. Davis.

22 Mr. Simmons.

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

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1 Black Struggle, the community organizers and activists
2 we've stood shoulder to shoulder with for years and
3 the national community of activists have actually come
4 to stand with us since August 9. We've actually worked
5 to create a frontal resistance that has come to be
6 known as Ferguson. We thank you for this invitation
7 and thank you for casting the eyes of your Commission
8 on our communities. I owe you a personal debt of
9 thanks for making it clear that we who actually live
10 in St. Louis, whether it's the Fergusons, Pine Lawns,
11 Berkley, northwest villages or in countless
12 municipalities throughout the county, there are
13 countless boys and girls grew up, myself included,
14 feeling like prey because the police in our city
15 stalked those of us who actually who looked like us
16 for pleasure and for profit, but there was actually no
17 remedy for us specifically to be sought under our
18 democracy. I remember in my own younger days when the
19 harassment seemed like it was daily. Just walking home
20 from school or from the bowling alley, it could result
21 in some form of intimidation, humiliation or
22 harassment. For us this was a right of passage that
23 our brothers, mothers, fathers, cousins and uncles did
24 their best to prepare us for. They knew what happened
25 when there was more than two of us. They knew what

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1 happened if it was just one of us. They warned us
29
2 about driving 35 miles in a 30 mile an hour zone.
3 They warned us about every nook and cranny where they
4 could be hiding, whether it was on Hanlon Road or
5 behind a local shopping center. They created routes
6 for us to travel in and out of the community when
7 there were ongoing insurance checks, sobriety checks.
8 There were usually police forces continuing to shake
9 down for money. This for us has always been a
10 generational issue. The U.S. Commission on Civil
11 Rights has now cast its eyes upon our community
12 because the execution of Mike Brown, the corrupt and
13 inept ways of the investigation as follows: The
14 investigation that ended in a fiasco of a grand jury
15 that would have amounted to business as usual, except
16 for the anger, tenacity and determination of the
17 people who have been in the streets over 250 days.
18 What happened in Ferguson is a structural feature of
19 our criminal justice system, not a bug, glitch or
20 anomaly. The social concept of militarization,
21 racism, marketization are in full bloom on almost
22 every street in America. We have law enforcement
23 bodies bringing to bear military force on citizens.
24 We have that force falling most heavily on people of
25 color, protestors, decadents and other traditional

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Department of Defense also of 03 programs supported by
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

2 of police as collection agents, implementation of
3 field contact cars that allow us to track every
4 interaction and early warning system database on
5 police behavior, a media accountability system that
6 includes body and dash cameras where the data is
7 actually controlled by the civilian review board and
8 civilian accountability project that has subpoena
9 power, investigatory and prosecution powers. The
10 board has to have a relationship and a role in
11 developing police policies in certain stadiums. We
12 have attached the full initiative to our statement.
13 The challenge for us and for those of us who have
14 actually committed to this fight is that most of the
15 recommendations that we offer are not new. In fact,
16 over the last fifty years, crisis after crisis have
17 resulted in civil investigations from the sources
18 that include this very Commission, but they continue
19 to go unheeded. My parents came of age during the
20 reconstruction of our culture and democracy that took
21 place in the late '50s and '60s. During that period
22 evils were exposed. Lives were lost. Entities were
23 transformed with the hope that justice would prevail
24 the generation on board. Yet today in 2015 the
25 promises of real justice are as of yet unfulfilled.

1 Our communities are now subject to institutionalized
2 state violence and they have no path for remedy from
3 this office. Sergeant marshal says we cannot play
4 ostrich. Democracy just cannot flourish amid fear.
5 Liberty cannot bloom amid hate. Justice cannot take
6 the fit of rage. America must get to work. In the
7 true climate in which we live, we must go against
8 prevailing wind. We must descent from the
9 indifferent. We must descent from the apathy. We must
10 descent from the fear, the hatred, the mistrust. We
11 must descent from a nation that's buried its head in
12 the sand, waiting in vein for the needs of its poor,
13 its elderly, its sick to disappear and just blow
14 away. We must descent from a government that has left
15 its young without jobs, education or hope. We must
16 descent from the poverty of vision and the absence of
17 morale leadership. We must descent because America
18 can do better and America has no choice but to do
19 better.

20 CHAIRMAN CASTRO: Thank you, Mr. Simmons.
21 Mr. Vargas.

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

25 COMMISSIONER CASTRO: I think your

microphone is off. There you go.

33

1 MR. FELIX VARGAS: No where can a
2 discussion of police practices or prosecution of
3 police or unjustified use of deadly force have
4 more relevance than in my hometown of Pasco,
5 Washington. Now Pasco is a historical village
6 right at the confluence of two great rivers, the
7 Columbia and the Snake. It is a small little town
8 in southeast Washington that evolved from a
9 railroad depot to a thriving and agricultural
10 center that it is today. The population of
11 Hispanics there have grown considerably. The city
12 now has a population of 68,000. 65 percent of
13 these are Latinos. Since the '40's and '50s
14 Hispanics have been attracted to this great and
15 wonderful part of the country by the wonderful
16 opportunities in agriculture. It is a place where
17 families, including my own, have found
18 opportunities to find and attain a piece of the
19 American dream. Now we have also cultural divide.
20 There are language and racial diversity are not
21 always appreciated or understood, and sometimes
22 not accepted. For decades my hometown, which sits
23 right across from the Hanford Nuclear Reactor
24 site was a place where minorities were dumped, if
25 we can use that term. Blacks and Latinos were
largely told to reside only in

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1 town, even though they worked forty miles away at the
2 Hanford Nuclear Site building, the Hanford De-reactive
3 site. They couldn't live in the neighboring towns of
4 Kennewick and Richland. That was reserved for the
5 Anglo populations only. There's a recent article
6 written by historian Kate Brown which documents this
7 fairly well. We remain largely disenfranchised and
8 underrepresented in the state and county organs of
9 power, including the city council, county commission,
10 school board and yes, the Pasco City Police
11 Department. To give a background that a young
12 Hispanic by the name of Antonio Zambrano Montes was
13 killed by members of the Pasco Police Force at
14 approximately 5 p.m. on Tuesday the 10th of February.
15 Mr. Zambrano, also one of the persons who had mental
16 disability mentioned by Ms. Lewis earlier, was
17 observed throwing rocks at the intersection of 10th
18 and Lewis. Police were called. They responded. They
19 came and sought to confront and they did confront Mr.
20 Zambrano. They gave orders to him in English, which
21 was not his native language. Since they couldn't
22 communication with him, they started firing tasers at
23 him. He started running across because, you know,
24 tasers do hurt when you got hit. He started fleeing
25 and as he fled, the police drew their pistols and

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

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1 filed a complaint. It led to litigation, and she was
2 ultimately awarded \$100,000. We have an investigation
3 process going on where police officers are
4 investigating police officers, and we have, as Mr.
5 Kladney pointed out, a situation where police
6 investigate police it's not credible. You add to that
7 a prosecutor who has been tied to the investigation
8 since day one and you see the makings of a perfect
9 storm. We will not get an impartial and objective
10 determination of what the charges will be filed
11 against them, against the three. There's an inherent
12 conflict of interest. We have sought to get the
13 prosecutor relieved or have him step aside, but that
14 has been rejected by the prosecutor. Now it's
15 interesting that the police officers in question were
16 never -- were never interviewed right after the
17 incident, right, so all the testimony of all the other
18 witnesses being taken, the police officers
19 conveniently at the end of all of this will have a
20 chance to offer their testimony, their take on it what
21 actually happened. In no time in my thirty-three years
22 of national security work for this great country have
23 I ever been in a situation where people involved in a
24 confrontation were not debriefed right after a
25 confrontation such as this. This I submit to you

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poisons the credibility of the investigation. This

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1 also is the start of the contrast of what happened in
2 North Charleston, South Carolina where a police
3 officer there who shot an African American, today he
4 sits in jail and has formal murder charges filed
5 against him, unlike the three police officers in my
6 hometown who are free to walk in the streets and on
7 paid administrative leave. Now the police chief in
8 North Charleston also said he was sick by what he saw
9 in the video. Don't expect to hear that from a police
10 chief, Bob Metzger, who sits behind me. He's more
11 worried about managing the press fallout and
12 supporting his officers than he is recognizing what
13 has happened in his hometown. So what did we learn? We
14 believe that there's developments of a strategy that
15 we ought to be pursuing. First we need a top-down
16 review of the current police practices and policies in
17 Pasco. Without this we cannot get anywhere. We need to
18 leverage the supporting services offered by the
19 Department of Justice, the state of Washington and
20 governmental/nongovernmental organizations, academic,
21 community leaders to help us find a solution. We need
22 a police oversight commission because our public one,
23 demands that it has to have the police. We cannot
24 expect the trust of the

police to be restored if we don't have visibility to

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1 how the police culture unfolds. We need training.
2 Now Police Chief Metzger here will tell you that
3 police officers get 130 hours of training, but he
4 cannot tell you that this is effective monitoring or
5 to ensure compliance. We need a highly trained police
6 officer. We need justice for this and we need to learn
7 from this and move on and fix the measures which have
8 been longstanding. I thank you for inviting me to
9 share these thoughts with you today.

10 CHAIRMAN CASTRO: Thank you, Mr. Vargas.
11 Mr. Fogg.

12 MR. MATTHEW FOGG: Thank you very much. My
13 name is Matthew Fogg. I'm a retired chief deputy,
14 United States marshal. I was simply in talking about
15 this subject, I'm a member or law enforcement against
16 prohibition, which advocates ending of drug
17 prohibition, much like American ended alcohol
18 prohibition. We believe the war on drugs in America
19 has been the single most racist national policy that
20 has created cultures of a different extreme, law
21 enforcement, racial, enforcement disparity in black
22 and brown communities nearly having the same impact as
23 slavery. Forty years ago before the war in Georgia
24 began American had 300,000 people locked up in its

1 institutions. Today America has 2.3 million locked up
2 in its institutions, 7 million on probation and
3 parole. One out of three individuals of color from
4 the ages of 18 to 30 are in the criminal justice
5 system out on probation, parole or incarcerated. The
6 Equal and Justice Institution also a project that did
7 a survey and they found out that fifty percent of all
8 men of color in major urban cities, such as Los
9 Angeles, Philadelphia, Baltimore, Chicago, Washington
10 DC are incarcerated or in some form in the criminal
11 justice system. Ladies and gentlemen, I testify here
12 because of the fact of what happened to me and what I
13 observed in law enforcement that simply just
14 translates from the inside to the outside. I took on
15 the Justice Department for race discrimination, won a
16 major lawsuit in 1998 and found the entire U.S.
17 Department of Justice U.S. Marshal Service to be a
18 racial, hostile, environment for all its African
19 American deputy U.S. marshals. That lawsuit is still
20 pending today, even though I won my personal lawsuit.
21 That means right now when we talk about enforcement,
22 we talk about the various issues, how do we deal with
23 hateful forces, how do we deal with disparity. What
24 we see, as we've got institutions that are already
25 affected on the inside. I was told

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

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1 Don't blow the whistle. Don't speak out. My partners
2 were told the same thing. The New York Post, matter of
3 fact, did an article front page Sunday morning
4 edition, said bigots with badges; U.S. Department of
5 Justice blatant racism right here in New York City.
6 When we look across the board, ladies and gentlemen,
7 we see time and time again when I came out of the
8 academy, first thing I always remember my supervisor
9 telling me, he said Fogg, I know you learned all of
10 this stuff in the academy and all the great academic
11 stuff, he said, but this is how we do it here, and
12 this is what we're finding time and time again, that
13 what we're seeing is this stuff just isn't occurring
14 just as they say a few bad apples. It is a system in
15 place. I know most officers are good. We say it all
16 the time, but that doesn't matter whether most
17 officers are good when you're in the command-
18 controlling environment. All it takes is one leader to
19 be out of whack and everybody's gonna follow that
20 leader, and if he's somebody that determines that
21 whether or not we can turn our heads, don't report
22 wrongdoing when we see other officers beating or
23 firing, we have certain codes of conduct that we used,
24 and I can tell you those codes of conduct behind the

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25 blue wall of silence, and I listed a couple of them
because I was thinking here, I said, I remember it

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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 seizures and everything. He said man,
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1 just go to the weakest link. What we have then is what
2 we got now, is ethic cleansing. We see over and over
3 again in law enforcement all of these things that are
4 coming out. We see the DOJ recently did a report in
5 Philadelphia, Pennsylvania showing the widespread
6 racial disparity. These disparities aren't just
7 happening overnight. Other officers, we know, we knew
8 we couldn't go into those affluent neighborhoods. I
9 knew if I stopped the car with four whites in it and
10 four blacks in it, whatever I said those black folks
11 did, that institution is going to back me up, from my
12 supervisor all the way up to the judge. Those white
13 folks might say to me Fogg, what was your probable
14 cause for stopping. You never asked me that before.
15 This is the type of institution that I begin to see
16 internally that we were working with, so when I went
17 all the way and got a finding against the U.S.
18 Department of Justice because I had an opportunity to
19 settle, people said take the money and run, man; you
20 can't win against the Justice Department, but I went
21 all the way and won, and that just said, it sent a
22 message to the Department of Justice. This is real,
23 ladies and gentlemen. So if it's happening to me, if I
24 got to be concerned about working next to a bigot with

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a badge, somebody that I know is going to harm me,

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1 imagine what they're going to do to the public. So
2 when we come up with solutions and we come up with
3 ideas how do we combat this problem, first thing we
4 got to do is give police officers whistleblower
5 protection. You're not going to get anything done if
6 you don't have a program just like the U.S. Marshall
7 set up when we have something for witness protection
8 for people that come forward and -- and tell the
9 government tell on others. You got to have that. You
10 got to have civilian review boards with power in
11 them. They cannot be boards that go back with no
12 power. They got to have subpoena power and they got
13 to be separate and apart from law enforcement. The
14 law enforcement cannot police themselves. It scares
15 me today that I got to stand here and I got to say to
16 most people of color you cannot trust law enforcement
17 in America today. That pains me, but when I look at
18 what the FBI just came out with, indicating that
19 hundreds of people were put to death, even on death
20 row because of forensic science that was -- was -was,
21 what's the word I want to say, forensic science was
22 tailored and -- and corrupted, again, when we talk
23 about the whole institution, we talking about from
24 Ferguson, all the way around to Philadelphia, we

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talking about these issues are internal issues that

1 need to be addressed. We got to have video, body
2 cameras, all of these things. As much transparency as
3 there can be there has to be in law enforcement. So I
4 say to this committee, if you're going to make an
5 impact, that's the first thing you have to do, is give
6 law enforcement people witness protection and have
7 these body cameras and have civilian review boards and
8 have separate entities that make certain that law
9 enforcement will always have oversight on top of
10 oversight. Thank you, very much.

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

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

24 I spent the last twenty years of my life

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representing the interest of rank and file police

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1 officers in every imaginable legal, legislative and
2 executive forum at the national, state and local
3 level. I verily believe that with very few exceptions
4 police officers are remarkably good people who
5 voluntarily face extraordinary challenges in their
6 daily duties. These dedicated men and women take an
7 oath and they make a promise. They promise to serve
8 and protect. This promise is universal. It is the same
9 oath, the same promise made and kept every day in New
10 York, Los Angeles, Chicago and in your hometowns.
11 Whether it's in response to a terrorist attack, a
12 tornado, a felony or a flood, police officers run
13 towards danger as others run away. They take the
14 promise seriously and they put their lives on the line
15 in order to keep it in many cases. Some of them are
16 catastrophically injured. Some of them die. It's their
17 service and sacrifice that we will -- that we will
18 memorialize next month in Washington DC at the
19 National Police Memorial. It's the service and
20 sacrifice that makes everything we do in America
21 possible. We're free because others took an oath
22 promising to be there when we need them to pull us
23 from a burning car or out of the rubble, to pursue
24 those who would commit crimes against us, to protect

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1 our lives. Nowhere has that been exemplified more
2 ⁴⁶powerfully or poignantly than here in New York City. I
3 wish that I could come before you today proclaiming
4 that police use of deadly force can be eliminated,
5 that by implementing a specific type of training tool
6 or technique we can eliminate tragic events, the type
7 that open new wounds or reopen old wounds, the type
8 that plague our communities in our country. Sadly
9 confrontations resulting in police use of deadly force
10 can't be eliminated. Some people, whether acting out
11 of delusion, drugs or purely evil intent pose a lethal
12 threat to others. This point was exemplified in the
13 recent ABC news series In an Instant, which revealed
14 to the nation in significant detail just one week ago
15 an event involving Jacksonville, Florida Police
16 Officer Pete Soulis who killed an armed offender after
17 being shot five times himself. This episode
18 illustrates how quickly a seemingly calm and routine
19 police shift can turn into a deadly, violent
20 interaction. Now that is not to say that all uses of
21 deadly force are legally or morally justified. Police
22 officers, like the rest of us, are imperfect human
23 beings. There are over 18,000 police agencies across
24 the United States and nearly one million police
25 officers. Let me say this loud and clear, those who

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choose to abuse their power and authority stain the
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1 service of the entire law enforcement community and
2 they must be held accountable. Furthermore, credible
3 representation of police officers requires the
4 unconditional condemnation of those few who abuse the
5 authority that so many officers exercise dutifully
6 and responsibly under the law. Deadly encounters,
7 while they cannot be eliminated, can be reduced. The
8 interim report of President Obama's task force on
9 policing in the 21st Century identified on several
10 recommendations the end action items, which if
11 adapted properly can greatly reduce police use of
12 deadly force. As you may know, I was appointed to
13 serve as a member of the task force by the president
14 on December 18, 2014. In less than ninety days the
15 task force held several public listening sessions
16 across the country. Heard the testimony of over 120
17 live witnesses and received thousands of pages of
18 written testimony and other documents. This report is
19 the process of a consensus deliberation. I understand
20 that the Commission has a full day of testimony
21 scheduled, and I suspect you're anxious to engage me
22 and other members of the panel with questions and
23 comments. So I would just direct your attention to
24 the recommendations and action items that I've

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

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

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

20 CHAIRMAN CASTRO: Thank you, Mr. Smoot.

21 Before I begin to invite questions from the
22 commissioners, I want to for the record indicate that
23 Commission Heriot joined us so you can make sure it's
24 in the transcript of the hearing and also for my
25 fellow commissioners, we just received an official

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1 confirmation from our Office of General Counsel that
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2 the our notational vote to confirm President Obama's
3 nomination of Mauro Morales (ph) as staff director
4 passed unanimously.

5 Commissioner Kladney, you want to take
6 the first question?

7 COMMISSIONER KLADNEY: Thank you.
8 Thank you, Mr. Chairman.

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

25 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

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1 Illinois, almost all police shootings or uses of
2 deadly force outside of the City of Chicago are
3 investigated by either the state, Illinois State
4 Police, which has a segregated Public Integrity Unit
5 that -- that does those investigations or by a multi-
6 jurisdictional major crimes unit, and in those --
7 within those multi-jurisdictional major crime units,
8 if there even are officers who are assigned to those
9 units from the agency where the incident occurred,
10 those -- those officers are not allowed to participate
11 or speak to the officers who are doing the
12 investigation. In fact, I think -- I think there's a
13 couple issues with regard to having private companies
14 do these investigations. One, I think there's an
15 analogy that can be made in terms of privatizing
16 corrections, which I think is a very dangerous thing
17 to do, and I think whenever we put a profit motive on
18 a function of government, perhaps you would come up
19 with results that are driven by profits and not by
20 substantially getting to the truth. And the second
21 thing which is something that was identified in the
22 President's task force report is the importance of
23 having police officers conduct these investigations
24 who have had exposure to the same types of force

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training and understand how these situations can
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unfold and what realistic reaction would be to them.

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

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

20 MR. SEAN SMOOT: I believe it's negotiated
21 into the contracts for various reasons. One, the
22 science behind how people remember things,
23 particularly those that are involved in a high stress,
24 adrenaline infused situation has shown that memories

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1 can often be inaccurate if they are immediate because,
2 for instance, if a police officer has a firearm
3 pointed at them, the research shows and the science
4 shows that they can get what is -- what is commonly
5 referred to as tunnel vision, and while they may be
6 focused on the barrel of the gun, their brain continues
7 to process other things that occur away from that focal
8 point, but those things will not come back to them.

9 That processing will not come back to them until their
10 brain catches up after -- after the incident. Some
11 departments where there is no contractual requirement,
12 the investigating agencies often require that officers
13 have at least two sleep cycles before they interview
14 them for their -- for their investigation because they
15 want to get the most accurate information that they can
16 from the officer in terms of what they've -- what they
17 saw, what they perceived and -- and what their physical
18 reaction.

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

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

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

13 COMMISSIONER KLADNEY: And their lawyer.

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

16 COMMISSIONER KLADNEY: I got just one more
17 area I want to cover because I know other people have
18 questions.

19 MR. SEAN SMOOT: Sure.

20 COMMISSIONER KLADNEY: You talked in
21 your statement, I believe, about nonpunitive
22 investigations. Did you talk about that?

23 MR. SEAN SMOOT: Yes, I did.

24 COMMISSIONER KLADNEY: You weren't -- there
25 didn't seem to be some clarity about whether those

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were privileged or because you made -- made mention
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about medical and aviation.

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MR. SEAN SMOOT: Yes.

COMMISSIONER KLADNEY: 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

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1 that I think it's essential that we do that because
2 ⁵⁶
3 what we're referring to is what is commonly called
4 assembly event reviews is because there is a great
5 deal of information that could be learned from that
6 type of a review, that type of an open, honest review
7 between the officers who were involved and other
8 parties who were involved in the incident that could
9 prevent future uses of deadly force or future uses of
10 force. And, you know, I think we really miss a lot by
11 not learning from those events and -- and we have a
12 very good guidepost in terms of medicine where the
13 federal government has actually created a safe -- a
14 safe place, a set of laws which is cited to in -- in
15 my written submission, so that those who work in the
16 medical field can learn from their mistakes quickly,
17 relatively, after they're made so that, you know, we
18 don't have surgeries that were in errors made,
19 somebody doesn't mark the right part of the body to be
20 operated on or -- or people notice that, you know, a
21 sponge is missing when they finish closing up a
22 patient. These are the types of, you know, I use that
23 -- those as examples, but obviously there are a lot of
24 things that I think we might miss from an analysis
25 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.

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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
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issues, I'd be very appreciative.

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

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

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

25 MR. MONTAGUE SIMMONS: Locally not anymore.

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

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

8 COMMISSIONER ACHTENBERG: Yes.

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

15 COMMISSIONER ACHTENBERG: Sure.

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

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

20 COMMISSIONER ACHTENBERG: Thank you very
21 much.

22 CHAIRMAN CASTRO: Commissioner Yaki.

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

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hearing today.

②

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

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

18 MR. SEAN SMOOT: So to -- if I could address
19 your comment, I would -- I would, first of all,
20 encourage you to look, there's a Dr. Lewinski who
21 testified before the President's task force, heads the
22 Force Science Institute, and they have done a
23 tremendous amount of -- of research, which is widely
24 available on their organization's website, and I'm

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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

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1 the question I wanted to address to Mr. Pasco and Mr.
2 Simmons and Mr. Fogg has to do with a different
3 aspect.

4 CHAIRMAN CASTRO: Mr. Vargas.

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

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

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

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

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

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

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apparently too high to qualify Hispanics to be

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1 selected. We believe that really that that is a must.
2 You have to fire your human resources officer, you get
3 someone who can identify and find where these good
4 candidates are and bring them in because without an
5 affirmative action program, we're not going to get
6 anywhere.

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

1 hoping for a more systemic shift.

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

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

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

19 CHAIRMAN CASTRO: Thank you, Commissioner
20 Yaki.

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

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1 community in Pasco?

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

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

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

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

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1 from personal experience, I had a young brother many
2 71 years ago was 16 years old. Got his driver's permit
3 and was driving his beater that my dad had just
4 bought him through the park to get comfortable, and
5 there was a small crack in the windshield.
6 Nonetheless, the police officer pulled him over,
7 threw him on the hood, cuffed him, took him to jail
8 and left the car there. When he found out it was my
9 dad's son, he said oh, Ray, I'm sorry. He knew my
10 dad. Well, if I knew it was your son, I wouldn't have
11 done it. Well, this was a Latino police officer doing
12 this to a Latino young person. So sometimes in the
13 community there is a greater fear of police officers
14 from your own community. Could you talk a little bit
15 about that nuance and how that interplays into the
16 5 larger picture that we're talking about today?

17 MR. MATTHEW FOGG: Certainly, Commissioner.
18 The thing with that, I believe, is as we say we all,
19 police officers have little jokes we're all on the
20 plantation, sort of meaning the paradigm of where
21 we're working, and from the top up, really from the
22 top down when we talk about how we are to do our
23 policing, if somebody is saying get your numbers up,
24 you got to get your numbers up. You got to -- we got
25 to see how many summonses you're writing or how many

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people you're locking up for the month, all of the

1 things that they ask us to do, and then they say now
2 don't go in those other communities and make this an
3 equal enforcement opportunity, just concentrate their
4 resources on those urban areas, then you're gonna have
5 I don't care if you're black or white, you're gonna be
6 in there trying to do your job because you're going to
7 be going after people, and what happens is that puts
8 this sort of strain on the black officers because the
9 black community, or and I'm sure in the Hispanic
10 community, they look at him as he's the sellout. He's
11 coming over here and locking us up because the
12 community knows we're not doing equal enforced
13 copping. They know we're not going and locking up
14 others and making this thing fair and just. So they
15 know that they're being the target. So that's what the
16 officer's dealing with. He's dealing with this sort of
17 paradigm that he's pushed into this sort of box that
18 breaks this promise, so we have to do here is we have
19 to make certain that, I always said it all along, if
20 the war on drugs was an equal opportunity enforcement
21 operation, where we was doing it over in the affluent
22 areas, it would have fixed itself a long time ago. All
23 of these problems that we're talking about today,
24 excessive force and everything, they

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25 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

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1 towards it. I met Officer Brian Murphy who was one of
2 the first responders at the Oak Creek Sikh Temple and
3 heard from him personally what he went through in order
4 to save lives, so I'm very cognizant of that, and when
5 I ran for Congress a decade and a half ago, the only
6 union to endorse me was the Fraternal Order of Police
7 because of the work we did together on violence
8 prevention, so I am uniquely aware and very respectful
9 of the work of the police, but having said that, you
10 know, clearly there's some issues here or we wouldn't
11 be here today and one of your comments in your remarks
12 you said we will never eliminate the police use of
13 deadly force, and as a concept I can understand that. I
14 think what we're trying to do here is figure out how we
15 can eliminate the unjustified use of police deadly
16 force, and when I was as an observer I attended our
17 Missouri State Advisory Committee hearing in St. Louis
18 County on this issue, it was asked of some of the
19 police officers that presented there why can't you just
20 shoot someone in the leg or in the arm, and the officer
21 said well, you know, we are trained to shoot at the
22 mass of the body, and I have some friends who are
23 police officers, and I asked them the same question
24 back home, and they said well, you know, our training
25 is to eliminate the threat.

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

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

25 In terms of when you -- when the officer

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

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1 think, that was put into place with the training
2 methodology.

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

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

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

18 MR. SEAN SMOOT: I think you've hit on a
19 very important point. Even in the most progressive
20 police training states, it -- the -- the standard for
21 training is annual qualification, which, you know,
22 means, under most standards, forty rounds fired at a
23 target, a paper target, and if you hit within the -
24 within the 10 square, thirty of the forty rounds, in
25 some cases as low as thirty, you qualify. That's it.

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1 Well, anybody who has worked in law enforcement knows,
2 first of all, that's totally unrealistic training. We
3 don't shoot at stationary objects. We certainly don't
4 shoot at stationary full frontal objects, and without
5 some simulation, without some realistic shoot/don't
6 shoot scenarios, even if you meet the training -- if
7 you even met the training qualifications of qualifying
8 once annually, I would argue you're not really well
9 prepared to deploy your firearm in a high stress,
10 highly volatile, fast action scenario, and that's the
11 kind of training that we need to ensure is mandatory
12 for officers on more than an annual basis.

13 CHAIRMAN CASTRO: Thank you, Mr. Smoot.
14 Mr. Fogg, and then I'm going to give it to the Vice
15 Chair.

16 MR. MATTHEW FOGG: Thank you, Commissioner
17 Castro.

18 One of the things, I was a member of the
19 SWAT team, and I've been involved in shootings, and I
20 remember there was a shooting in Miami we were
21 fighting -- I was fighting this guy, and I had my
22 weapon on me, and this was a fugitive, escaped felony.
23 We were fighting in this apartment, all over the
24 apartment, and my partner had a sawed off shotgun and
25 I never pulled my weapon out, even though I was

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1 fighting, physically fighting. Now our training
2 teaches us because I'm not supposed to really be
3 fighting because he might get a lick on me, punch me
4 and know me, take my gun and shoot me, so there's a
5 lot of discretion. The problem that I got here and
6 what I'm supposed to say when I see these incidents
7 all over the country and we got video now and we've
8 had a lot of training. I had sort of what Mr. Smoot
9 was talking about where we -our training involved
10 being on the SWAT team where we were using rubber
11 bullets shooting at each other, so it was really you
12 had a lot of high stress in shooting situations. The
13 U.S. Attorney asked me right after we ultimately shot
14 -- I didn't shoot him. They shot him. Accidentally the
15 shotgun went off while the guy was running. My partner
16 accidentally boom. We didn't kill him, and one of the
17 pellets hit somebody at the end of the hallway. Didn't
18 kill her. It just went through her lip and it wasn't
19 nothing deadly there, but the key was Assistant U.S.
20 Attorney, first thing he asked me, and we gave
21 statements right away, and he said Mr. Fogg I got
22 identify you because I need to know what happened. I
23 told him everything after I was fighting this guy. I
24 got one question for you, he said, why didn't you just
25 pull your gun out and just shoot him while you were
fighting him, and I stopped

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1 and I thought and I said I guess I didn't feel like my
2 life was in danger. He said oh, good answer, good
3 answer. The problem we're seeing today is why I'm
4 seeing these incidents. I'm like this officer didn't
5 have to shoot, but what we're told in our training is
6 if you do shoot, just say all the things they're
7 saying, I felt for my life, I was scared, I just --one
8 of my -- somebody had just gotten killed a couple of
9 -- six weeks ago, whatever. The point is you have to
10 be convincing that I used deadly force when maybe I
11 didn't have to, and then the second piece is why is
12 this deadly force being used often against people of
13 color. There is more to this than just simply
14 training. It's not -- I had great training. All the
15 guys I know had great training. It's our discretion.
16 Why are these people shooting these folks who are
17 people of color because there's a threat mechanism
18 there? There's some fear there that or somebody's
19 saying I don't have to put up with this guy doing
20 this to me. I can just shoot him like we saw that guy
21 running away from the officer and he just is calmly
22 shooting at this guy down in South Carolina, just no
23 second thoughts at all. That's really what the
24 problem is. It is not the training. It's what's in
25 our mind when we are releasing these rounds. That's

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1 all.
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2 CHAIRMAN CASTRO: Thank you, Mr.
3 Fogg. Madam Vice Chair.

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

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

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

20 MR. MONTAGUE SIMMONS: Not at all.

21 MR. FELIX VARGAS: Not a good idea.

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

25 MR. SEAN SMOOT: The only reason that I

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1 could see that you would prohibit taping wouldn't
2 necessarily be prohibit -- the prohibition of
3 recording, but perhaps how it's done so that it -- if
4 there were some kind of a limitation on how close you
5 could actually get to the officers when they're
6 handling a situation or something like that. We've
7 seen some situations, you know, just go online and you
8 can see situations where officers are attempting to
9 effect a lawful arrest and there are citizens who take
10 out their cellphones and are literally, you know,
11 holding it this close to the officer while they're
12 trying to effect an arrest, so I -- I was at a meeting
13 a few days ago and it was suggested, and I don't
14 remember what state it was, but -- but that there was
15 some legislation being proposed that there be like a
16 30 foot requirement, which would allow citizens to
17 exercise their right to videotape officers performing
18 their work, but also allow the officers --

19 VICE CHAIRMAN TIMMONS-GOODSON: Safety.

20 MR. SEAN SMOOT: Yes, in the interest of
21 safety.

22 MR. MATTHEW FOGG: The other piece is now
23 everybody's seen Cops, right, we've all seen the
24 video Cops. Cops are being filmed. They enjoy it and
25 they're going on instant calls. Radio is going,

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1 everything. So if we can do it in Cops, why can't we
2 do it across the board. That's my answer.

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

7 MR. MATTHEW FOGG: That's exactly right.

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

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

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

12 MR. MATTHEW FOGG: Witness protection.

13 MR. MONTAGUE SIMMONS: And I stand with
14 you, witness protection, but honestly, I would go
15 towards deployment. We have to start in the field of
16 how police are deployed to do their jobs. Too often
17 they're not actually being used for direct public
18 safety. Too often as a result of what he mentioned
19 before in terms of the war on drugs, they're actually
20 deployed looking for folks instead of actually
21 addressing actual crime. In the community I grew up
22 with, if there was a car that was broken into or
23 stolen, you had less opportunity to actually see any
24 justice in that crime than you would in just seeing
25 someone picked up randomly under suspicion of either

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1 being involved in a gang, involved in drugs, involved
2 in any one thing, but in actual public safety,
3 response to break-ins, response to theft, those things
4 very rarely got solved. Most of the resources of the
5 department were actually put toward deploying officers
6 to actually find and rake in suspects under the hope
7 that they actually may be involved in some area of
8 crime versus actually deploying them to respond to the
9 crimes that were actually being reported, so I would
10 start there, just in terms of basic functioning and
11 thinking about safety beyond policing, which I know is
12 actually a campaign in this city to actually realign
13 and think about how police are being used, but I think
14 that's absolutely right because there's a lot of
15 witnesses within the institution itself that can speak
16 to what's happening, and they're afraid to because the
17 institutions take the punishment.

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

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

24 VICE CHAIRMAN TIMMONS-GOODSON:
25 Yes, transformative change.

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

24 VICE CHAIRMAN TIMMONS-GOODSON: Ms. Lewis.

25 MS. TALILA LEWIS: I believe that what we

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

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

3 VICE CHAIRMAN TIMMONS-GOODSON: Thank you.

4 CHAIRMAN CASTRO: Thank you. Commissioner
5 Heriot and then Commissioner Narasaki will conclude
6 this panel.

7 COMMISSIONER HERIOT: Thank you, Mr.
8 Chairman.

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

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

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

21 MR. SEAN SMOOT: Certainly.

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

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1 tasers are very expensive? Is it because we have to
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2 go through a period of training? Why hasn't this
3 happened more rapidly than it has? I mean tasers are
4 new, but they're not that new.

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

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

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

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

18 MR. MATTHEW FOGG: Yes, if I think you're
19 trying to kill me, I want to make sure probably I'm
20 gonna kill you or stop you one hundred percent, and
21 the taser may not. Now I understand tasers should,
22 but we seen people been tased and still shot or still
23 were able to do things that we didn't think they
24 could. I just want to be clear that when we say using
25 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
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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,

1 too often people go to deadly force out of fear --
2

MR. MATTHEW FOGG: Yes.

3 MR. MONTAGUE SIMMONS: -- in stating
4 that they're actually in fear for their life.
5 Unfortunately, we lived in a time and in a place in
6 which that's actually enhanced by the length in which
7 we see race and skin often translates to increased
8 threat, increased fear, so one of the things we're
9 actually recommending is enhanced personal unarmed
10 combat training under the idea that if you're actually
11 training, if you actually feel comfortable in actually
12 using your body in combat, you might be less inclined
13 to default to a weapon and to default to thinking that
14 you're actually in fear for your life. It's actually
15 training, but one hopefully in adding that to the
16 culture you begin to weed out those who will
17 automatically by instinct. What we normally say is
18 typically we see two types, either you get boy scouts
19 or bullies. In our eyes there are those that actually
20 want to go into this and do the right thing, want to
21 serve the people. Those are boy scouts, but there are
22 those that come in with this inclination towards
23 violence, inclination towards using weapons and
24 hostility. If they're actually trained, hopefully
25 we'll see more folks come in with the inclination to

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actually do the right thing.

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

7 MR. MONTAGUE SIMMONS: There you go.

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

10 MR. MONTAGUE SIMMONS: That's true.

11 MR. MATTHEW FOGG: I know that I just have
12 to be able to articulate all of the things that I'm
13 going to get my story together later and do exactly
14 that, so that all I'm just simply saying to you is no,
15 we need psychological intervention before we even get
16 on that job. It has to be extreme psychological
17 testing and understanding what a person's purpose is
18 in a reason because again, why should we be shooting
19 everyone at the same rate. It shouldn't be this rate
20 of shooting people of color more than others and I've
21 been in shootings where I have seen he didn't have to
22 shoot. What did he shoot, and then of course he's
23 going to articulate well, I was afraid; I was scared,
24 even if those things really wasn't the reason they

1 shot. So that's the concern that I have here.

2 Officers are shooting when they know that guy was
3 running away from the man in South Carolina. I
4 guarantee you when they sit down, he's gonna say all
5 kind of things that he felt and believe the reason why
6 he fired his weapon, and we need to address that, and
7 that's a psychological issue.

8 MR. MONTAGUE SIMMONS: Absolutely.

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

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

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COMMISSIONER NARASAKI: Thank you, Mr.

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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

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1 asked the police directively to hit jaywalkers in this
2 particular community because of a series of recent
3 pedestrian deaths. He was beaten after he tried to
4 walk away because he didn't understand the police
5 instructions who was trying to write the ticket and
6 that's, I think, an example of everyday things that
7 somehow escalate to something larger when they really
8 apparently shouldn't be escalated to that level. We
9 know that police risk their lives every day, but they
10 also need to have accountability measures that takes
11 into account their concerns about their own safety and
12 the safety of those around them. Community members
13 need the police to protect them and enforce our laws,
14 but they need to be able to trust the police that
15 they're gonna partner with us effectively in that job,
16 and we understand that police are in danger of losing
17 the legitimacy and cooperation they need if the
18 community cannot trust them, as we've just heard. The
19 murders of the NYPD officers, Wenjian Liu and Rafael
20 Ramos, highlight the dangers that our police face
21 every day and the shooting by NYPD officer, Peter
22 Liang, of Akai Gurley innocently walking up the stairs
23 with his girlfriend shows the danger that minorities,
24 particularly African Americans and those with
25 disabilities face everyday. The tragedy there

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1 apparently was at least in part the result of two
2 rooky cops, perhaps without sufficient field training,
3 being thrown into NYPD's most perilous assignments,
4 patrolling the dark stairwells of a high crime
5 project in order to stand the rise and shootings of
6 police public housing. Again, good intentions, but
7 unfortunately bad result. And I think it's important
8 for us to remember that both black and whites matter,
9 and the challenge that I want to put to you all in
10 this panel is, as I said earlier, we've been having
11 this conversation. Some technology is new. We have
12 tasers now. We have video, you know, affordable on-
13 body cameras, but other than that it seems to my that
14 the biggest issue is cultural change, how the police
15 look at policing. And what is it that is going to
16 cause a cultural shift that all of you seem to agree
17 need to happen? You know, when you talk the blue
18 wall, I can see how that happens. If you are
19 protecting someone's back everyday, you're gonna have
20 their back. You're gonna give them the deference of
21 their opinion because your buds. How do you break
22 that down, and when you talk about having meaningful
23 witness protection, what does it actually look like?
24 So that is what I'm very interested in this
25 transformative issue, and I think what we have to

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1 transform is the culture because you can have every
2 kind of protocol that looks pretty on the books, but
3 if people aren't actually going to follow them with
4 the right intent, I think we're not going to have any
5 different results.

6 MR. MATTHEW FOGG: You know, I was just
7 going to say that, you know, a lot of people, remember
8 we had a situation in New York here where the guy was
9 sodomized by the plunger, everybody was saying this
10 was a horrific act, but everybody missed the point
11 that the police officers brought him into the police
12 station, had him in the bathroom, which means they
13 knew that other commanders and other people could come
14 in to see him. That's what I was concentrating on. The
15 other day when we had half the police department in
16 New York turn their backs on the commander-in-chief,
17 that should tell everybody that is a culture out of
18 control. So how do we get that culture into control.
19 The first thing you have to do is bring in people who
20 are in leadership and hold them accountable. They've
21 got to be held accountable to the point that when
22 something happens down that rank and file, you see it
23 in the army all the time, let somebody get out of
24 control in that rank and file, that commander is gone.
25 So when he knows his back is

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1 against the wall, he's gonna make certain that his men
2 are doing it by the book as much as possible and
3 making certain that training and everything is
4 constantly saying you have to do it by the book the
5 way we've been taught to do it, whether you like it or
6 not and not none of that stuff when you came out of
7 the academy like I heard I know you learned all that
8 training, but this is how we do it here. When we saw
9 that guy get beat crazily out in California, everybody
10 see the helicopters, the officers know they're being
11 filmed and they're still like kicking and punching
12 this man and kicking him in the groin and everything
13 you can think of and all of America is watching this
14 on video. We saw Eric Garner get choked to death in
15 New York. They used a choke hold that was already
16 outlawed by the police department, but yet the man was
17 -- the officers weren't even indicted. So what I'm
18 saying to you is we got to first attack it from that
19 perspective that the office, command office have to be
20 held accountable, and when something like that
21 happens, they have -- they gotta go. Just like in the
22 Secret Service, we've been hearing what's happening in
23 the Secret Service, first thing we hear they got rid
24 of the first commander; they brought in a new person.
25 Now that person's under the gun because that culture

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1 behind him has to change, and you got to really put
2 some real heat on the commanders to say you will
3 change it or you will lose your job. I think that's
4 first.

5 MR. SEAN SMOOT: If I --

6 CHAIRMAN CASTRO: Mr. Vargas, and then Mr.
7 Smoot, and then we need to wrap up because we have the
8 second panel, some of whom have to leave a little
9 earlier.

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

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

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

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

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

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

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

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

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

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

15 I think the first way you begin to rank and
16 file to buy in is by inviting them to the
17 conversation, which doesn't happen, and I think
18 something that holds out significant hope for me to -
19 to transform culture, and maybe it has to be done
20 department by department, state by state, I hope not,
21 but it might, is it the collaborative reform process
22 that the Cops Office started doing in various
23 jurisdictions. You know, the culture of policing needs
24 to be changed from a sentinel mindset, a soldier
25 mindset, a military mindset to institution that at its

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1 core is based on procedural justice and legitimacy,
2 and that procedural justice and legitimacy has to be
3 inside the department as well as outside. You heard
4 earlier testimony about how people were treated
5 differently within the department. How would you
6 expect somebody who works in that department to go
7 outside and treat people the way they should be
8 treated, and so things like quotas, profiling based
9 on race, sex, sexual orientation, disability, those
10 things degrade not only procedural justice in the
11 public, but procedural justice and legitimacy within
12 departments, and -- and so I think that's really --
13 we need to get at the core and it's got to start with
14 collaborative processes now that include police
15 officers, line rank and file officers, and we need to
16 start training officers from day one at the academy
17 on a training model that's a guardian training model
18 based on procedural justice and internal and external
19 legitimacy. Thank you.

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

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

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

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

23 MR. CEDRICK ALEXANDER: Yes.

24 MR. BOB METZGER: Yes.

25 MR. EVAN BERNICK: Yes.

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1 MS. PAMELA MEANES: Yes.

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2 CHAIRMAN CASTRO: Thank you. Mr.

3 Alexander, please proceed. You each have seven
4 minutes. The lights will let you know when it's
5 time to end.

6 MR. CEDRICK ALEXANDER: Thank you very much,
7 and I promise you I won't take that much time in the
8 interest of and respect everyone's time here. But let
9 me start by saying this, is that I've been in policing
10 for over thirty-eight years now and have worked in a
11 variety of environments, both at the local, state and
12 federal level. Policing today is at a crossroads in
13 its history, as we all well know. There has been a
14 long history of separation between police and
15 community ever since the beginning of time and that
16 continues to this day; however, I think it's important
17 to note too that much progress has been made as it
18 relates to policing community relations in light of
19 many of the things that we see and hear and talk about
20 here today. I think that for myself and in the time
21 that I've spent in currently as public safety director
22 in a major county in Georgia in serving as president
23 and also as one of my prior colleagues up here, Mr.
24 Smoot, serving on the Presidents' task force on 21st
25 Century policing really gives me an

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1 opportunity to share from a variety of -- of positions
2 my thought in terms of how and where I think policing
3 is going as we continue to move into the 21st Century.
4 We are beginning to see, quite frankly, as we talk
5 about police officer and their training, training is a
6 very important aspect. I'm quite sure that we all can
7 adhere to and say that that's important to officers
8 doing their jobs, but we're seeing also a very
9 different officer today. Many young people who are
10 coming on this job are not here to stay twenty and
11 thirty years. Many of these young people may stay
12 anywhere from three to five to seven years and may
13 move on to another profession so by the time that they
14 begin to adapt to this profession for many of them
15 they will have opportunity and move on and we're also
16 seeing many young people today too that are far more
17 educated than in the past which allow them
18 opportunities to do many other things, and I think we
19 also have to take into account for almost over the
20 last ten years as well too, as we've seen a very
21 struggling economy in this country, a lot of men and
22 women, and this is more anecdotal observation than it
23 is scientific, and it is from talking to a number of
24 officers both in my department and across the country
25 as well too, many young people have gone into law

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1 enforcement not necessarily because that's something
2 they wanted to do, but many of them needed a job and
3 they found themselves in a very noble profession in
4 which they end up having a great deal of fondness
5 about and many have stayed, but as we're beginning to
6 see the economy begin to turn around, I'm beginning to
7 see in my own department young men and women who are
8 deciding to go after their careers in which they
9 started off to do in college anyway. So I think all
10 those things are great. I just think for us as we
11 begin to talk about policing in a 21st Century, I
12 think it becomes important that we also have to look
13 at generational difference, and one thing that I am
14 very challenged by that I hear so often is that when
15 we talk about challenging and policing, it is so easy
16 to paint everyone with the same brush, and I would ask
17 that we all caution ourselves to that, and I say that
18 to my friends and colleagues across the country
19 because all police officers are not the same. There
20 are those out there that are doing this job every day
21 and they do it very well. They save countless lives.
22 Unfortunately, those are the stories that we may not
23 hear about, but usually the most egregious and
24 grotesque stories we do hear about on a frequent basis
25 and then we tend to want to cascade the whole police

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1 department as being a horrific profession, but I think
2 it's important to note as well too that we're asking
3 police to do more today than we ever had in the
4 history of America as well. We're asking them to know
5 about this and to be experts in that and to do all the
6 things in which no one individual for a 30 thousand
7 dollar a year starting salary, quite frankly, is going
8 to be able to do, and that's just the hard core facts
9 of it all. So yes, we can train, but we also put
10 police officers in a position, quite frankly, where
11 we're really asking them to do a lot, a lot and we're
12 asking them to solve all of this -- of this nation's
13 social issues that began before they were born, that
14 continue to exist today and will continue to exist
15 when they leave the profession either through
16 resignation or retirement. We are going to have to
17 change policing. We're going to have to change our
18 attitude toward policing in terms of what the job is
19 and how complex it is. We're going to have to train
20 officers. We're going to have to, first of all, we're
21 going to have to recruit the right kind of people for
22 this job. That's first and foremost. What do they look
23 like, and when you do that when we say we want better
24 trained officers, we want more educated officers, we
25 want officers to be experts in mental

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

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1 positive way, in a way that's going to be meaningful 110
2 and helpful and not start over again, but starting
3 from pillar one, building trust and legitimacy right
4 down to pillar six where we talk about police well
5 being. Police well being is how we recruit, how we
6 provide psychological training to police officers or
7 provide psychological support, I should say, for
8 police officers. We are putting our men and women
9 every day in very high stress situations, and in light
10 of all that we have seen over the last several months,
11 shootings and incidents that we all question that we
12 know, quite frankly, based our own observation and
13 experience just downright wrong, but a system in this
14 country still has to adjudicate that, and we'll trust
15 that they'll make the right decision. Thank you.

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

18 MR. BOB METZGER: Thank you very much.

19 CHAIRMAN CASTRO: No, try it again.

20 MR. BOB METZGER: Is it on now?

21 CHAIRMAN CASTRO: It is.

22 MR. BOB METZGER: I want to thank the panel
23 for inviting me here today. I would like to say I'm
24 not gonna just read my script. You've already got
25 that. What I'd like to say, though, is I've been in

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

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

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

21 I think another thing from leadership that
22 sometimes we lack or sometimes not lack, but we forget
23 about it and I certainly have to remind myself from
24 time to time is we're not invalid as leaders. None of
25 us are. We all make mistakes. We also have to

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1 realize that because policing is a constantly evolving
 2 process that we have to be ready for those changes,
 3 and I think one of the those things in listening to
 4 the prior panel and in what you're doing here today is
 5 one of those opportunities for me, certainly as a
 6 leader, is to listen, observe, take some of these
 7 things back to my department when I go back and do
 8 that. We meet three times a week with all of my
 9 command staff and they're given very clear direction
 10 from me as to what type of policing we're going to do
 11 in the City of Pasco, and I think that needs to be in
 12 every city, but I can also tell you, having been a
 13 chief in five different cities, that every city's
 14 different. There's no cookie cutter approach to
 15 policing in any one state and it's all different and I
 16 have to make sure that I take my background and
 17 experiences and not try to cookie cutter them into the
 18 city that I'm in now, but rather take what I learn and
 19 try to adapt it within the City of Pasco and learn the
 20 City of Pasco.

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

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

22 I'd also like to say that there is a
23 difference between, I know there's been some comments
24 made about how long it can take for an officer to be
25 interviewed and I know that was brought up by the last

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1 panel. In my case I've been advised by both the
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2 prosecutor and our labor attorney to not allow the
3 officers to be interviewed until the criminal
4 investigation is done. They all have attorneys, so
5 that has to be worked out through that process. And I
6 realize you're saying you're gonna tell me well, why
7 didn't you go quicker. I've been advised, and that's
8 what I have to go by. So again we all get advice. One
9 of the things that I'm doing is we've also sought the
10 advice of outside experts in the use of force to look
11 at not only our training program but this incident as
12 well as others to see what we can do as a police
13 department to deal with these situations to make sure
14 they don't occur again.

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

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

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

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

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1 It's a question that many Americans are asking
2 themselves in the wake of tragic and horrific deaths
3 of Eric Garner, Tamir Rice, Walter Scott, Eric Harris
4 and others. It's a question that the Institute for
5 Justice is familiar with. In 2005 we litigated the
6 case of *Kelo v City of New London*, which dealt with
7 the question of whether a private developer
8 exercising the power of eminent domain to bulldoze an
9 entire working class neighborhood for so-called
10 economic development. The Supreme Court said yes, and
11 Americans were outraged. How could that happen in
12 this country, they asked. Now Susette Kelo, who lost
13 her land, might not seem to have much in common with
14 Eric Garner who lost his life, but both were the
15 victims of unchecked government power. When you see
16 unchecked government power, you see people losing
17 their liberty, their property and even their lives.
18 Today I want to talk to you about one of the most
19 potent sources of unchecked government power in this
20 country today, an example of judicial policymaking
21 that makes it effectively impossible for police
22 officers to be held accountable for constitutional
23 violation. In what follows I will summarize,
24 criticize and call for the appellation of qualified
25 immunity. Section 1983, the Federal law that enables

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1 citizens to sue for constitutional violation is broad,
2 unequivocal and unambiguous. It says that every
3 person acting under color law who causes a deprivation
4 of any rights secured by the constitution of laws
5 shall be liable to the party injured, shall be liable.
6 Section 1983 embodies the foundational principle of
7 justice that resonates with Americans what's now
8 referred to Marbury V Madison. When there is a right
9 there is a remedy. For decades now we have had rights
10 without remedies. The 1967 case of Pierson v Ray the
11 Supreme Court held that police officers sued for
12 constitutional violations can raise qualified immunity
13 as a defense and thereby escape paying out of their
14 own pockets, even if in fact they violated the
15 constitution. This position was unabashedly policy
16 oriented. It was thought that government officials
17 would not vigorously fulfill their obligations. They
18 can be held accountable for actions taken. Under
19 current law the general rule is that victims of rights
20 violations pay the cost of their own injuries. In
21 practice, qualified immunity provides a near absolute
22 defense to the most outrageous conduct and sometimes
23 not even that. The 9th Circuit has held that throwing
24 a flashbang grenade blindly into a house isn't
25 outrageous enough. Just last year in the Supreme Court
decided that

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1 firing fifteen bullets at a motorist is a reasonable
2 method to end the motor's plight from the police. So
3 much for every person shall be liable. Qualified
4 immunity shields police misconduct not only from
5 liability, but also meaningful judicial scrutiny.
6 Private lawsuits are an essentially tool in
7 uncovering the truth about police misconduct. The
8 discovery process conceals information that make
9 broader policy changes within police departments
10 possible. At trial genuine, traditional engagements
11 and impartial evidence-based determination of the
12 constitutionality of the officer's actions can take
13 place. Qualified immunity such a search for too
14 short. If qualified immunity is raised before trial
15 and the judge denies it, that decision is immediately
16 appealable. If it's granted discovery stops and there
17 is no trial on the merits. Now what needs to happen?
18 Simply put, qualified immunity must be abolished. It
19 should be replaced with a rule of strict liability
20 for bona fide constitutional violations. There are a
21 variety of ways to get there. First, officers can be
22 held personally liable for any rights violations and
23 pay out of their own pocket; they carry personal
24 malpractice insurance just like lawyers, doctors and
25 other professionals. Second, police departments could

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

22 CHAIRMAN CASTRO: Thank you, Mr. Bernick.
23 Ms. Meanes.

24 MS. PAMELA MEANES: Thank you, Commission.
25 Is it on?

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1 CHAIRMAN CASTRO: I believe so, yeah.

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

4 CHAIRMAN CASTRO: Try again.

5 MS. PAMELA MEANES: Thank you, Commission,
6 for having us here. My name is Pamela Meanes. I'm
7 president of the National Bar Association, and we
8 believe that what you're doing here today is gonna
9 make a real difference in continuing to shed light on
10 what has become America's epidemic. There are some
11 positions in our country, in our society that require
12 at least the illusion of impartiality. Judges and
13 police officers who enforce our laws are among those
14 positions. If we trust an individual to have the
15 authority to take away a person's freedom or even
16 their life, we want to have all of the assurances
17 possible that you will not do that based on your
18 negative feelings about a person's race and ethnics.
19 San Francisco police public defender, Jeff Adachi
20 said that police departments suffer from a culture of
21 racial and prejudice bias. They need to be exorcised.
22 Then he ended his comments by saying how do you
23 legislate racism. The National Bar Association's
24 response is you cannot. You can't pass a law that
25 will make someone like someone. You can't pass a law

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1 that will make someone trust someone. As a result the
2 National Bar Association is putting forth we don't
3 believe that the laws that we are asking to be
4 implemented is all of the solution, but it is
5 absolutely a part of the solution to what we believe
6 is the problem because we believe you can't legislate
7 racism away, because we believe that at the core of
8 the problem of policing that we see is a broken
9 educational system and the failure of this country to
10 deal with the issue of racism, and so we believe that
11 laws should be passed and weed out individuals that
12 don't deserve to be on the force. Eliminate them from
13 the beginning or keep them in the police squad until
14 they're ready to hit the field. The laws we're
15 offering you may say why did you separate them on the
16 level you did. Well, we know if you put too much in
17 one bill, it will never get passed, so there were some
18 things we looked at the local level and said these are
19 the things that can be immediately passed by a city
20 council. Stricter mental health testing, you heard it
21 said here today. What does that look like? There is
22 psychological testing in some locations for -- that
23 weeds in and weeds out biases; however, there's also
24 tests on the internet that tells you how to pass those
25 tests. There should be a standardized strict test

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1 that looks at those issues and deals with the racial
2 biases and individuals that have a propensity toward
3 it should not be given a gun to go on the street.
4 They can stay in a squad room and answer calls
5 because this is a matter of life and death. Stricter
6 mandatory deescalation of force training, we've
7 talked to officers across the country who say we get
8 trained on that, but when you see the flurry of
9 videos that came out this weekend when white cops are
10 confronted with white individuals and instead of
11 drawing their guns, they're backing up from them and
12 they're not immediately going to shooting, but when
13 you see individuals in the African American community
14 where the first response is actually to draw the gun
15 and to shoot, that tells you there is a different
16 style of policing within the first community and
17 white community. Prime example, when a white man in
18 South Carolina can go into a Walmart, steal a cash
19 register, paralyze the store, lead the police on a
20 high-speed chase, take his gun, try to struggle with
21 it and the cop tasers him, but a black man standing
22 in the Walmart in Ohio is on the phone with his
23 girlfriend and there are immediate shots fired, that
24 tells you there's a difference in policing. Mandatory
25 race-based training, and I'm not just talking about

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1 give a course and do some simulation. I'm talking
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2 about get to the heart because you've heard the
3 stories of the e-mails that have come out from the
4 fourteen officers in San Francisco, but what about the
5 gentleman in West Charleston, in West -- West Virginia
6 where he dressed his daughter up in his police outfit
7 and had her dancing around to the national anthem of
8 the Ku Klux Klan, and then his response was I should
9 not be fired because if you put my racism on a scale,
10 my racism at a 10 and other people in the department
11 is at a 20 or 30. So on that local level, mandatory
12 mental health testing, strict racial training and also
13 deescalation of force training. On a state level we're
14 seeing independent investigations of police-involved
15 shootings, independent prosecution. We do not believe
16 that a sister organization can't investigate unless
17 they're willing to and they go through the testing of
18 actually saying that there is no relationship with
19 that department and there's a weeding out in the law
20 of anyone that is connected with them. We don't
21 believe in the case of the prosecutor that it's
22 necessarily the prosecutor that's the problem, but the
23 real problem here you all and the reason we fear that
24 in South Carolina even when you see, even when you see
25 with this video that Officer

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1 Slager making out is because of the law that was
2 established in Tennessee versus Garner. That law says
3 that an officer can elevate force to that degree which
4 he or she believes is reasonable to stop the force,
5 that's in front of them. You heard these panelists
6 talk about it. Why does an officer say, why do they
7 say I fear for my life, because Tennessee Garner gives
8 you the right to say that. It gives a script and we
9 fear that when a standard is that subjective, that can
10 only can changed by the Federal Government. You see a
11 lot of body camera laws, but we caution you to say
12 that's not enough. Put some accountability on those
13 body camera laws. Make it a felony for an officer to
14 tamper with the law. When you hold people accountable
15 and they have the possibility of losing their freedom,
16 it will change how they act. Lastly, make it a felony
17 for another officer to stand next to an officer, see
18 them commit police brutality and don't to a doggone
19 thing about it. That's why we say that Officer Michael
20 Slager should be arrested because he stood there and
21 he saw or at least heard something fall on the floor,
22 and his report said nothing about it. Really quickly,
23 if we didn't have the video camera in South Carolina,
24 the narrative that was told for three days by the
25 police department, the National Bar Association

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1 doesn't applaud that department, but they said it was
2 a traffic stop gone bad until we saw video to the
3 contrary.

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

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

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

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

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

22 CHAIRMAN CASTRO: A what, I'm sorry?

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

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

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

23 MR. BOB METZGER: Thank you.

24 CHAIRMAN CASTRO: -- and that you're
25 answering our questions, so that doesn't go

1 unappreciated or unnoticed.

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2 MR. BOB METZGER: Thank you.

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

16 MR. BOB METZGER: I'd be glad to. There
17 are two crisis intervention trainings in the state
18 of Washington. One is a forty hour training and
19 that's to train, get people involved in a team
20 effort, utilizing other police departments and so we
21 have to send some officers to that. It's a week long
22 training. We then have a three hour basic training
23 that we've put all officers through. The only ones
24 that were not are the ones that might have been on
25 vacation or out sick that day. I think we have all

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but three or four of our officers that have been

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

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

19 CHAIRMAN CASTRO: A couple more questions
20 for you before I turn it over to my colleagues. I'm
21 referring to the local federal officials of the other
22 law enforcement, you referred to them on several
23 occasions as my partners and then you're telling us
24 that you're being told by these partners that you
25 can't interview the individuals involved in this

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1 criminal case for a criminal investigation until after
2 the investigation is done, so two fold there, do you
3 think that there is some sort of inherent conflict
4 when you're dealing with people who you already work
5 with as partners to independently look at an issue
6 like what happened with Mr. Zambrano, and secondly,
7 don't you have some discretion of your own? You're
8 conducting a criminal investigation. You should as
9 the investigator decide when you need to investigate
10 and who you need to ask when; shouldn't you?

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

15 CHAIRMAN CASTRO: Your prosecutors are
16 the county prosecutors?

17 MR. BOB METZGER: Right, right, and he had
18 asked us if it would impair the criminal investigation
19 if we were to interview the officers before we do our
20 Gary interview before we do the Miranda interview. Our
21 labor attorney, not the union labor attorney, I'm
22 talking about the city's labor attorney has advised us
23 to interview the officers before the criminal
24 investigation is complete is not appropriate and would
25 interfere with our ability to, for example, terminate

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1 later on if we had to under Washington State Labor
2 Law. So that's what I'm talking about when I talk
3 about who's -- who's advising me.

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

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

19 CHAIRMAN CASTRO: So you, probably like all
20 of us here, you've seen that video of Mr. Zambrano
21 many times and, you know, I remember when I first saw
22 that video, there was some news commentary saying,
23 well, you know, the guy was throwing rocks and then
24 you look at some of the other cases, Rob Pedro, he
25 stole cigarettes or he was selling fake cigarettes.
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You know, sometimes the victim is not necessarily the

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1 most upstanding citizen, but does that give police
2 officers the right to use the kind of deadly force
3 that you see in the video in particular in Pasco?
4 What are your thoughts about that video when you saw
5 it?

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

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1 get a call to a person's house and they said this
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2 person, that they saw somebody climbing in a back
3 window. So I go in. Sure enough there's somebody in
4 the house. There's a young lady. She said this is my
5 mother's house. The name is different. Mother just
6 moved in the neighborhood. They didn't have
7 cellphones back then. Neighbor just saw her going in.
8 If that's all I took was just that she broke into
9 that house and didn't do anything else, she'd be in
10 jail. As it was I -- something about her, I said we
11 got to do more investigation. We checked her out.
12 Turned out later on yes, in fact that was a daughter.
13 She was in college, had come home. Mother didn't know
14 it. Didn't have a key. Had to come in through a
15 bathroom window that she knew her mother always left
16 open. So again, it's that piece of the investigation.
17 One thing I've learned over forty years is you just
18 never know what all of the information is going to
19 show. It's very time consuming. Trust me, as a police
20 officer, there's nothing worse than sitting back and
21 waiting for all of that information to come forth,
22 but until I get all that I'm doing a disservice to my
23 community, to my police department or police in
24 general by jumping to conclusions based on a twenty
25 second video. That video alone, yes, it's not good,

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1 and I'm not gonna try to defend it or the officers
2 that did it, but there's a lot more to the
3 investigation. When it all comes out, then all of that
4 has to be taken into consideration, then what the
5 prosecutor decides what to do criminally and what I
6 decide to do within the department.

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

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

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

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

20 MR. BOB METZGER: Not at all.

21 CHAIRMAN CASTRO: Do you believe that there
22 is at least some sort of subconscious bias in the
23 police department that may treat African American or
24 other minorities differently in scenarios like that
25 than non-minorities?

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1 MR. BOB METZGER: I think everybody has
2 some innate problem with that, if you will, not just
3 police departments. I think people in general,
4 unfortunately, so to say no, there's absolutely not,
5 no, I'm not going to say that. Do we try to temper
6 it, absolutely.

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

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

16 CHAIRMAN CASTRO: What about specific
17 training for your officers?

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

20 CHAIRMAN CASTRO: Cultural sensitivity,
21 language.

22 MR. BOB METZGER: Cultural sensitivity, we
23 have language. About a quarter of our officers are
24 fluent in Spanish, and so we have them do some of the
25 basic commands in Spanish. We each carry a cellphone,

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1 so we have a language line that we can use, and then
2 we also make sure that our bilingual officers are
3 spread out throughout the districts and throughout the
4 shifts, so that there's always one available to come
5 and assist or to make a phone call or whatever needs
6 to be done to help other officers who don't have
7 bilingual skill.

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

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

11 CHAIRMAN CASTRO: Why not?

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

15 CHAIRMAN CASTRO: Commissioner Kladney.

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

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

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

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

25 COMMISSIONER KLADNEY: And do you take a

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

3 MR. BOB METZGER: For?

4 CHAIRMAN CASTRO: Mental health.

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

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

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

14 COMMISSIONER KLADNEY: Have you ever
15 heard of early intervention systems?

16 MR. BOB METZGER: Yes.

17 COMMISSIONER KLADNEY: You don't have one
18 in your city?

19 MR. BOB METZGER: No.

20 COMMISSIONER KLADNEY: Is that because
21 you're a small department?

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

24 COMMISSIONER KLADNEY: Do you believe
25 that your investigation should be made public?

1 MR. BOB METZGER: It will be when it's all
2 completed.

3 COMMISSIONER KLADNEY: Is that the law or
4 is that part of your philosophy?

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

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

17 MR. BOB METZGER: Well, you could have.

18 COMMISSIONER KLADNEY: I'm sure I could.

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

20 COMMISSIONER KLADNEY: It is?

21 MR. BOB METZGER: It is online.

22 COMMISSIONER KLADNEY: Thank you.

23 CHAIRMAN CASTRO: Commissioner Yaki.

24 COMMISSIONER YAKI: Thank you very much,
25 Mr. Chair. One quick question for Chief Metzger and

1 one that will be for everyone else. I'm very curious
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2 about the advice that your attorneys have given you
3 about the officers being questioned, and I'm
4 especially curious because if I've heard your
5 testimony correctly, the FBI is somehow involved in
6 this investigation.

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

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

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

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

16 MR. BOB METZGER: Yes, I have.

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

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

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1 way we run the Special Investigations Unit is I am not
2 in charge of it. It's an independent investigation in ¹⁴¹
3 my department. I did ask the FBI to come in. I asked
4 DOJ to come in. They made contact. I don't know what
5 their contact has been with the Special Investigation
6 Unit, as again, I am not interfering or involved with
7 that.

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

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

12 COMMISSIONER YAKI: Did you have a quick?

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

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

25 COMMISSIONER KLADNEY: Thank you. I just

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

3 COMMISSIONER YAKI: Thanks. When you were
4 talking about, there's something that was sort of
5 resonating in my mind when you were talking about how
6 much time can I devote to training, how much -- how
7 much can I deal with the issues of -- of trying to get
8 my officers to -- to be able to speak Spanish, how do
9 I get them to deal with issues of the -- of the
10 mentally ill, and it -- it goes to me to the question
11 raised by the first panel, which is the -- the
12 reflection of the police -- of the police force being
13 a reflection of the community itself, whether in
14 diversity, whether in residency, and I'd like to get
15 your thoughts and then the thoughts of others as well
16 because this is becoming to me an increasingly
17 important point. First of all, what are you doing in
18 terms of attempting to or if you are doing anything, I
19 shouldn't presume, with regard to diversifying your -
20 your police force not just in terms of whether they
21 can speak Spanish or not, but whether or not they can
22 be represented by other neighborhoods or other
23 communities that you're going to have to police, and
24 second -- and secondly, you know, to the -- to the
25 others here and to Mr. Alexander and to Ms. Meanes, I

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1 want to throw that open to you as well as to how
2 important is diversity issues and what suggestions you
3 might offer to Mr. -- to Chief Metzger on how to
4 achieve that in Pasco? So Chief, if you could.

5 MR. BOB METZGER: Sure. Real quick, we do
6 several things, actually. We have school resource
7 officers in each of our high schools that interact
8 with the kids. From that we've built a police
9 explorer program, open also to our young Hispanic
10 males and females and part of that -- it's through
11 the Boy Scouts, and part of that is our attempt to
12 get them interested in policing. Some of them do. In
13 fact, we have one young lady right now who's in the
14 process of taking the test. We then have a very
15 active police reserve program. It's not like the one
16 perhaps that you've seen recently in the news. They
17 do not go out on patrol by themselves. They basically
18 are there for special events working with an officer,
19 but it's also a training ground. There is an academy
20 for that reserve program, and they come out certified
21 by the state as reserve officers and then they're
22 allowed to work with officers not by themselves. That
23 also has fifteen members. Thirteen of them are
24 Hispanic and a couple of those, one of those just
25 took the test to become a police officer. We've also
had a couple of

1 our explorers that are currently in our local
2 144
3 community college, both of whom have told me that
4 they're interested in taking the test. We, of course,
5 are a civil service organization, meaning there is a
6 test and so we have encouraged, and in fact the last
7 test was done in Pasco. We have also, we're going to
8 our Civil Service to give additional points. They
9 haven't done it yet, we're working on it right now, to
10 get the Civil Service Commission to award extra points
11 for both being a police explorer and for being a
12 police reserve officer so that those people that are
13 local and reflect the community can have an extra
14 incentive, if you will, to become members of the
15 police department. So those are things that we're
16 trying to do locally to increase. I will say out of
17 the last test we had, we had about seventy people take
18 the test and we only had four or five Hispanics that
19 came in to take the test.

20 MS. PAMELA MEANES: This may come as a
21 surprise, but the National Bar Association is going to
22 caution this Commission to believing that residency
23 requirements in affirmative action programs solve the
24 problems that we see in police departments. Part of
25 our 25 state initiative that we have against police
brutality involves us going to into the communities

1 that we're looking at and do you know your right forms
2 and often we do and we all the time invite the police
3 to come in with us because the purpose of this is to
4 train the community on how to interact with police
5 departments, educate them on you get pulled over by a
6 stop, make no sudden stop. Sit still. There are
7 certain things you should do and not do. I will tell
8 that what has become so disheartening and evident is
9 that some of the most horrific remarks that have been
10 made as it relates to race and the denigration of
11 African Americans have been done by black officers. I
12 was in Arkansas and the chief of police who had only
13 been there for less than six months stood up and began
14 to reprimand the individuals in the audience about
15 being involved in the sexiness of the Mike Brown case
16 when they should be taking care of home. Then
17 proceeded to rattle off a name of black-on-black
18 crime, things we hear Rudi Gillian say on the air, and
19 he said if you want to solve the problem, solve it in
20 your own backyard, but yet he didn't rattle off the 85
21 percent of white-on-white, that it's actually going up
22 instead of going down. That's black-on-black crimes.
23 Then said at the end of this program get yourself
24 together because I'm tired of scraping your kids off
25 the ground. That officer would have never said that in
a

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1 white community when we were doing a know your rights.

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2 Went to Jackson, Mississippi with the U.S. Attorney,
3 African American, the chief of police, African
4 American, the sheriff, African American, and we were
5 teaching 200 young black men about their
6 constitutional rights and we give out these little
7 cards that say here is what the constitution actually
8 allows you to do. The chief of police of the -- of
9 the sheriff, the sheriff in that area stood up and
10 said I disagree with everything that the president of
11 the National Bar Association said. If I pull you over
12 to the side, do not begin to litigate your rights to
13 me. You do what I tell ya, when I tell ya and how I
14 tell ya. Then they pulled over one of my attorneys,
15 and they said why didn't you check her. Why did you
16 allow her to give these cards to these guys because
17 when we pull them over, this only makes it worse. In
18 2015 for individuals to say that the exercising of
19 your rights puts you in the line of fire tells you we
20 have a problem. It's not just loading into a
21 community cops that look like them. It's changing the
22 culture of that community and not putting on the
23 street individuals that don't recognize, contrary to
24 popular belief, police work for us and not the
25 reverse. We have a problem, and it's in that vein

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1 that we say look, I hear cops when they say, and I
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2 agree, we do not have a war against police
3 departments. I want the cops protecting my area. I
4 want them protecting my home. We have a war against
5 bad police officers, but what I find ironic is that
6 when you tell me not to paint your profession with one
7 brush, that is all they do to the African American
8 community, especially when it comes to young black
9 men. The chief of police in Arkansas said we police
10 harder in black communities because you commit the
11 most crimes. He didn't rattle off any other
12 statistics. He wasn't honest about what he said, and
13 so my son is a 14-year-old guy in an honors program. I
14 fear that with his mother being a lawyer and his
15 father being a pastor with a doctor degree that he can
16 walk out into the street and he can look at someone
17 the wrong way and I no longer have my son. So I don't
18 come to you just as the president of the National Bar
19 Association. I come to you as a mother of four with
20 one son telling you this is a real problem. Don't just
21 load the community with people that look like them,
22 but deal the real color issue is blue. Black and white
23 makes it worse, but when a culture says you obey me,
24 you are subject to me, we're dealing with a systemic
25 problem, and we don't like to have the hard

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

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

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

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

4 MS. PAMELA MEANES: Thank you so much,
5 Commissioner. What we are recommending is not the
6 establishment of a police review board. We're actually
7 saying that state's attorney's office should have an
8 investigation department within the state's attorney's
9 office and that those investigative bodies should do
10 the investigation and the states attorneys should
11 handle the investigation, something similar to what
12 was being offered here in New York. The only
13 department that we know that's similarly doing this is
14 in California. What you guys should know is that our
15 initiative is really chaired by two individuals. One
16 gentleman is a twenty-eight year veteran prosecutor
17 with Alemany College in California. He's the second
18 highest ranking individual, and the other gentleman is
19 a twenty-three year guy who actually represents
20 families, and the reason for that is we want the
21 balance of opinion. This prosecutor said to me that's
22 where you really get -- remove -- you can assure that
23 there is no bias because the state's attorney's office
24 is not connected to that local prosecutor. The local
25 prosecutor has the choice and makes the deal, and we

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1 have talked to many prosecutors who are now judges on
2 the bench, and they said Pamela, when we decide what
3 kind of indictment, we present the case in that
4 manner, and sometimes we work very closely with the
5 police department, so it's a trust issue. The only
6 county, and it's kind of untested, is in California,
7 but the reason we're saying this is that we really do
8 believe that there are places around the country that
9 probably could investigate themselves, but the trust
10 is so damaged at this point that you need an
11 independent body and police review boards are too
12 susceptible, and if you look around the country, even
13 in St. Louis City, in St. Louis County, even if you
14 gave them authority, even if you gave them authority
15 the possibility of people choosing the right people
16 because folks are gonna complain either way, but if
17 you give it to the state's attorney, this wouldn't
18 require a state to use a lot of money. You set up that
19 individuals to do the investigation and we believe
20 that that then has some -- some -- puts some barrier
21 between the police department and the local entity.
22 You will know that in these cases that's the reason
23 the National Bar Association has always called on the
24 U.S. Department of Justice to do it because we wanted
25 to say that if an outside agency is looking, it

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1 can bring some credibility.

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

12 MS. PAMELA MEANES: It's more implicit bias
13 than it is overt bias, those biases that we own and
14 have that sometimes we don't even know that are there,
15 that we don't even know we have a propensity to do it.
16 You know, when I got married, my husband said your
17 mother was a strong women, but she kind of reared you
18 not to like men, and I said what are you talking about
19 because I would make the statement all the time I
20 don't need a man to survive and so in that he had the
21 feeling that he was unnecessary, and some of my
22 actions then led to that, so that was something I had
23 to deal with, that I thought that this was a strength
24 and something that's right, but on the other hand
25 having that partner is a great thing. If you look --

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1 I don't know if you saw the announcement that just
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2 came out by U.S. Attorney Harris. They're about to
3 start an implicit bias training program in California
4 because of the systemic problems that are there. What
5 we saw in the Oakland Police Department was under
6 federal review for how many years and they still have
7 a load of problems and now they're moving on the
8 implicit bias training because people are recognizing
9 that as a nation we have failed to deal with the
10 elephant sitting in the room and that elephant is race
11 on every level, and until -- and what we have to use
12 that training to do, Commissioner, I don't think it's
13 being tested anywhere. I think California is the first
14 place to say we're going to do it and the police
15 department is saying we're going to do it. Now we have
16 little pockets, if you look at LA, Connie Weiss is
17 doing a community relation building where she has a
18 department that you get points if you deescalate a
19 situation as opposed to escalate a situation. All of
20 that is nice, but our problem at the National Bar
21 Association is that we don't have time to do all of
22 those little pockets of changes, and that's why we're
23 saying implement some of these things with implicit
24 bias training that would weed officers off the street,
25 but the police chief said to me well, what do we do,

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1 Pam, when we don't want to identify them, and I said
2 don't put them on the street until they're ready and
3 the implicit bias training would do that and you have
4 to not release the facts and then have techniques of
5 how to pass the test or training on how to pass them.
6 I was stunned and shocked when I went on the internet
7 and there were tests of how to pass the psychological
8 test for policing. That's not the nature of what we
9 should be doing.

10 COMMISSIONER ACHTENBERG: Thank you.

11 CHAIRMAN CASTRO: Commissioner Narasaki.

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

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

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

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1 have presented us with ways maybe of not to do things
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2 when we look at them on video. So in light of the fact
3 that during the mid and late 1980s there was a
4 deinstitutionalization of individuals who were
5 typically incarcerated or I should not say
6 incarcerated, but who were housed in mental health
7 facilities. With the onset of new medication a lot of
8 people allowed to go back into the public, but they
9 required also that they would have to have some social
10 support to help maintain a place of residency and also
11 stay on their medications as well too, but oftentimes
12 we know many of these people are homeless who
13 struggle. Many of them may not have the type of social
14 supports that they need to get off medication, and
15 then you have these events that occur between police
16 and community. What we have done in Dekalb County,
17 Georgia because most recently we had a shooting, as
18 many of you may have heard, of a naked man by one of
19 our police officers. That was in Dekalb County,
20 Georgia, and that case is under investigation by an
21 outside entity, which is the Georgia Bureau of
22 Investigation, and I'd certainly be willing to speak
23 more about that as it relates, Commissioner, to your
24 question around should outside entities investigate,
25 and I can talk at length about that, but what we are
doing

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

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

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

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1 there in fact any effective carrots that will help us
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2 to change the policing culture, as many of the
3 panelists have already noted we need to change?

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

14 COMMISSIONER NARASAKI: Do they get
15 nominated by the community?

16 MR. BOB METZGER: Nominated sometimes by
17 the community. Sometimes by the fellow officers.
18 Sometimes by supervisory. They also do it for
19 residents. We just had some awards go out the other
20 day for residents that helped us do some things. In
21 this case they caught some burglary suspects that had
22 run by their house. So we do it on either an as need
23 basis, in other words, as things come up and then we
24 also do a formal awards ceremony where we do it, and
25 it's not about the shootings or any of those things.

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1 It's about just the things that you're talking about,
2 and I think that's the kind of culture that it's, as a
3 police chief anyway, it's imperative on me to make
4 sure that we emphasize that, if not more, at least as
5 much as we do the discipline part. We have the rules
6 and regulations, all the other things, but it's that
7 good police work and that's instilled not only in our
8 quarterly and our daily meetings that we have with
9 supervisors, the daily roll calls, but then those
10 other events such as the award ceremony and I think
11 that's incumbent to constantly report that.

12 MR. CEDRICK ALEXANDER: And let me add
13 something to that as well too. You know, inasmuch as I
14 think we still do a lot of great training that end up
15 with a lot of good results that you don't hear about
16 that you just heard the chief articulate, is no, it
17 doesn't get the kind of notoriety as something going
18 wrong, horribly wrong, so what we do is we try to
19 encourage, enhance, make that as simple as we can
20 within the community, within the police department and
21 you can have a very good department that do wonderful
22 things and that doesn't get recognized. Okay, that's
23 okay. I can live with that. The challenge becomes for
24 any administrator, and I think the chief, any of us
25 would agree with that, would be that when one

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1 department do something wrong on the other side of the
2 country is a reflection now on all of us, and when
3 that happens, those police officers who are doing a
4 great job oftentimes do get that same stroke of that
5 brush and they may have had a history of just having a
6 great career, doing wonderful things, savings lives
7 that they can go back to, but that's the nature of the
8 business. We come to accept that's what it is. When we
9 do something great in Washington State, we all herald
10 over it. When we do something bad in Dekalb County, we
11 all are saddened by it. That's the nature, but it does
12 have its challenges and when you're trying to keep up
13 with the morale of your men and women and their
14 ability to go wayward, it does cast reflection on
15 everybody.

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

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

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

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

5 COMMISSIONER NARASAKI: Can she reply
6 to the Heather MacDonald?

7 MS. PAMELA MEANES: The question of the
8 race?

9 COMMISSIONER NARASAKI: Yes.

10 MS. PAMELA MEANES: Give me the question
11 again.

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

15 MS. PAMELA MEANES: Well, that's comparing
16 apples to oranges and let me tell you why or apples to
17 a pear because there is no African American that I
18 know when it's black-on-black crime who is paid to
19 protect and serve. That's their job, who is paid to
20 actually in that situation to protect that person.
21 Secondly, I've never seen an African American be given
22 48 hours to get his story together in a situation like
23 that or escape prosecution by saying I feared for my
24 life. Those are two different situations, but a law
25 enforcement officer is given the right and the

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

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

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

21 MS. PAMELA MEANES: No, I understand what
22 you're saying, but then if that is the case, then
23 black-on-black crime is actually going down, if you
24 look at FBI statistics. The latest you have is 2001.
25 It went down from 90 -- white-on-white crime is going

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up, 85 percent, so if that's your rational, then you

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1 should have the more in white community making a force
2 on that, but when you look at those numbers, what they
3 say is well, you know, not all white people are out
4 killing white people. That suggests diminution of
5 that crime.

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

19 MR. CEDRICK ALEXANDER: No, it's a very fair
20 question, and I think to try to minimize the fact that
21 there is not a brotherhood or sisterhood that exists
22 would be wrong. It does exist. Any time that you have
23 people that work together in any occupation, quite
24 frankly, it is just normal that you're going to

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1 have -- gain some emotional or psychological
2 relationship with them. If you and I rode in a car
3 every day for eight to ten hours on a shift and we
4 have a variety of experiences that we come in contact
5 with and we're doing the job right, we're doing the
6 job the way we were trained to do, we don't need to
7 have the biases that exist among others. We're just
8 good police officers, well trained, maybe live in the
9 community in which we serve, yes, there's going to be
10 a development of relationships that people are going
11 to have, but it does not mean necessarily they have to
12 be unhealthy relationships because if you see me do
13 something wrong, you have a responsibility to tell me
14 I'm not with that, and I also have a responsibility
15 not to put you in a position where you ever have to
16 jeopardize yourself or your career for me either.
17 Those relationships do exist in policing. Those are
18 not the ones that we hear about more frequently
19 because we do know that there are unhealthy
20 relationships. We have people who do lie and do cover
21 for each other. That do exist, and we, I, myself as a
22 chief, as a public safety director over the years,
23 have always been supported my folks, but I am very
24 clear about this that if you go outside of the law,
25 you can expect the same thing you would expect from

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1 anyone else, and the same thing that we're out here
2 trying to enforce we cannot do any different, and you
3 cannot only say it. You have to exercise it when
4 those events do occur, and they will occur over the
5 course of your career because you're dealing with
6 people. Police officers are people, just like anyone
7 else in any other profession. They're gonna come with
8 their biases. We train them the very best that we
9 can. We help people realize what their internal stuff
10 is. And some will learn and grow from it. Others will
11 appear to learn and grow from it and others will just
12 have to do something else with -- more egregious, but
13 I think it's important for any police leader to
14 recognize the fact that any time you have a number of
15 human beings working for you, men and women, you
16 always gonna have those that are going to go outside
17 and you have to deal with them appropriately, and
18 that's what good leadership is because a lot of this
19 does go back to leadership. There's no question about
20 it. It's what my attitude at the top of the food
21 chain and what's filtered down to the last person
22 hired, and it's oftentimes, though, the bigger your
23 department, the more challenging it can be, and then
24 sometimes the smaller your department, the more
25 challenging it can be as well.

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

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1 it may be. So I think there's a couple things that
2 have to be done by them.

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

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

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

22 CHAIRMAN CASTRO: Thank you.

23 Commissioners, now I want to give it now to the vice
24 chair to close the panel of questions.

25 VICE CHAIRMAN TIMMONS-GOODSON: Thank you

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1 very much, Mr. Chair. The question is for Chief
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2 Alexander and Chief Metzger. Throughout our two
3 panels today we have heard the word trust repeatedly.
4 It's throughout, and we all seem to agree that in
5 building community relations between our citizens and
6 our law enforcement trust is an important element of
7 that. We've looked at the report of the task force,
8 and I believe the first pillar talks about trust.

9 MR. CEDRICK ALEXANDER: Building trust and
10 legitimacy.

11 VICE CHAIRMAN TIMMONS-GOODSON: Absolutely.
12 So Chief Metzger, when you were speaking earlier about
13 the efforts that were underway in your community to
14 build relationships and to build trust, you mentioned
15 a couple of things. You mentioned a program with the
16 Boy Scouts and you also mentioned the school resource
17 officers. I want to touch briefly on this issue, the
18 school resource officers. In my time as a district
19 court judge in my state, I had a large responsibility
20 for juvenile court, and I saw at that time a few too
21 many instances where I thought that the school
22 administrators were using law enforcement to help them
23 deal with routine discipline, and of course, what I
24 did in the courtroom, I would make mention of that,
25 but I over the years, and that was some fifteen years

1 ago, but I believe I see rather than a decrease in
2 that kind of action, an increase of that, and so my
3 question is what efforts are you in your department
4 making to ensure that our schools are not calling upon
5 our resources -- our resource officers to handle
6 routine discipline because when you permit that, it's
7 counterproductive. You're working and encouraging a
8 new generation of folks to distrust and not appreciate
9 our law enforcement. So what are you doing or what can
10 be done to ensure that police departments do not allow
11 their school resource officers to be misused.

12 MR. CEDRICK ALEXANDER: Right. In many
13 departments across the country, and I can go back
14 twenty-five, thirty years, when that first concept
15 first came about in, I was in Dayton County, Miami at
16 that time policing, and the idea was a good one, put
17 police officers into schools, positive role models,
18 you get to know the kids. You work along with them.
19 Maybe you do a class or something around promoting
20 good citizenship, you know, that type of thing, but
21 then it moved to something else and that something
22 else, quite frankly, is exactly what you're talking
23 about where now what we're beginning to see in many
24 part of the country police being used as enforcers as
25 opposed to partners with mentoring young people along

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1 the way. Now in the 21st Century document test, word
2 document, we attended to that same issue, and what we
3 recommended in there is to reverse back to what that
4 position was originally designed to be because there
5 has been over time that I moved towards being more of
6 the enforcer which end up doing nothing, but we're
7 just helping the school throw kids out of school as
8 opposed to trying to do some work with those kids in a
9 positive way to keep them in school and then it
10 becomes -- it becomes a black eye for the police
11 department.

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

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

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

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

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1 they can be seated. Now housekeeping, any member of
2 the public can purchase lunch at the cafeteria and 175
3 commissioners can purchase our lunch in the staff
4 lounge and staff will join us for that. So we'll be
5 back here 1:20 for a 1:25. Thank you.

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

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

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

1 panelist, Mr. Jonathan Blanks with the Cato Institution.

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

7 HONORABLE LAWRENCE MARK: Yes.

8 MR. EZEKIEL EDWARDS: Yes.

9 MR. JAMES CHANIN: Yes.

10 MS. JONES-BROWN: Yes.

11 MR. JONATHAN BLANKS: Yes.

12 CHAIRMAN CASTRO: Thank you. Judge Mark.

13 HON. LAWRENCE MARK: Sure. Thank you for
14 the opportunity to testify here today. I'm Lawrence
15 Mark. I'm a trial court judge here in Manhattan. I'm a
16 trial court judge here in Manhattan. I'm also the
17 deputy chief administrative judge for the state court
18 system, which involves me in administrative policy
19 issues within the state courts here in New York. So
20 I'd like to address my comments today to efforts we
21 undertake in the New York State court system to
22 improve public trust and confidence in the justice
23 system. We've taken many steps to do that here in New
24 York under the leadership of our chief judge, Jonathan
25 Lipton, including proposing measures such as reforming

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1 our bail system, preventing wrongful convictions and
2 raising the age of criminal responsibility, to name
3 just a few. But what I'd like to concentrate on here
4 today is legislation we've proposed regarding the
5 grand jury, and I'd like to explain why we propose
6 this legislation, what the legislation would do and
7 why we think it will improve trust and confidence in
8 the criminal justice system. We also think that it
9 could provide a model for other states that use grand
10 juries, and by the way, about half the states in the
11 country routinely, as we do in New York, routinely use
12 grand juries to charge people with felonies. So first
13 why is the New York court system proposing this
14 legislation? As we all know, public trust in the
15 justice system and in the grand jury process in
16 particular has been shaken by the recent cases in New
17 York City, Missouri and elsewhere and as the head of
18 the judicial branch of our state's government, it was
19 incumbent on our chief judge in light of this crisis
20 and confidence to evaluate the grand jury process and
21 determine whether changes are warranted, and
22 particularly so because contrary to what many people
23 think, the grand jury is not an arm of the
24 prosecutor's office, rather under the law in New York,
25 and I believe this is true in most, if not all of the

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1 states that use grand juries, the grand jury is a part
2 of the court. That's actually the term that's used in
3 the criminal procedure law in New York. The grand
4 jury is a part of the court. So for example, under
5 the law the courts in panel grand juries, judges had
6 supervisory authority over grand juries and judges
7 along with prosecutors serve as legal advisors to the
8 grand jury. So when the public loses confidence in
9 the grand jury process, it is very much a problem for
10 the judicial branch, and it is very much the
11 responsibility of the judicial branch to consider
12 appropriate changes in reform. And that is precisely
13 what we've done. We offered a targeted, measured
14 legislative proposal, which we've presented to the
15 New York State legislature, and I have copies that
16 I'll hand up to you today, a proposal that we believe
17 can restore public confidence in this process. The
18 bill has two parts; first it would reaffirm and
19 strengthen the court's supervisory role over grand
20 jury proceedings in cases involving investigation of
21 excessive police force, excessive force charges
22 against police officers and it would do this by
23 requiring the physical presence of a judge in the
24 grand jury proceedings in these cases. So what would
25 the judge do in such a role? Well, the judge would

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1 not be conducting the examination of witnesses, and
2 the judge would not be deciding which crimes to
3 present to the grand jury. That's the role of the
4 prosecutor. Rather the judge would make rulings on the
5 admissibility of evidence, advise the grand jury on
6 legal issues and provide legal instructions to the
7 grand jury. And why does it make sense to have a judge
8 present in the grand jury in these types of cases? It
9 makes sense because there's an increasingly held
10 perception in these cases that prosecutors, because
11 they rely so heavily on and work so closely with the
12 police on a day-to-day basis, are conflicted in these
13 cases and do not objectively and aggressively present
14 them. Now is that an accurate perception? Maybe, maybe
15 not. Because there's no question that it is a
16 perception and an increasingly held one. So we believe
17 that the presence of a neutral judicial officer in the
18 grand jury in these cases will help to a great extent
19 and diminish that perception. And the second part of
20 our legislation address the secrecy of the grand jury.
21 Under the law grand jury proceedings are secret,
22 although technically judges have authority to order
23 disclosure of the grand jury transcripts. That
24 authority, at least here in New York, has been
25 narrowly construed, very sparingly exercised and the

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New York statute provides no guidance on this issue
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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

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1 disclosure of the charges submitted to the grand jury,
2 the legal instructions given to the grand jury, the
3 testimony provided by all public servants and all
4 experts who appeared and the testimony of all other
5 witnesses who appear but with their names redacted and
6 any other information that would tend to identify
7 those civilian witnesses also redacted, and there are
8 further protections built into the bill that we
9 propose. So those are the two components of our
10 legislation, requiring the physical presence of the
11 judge in grand jury proceedings involving excessive
12 police force charges and creating a presumption of
13 disclosure of the grand jury proceedings with certain
14 limitations where the grand jury declines to indict
15 and the court finds that certain factors exist.
16 Overall we believe this legislation will go a long way
17 toward restoring trust and confidence in the criminal
18 justice system and in the grand jury process in
19 particular here in New York and in other states that
20 use the grand jury. Thank you.

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

23 MR. EZEKIEL EDWARDS: Thank you for having
24 me testify here today. I wanted to focus since we're

1 talking about procedural justice, on procedural
2 justice and the police and their interactions with the
3 community. Tom Tyler, who many of us know, Yale law
4 school professor, has defined procedural justice as
5 treating people with respect and in an unbiased
6 fashion. He has noted that such fairness does not
7 depend on crime rate fluctuations but on the behavior
8 of the police themselves. He has stressed that
9 authorities need to acknowledge the basic dignity and
10 rights of citizens to account for decisions that
11 affect them and to make their decisions in a neutral
12 and objective way, and he has said that without such
13 acknowledgement of their dignity and rights, people
14 are likely to feel angry and be resistant to the
15 police. Procedural justice is certainly not a cure all
16 for all of problems that we face in policing today,
17 but certainly treating all members of our community
18 with respect and acknowledging their dignity and
19 rights and treating them fairly, regardless of the
20 color of their skin or the neighborhood in which they
21 live would take us significantly forward in police
22 community relations, but what I would like to talk
23 about today briefly is a broader view of procedural
24 justice, which is not only how the police treat you
25 when you're stopped, but about why you're being

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1 stopped, who's being stopped and what for. How can we
2 achieve procedural justice, how can we achieve respect
3 for dignity and equal treatment and how can we achieve
4 legitimacy when we have a system in which too often
5 the color of your skin or the neighborhood where you
6 live is a deciding factor in whether you are stopped,
7 searched, arrested, jailed, convicted too often
8 without adequate justification and even when often for
9 minor conduct that goes ignored in other communities.
10 There is a plethora of data from New York City stop
11 and frisk, from Philadelphia, Boston, Chicago,
12 Minneapolis where we and others have documented the
13 startling racial disparity in who gets stopped, who
14 gets frisked and who gets arrested. In New York
15 between 2004 and 2012 there were 4.4 million stops. 83
16 percent were of black and Hispanics. Ten percent were
17 of whites. 30 percent were either illegal stops or
18 question of legality. Almost 9 out of 10 did not
19 result in any further law enforcement action because
20 the person was innocent. You see the same data in the
21 cities that I mentioned. We looked at Minneapolis
22 police departments and looked at arrests, not just
23 stops and we found that blacks were eight times as
24 likely to be arrested as whites for vagrancy, nine
25 times for disorderly conduct, twelve times for

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1 marijuana possession. Indeed we put out a report in
2 2013 documenting shocking racial disparities in
3 marijuana possession arrests in every corner of this
4 country, regardless of demographic. The simple but
5 unacceptable fact is that your fourth amendment right
6 to be free from unreasonable or even sometimes
7 reasonable searches and seizures is different based on
8 the color of your skin and where you live, and the fact
9 is you are more likely to be arrested based on those
10 factors than if you were to live in other neighborhoods
11 for the same conduct. So even if all those stops had
12 been achieved procedural fairness, which of course many
13 of them probably did not, but where the police treated
14 you with respect, explained why they were stopping you,
15 we still would not achieve the procedural justice that
16 we're here to talk about. If you know that in fact if
17 you had a different skin color or you lived somewhere
18 else you wouldn't be getting stopped, you wouldn't be
19 getting searched, your likelihood of getting arrested
20 would be down or the same conduct, the same minor
21 conduct would go ignored, so we can't achieve
22 procedural justice unless we examine who we're
23 stopping, why we're stopping them and what we're
24 criminalizing for.

25 In this country we have developed now a

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1 harmful reliance on the criminal justice system to
2 deal with social and public health problems; drug use
3 and addiction, mental disabilities, unemployment,
4 underfunded and overcrowded schools. Indeed as part of
5 our bloated and wasteful expansion of incarceration
6 over the past few decades, which we all now know makes
7 us the world's leading incarcerator by leaps and by
8 bounds which starts with police contact, many police
9 departments have expanded the use of arrests for low
10 level, nonviolent infractions; loitering, vagrancy,
11 disorderly conduct, marijuana possession, trespassing,
12 this arrest first, arrest often approach has
13 needlessly snared tens of thousands of people into the
14 criminal justice system. It has led to arrests and
15 conviction records, jail time and prisons sentences
16 that could and often should be avoided. Each of these
17 harmful, potentially traumatic consequences are
18 followed by more negative consequences that can cut
19 off opportunities for advancement and increase the
20 likelihood of future contact. The number of stops and
21 arrests harms both individuals and communities and
22 along with the racial disparities create a sense of
23 illegitimacy, resentment and distrust. As part of re-
24 envisioning and restructuring their relationship with
25 the communities they serve, police departments

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1 need to change how they do their power to stop and to
2 arrest. Detaining someone and even more arresting
3 someone should be seen as a scarce resource, an
4 expression -- expression of awesome state power and
5 authority, depriving people of their liberty that
6 should be used as sparingly as possible. It should
7 also be understood as an act that can cause harm,
8 disrupt lives, generate negative consequences and as
9 it potentially pushes people away from civic
10 participation when abused or overused, literally fray
11 our democracy. As University of Cincinnati criminal
12 justice professor, Robin Engel, said here at John Jay
13 on a conference on pretrial justice last month, when
14 arrests become systematically viewed by police as a
15 limited and precious commodity to be used sparingly
16 and for the most chronic or serious offenders, then
17 change throughout the criminal justice system will
18 likely resort. In other words, we as a country, just
19 as we as a country need to incorporate restraint in
20 our use of incarceration, the police should employ a
21 principle of restraint in stops, searches and arrests.

22 I am inspired, for instance, by the law
23 enforcement assistant diversion program in Seattle, a
24 pre-booking diversion pilot program developed with the
25 community to address low level drug and prostitution

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crime. It diverts people away from the criminal

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1 justice system. It doesn't eliminate contact with the
2 police, but it does treat arrest as a tool to be used
3 more sparingly. We must adjust the framework within
4 which police have been operating for many years in
5 which stops and arrests have become cheap commodities,
6 when we must see them instead as precious commodities
7 in order to achieve our goals of legitimacy, fairness,
8 dignity and equal treatment.

9 CHAIRMAN CASTRO: Thank you, Mr. Edwards.
10 Mr. Chanin.

11 MR. JAMES CHANIN: I have spent the last
12 forty-five years trying to make police departments in
13 the San Francisco Bay area accountable to people who
14 pay their salaries and depend on them to bring law,
15 order and justice to their community. I've worked on
16 political campaigns for police reform and represented
17 police officers and police employees. I've been
18 involved in eighteen wrongful death cases involving
19 shootings by police officers and prison guards and
20 litigated the much larger number of excessive force
21 cases. For the past fifteen years I've been involved
22 in litigation with the city of Oakland in a single
23 case, first trying to get compensation for over a
24 hundred twenty victims who served over forty years for

1 ~~disseminate how the franchise is implemented and by police~~
 2 and then for the last twelve years trying to make the
 3 Oakland Police comply with a consent to create that
 4 would bring contemporary law enforcement standards and
 5 constitutional policing to Oakland. There are now
 6 signs of real progress in this case. The Oakland
 7 Police are now in site of full compliance. There is no
 8 one size fits all solution of problem officers and
 9 problem police departments. Various options have
 10 succeeded or failed due to the quality of police and
 11 political leadership, the will to use severe
 12 enforcement options where lessor ones have failed and
 13 the amount of outrage and publicity over the problems
 14 caused by police misconduct. There are, however, basic
 15 principles that must be attained in order to have
 16 meaningful reform in any police department.
 17 Supervisory accountability is one such principle. We
 18 often focus on single officers or groups of officers
 19 engaging in acts of misconduct; however, many of these
 20 incidents are directly related to poor supervision,
 21 lack of leadership and systemic failure to hold
 22 officers and supervisors accountable for their
 23 actions. Recent incidents involving individual
 24 officers shooting African American men are sometimes
 25 attributable to one police officer who made a mistake

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2 of a culture of lack of accountability that leads
3 directly to these tragic and often avoidable
4 incidents. In 1979 Oakland Police killed seven African
5 American men. Many more were killed yearly every year
6 thereafter. In 2014 Oakland Police did not have a
7 single officer-involved shooting. What has changed is
8 the creation of a culture of accountability, including
9 supervisory accountability. In Oakland we insisted
10 that every police officer be supervised 85 percent of
11 the time by a primary or assigned supervisor, and that
12 the assignment detail permit the maximum of one
13 primary sergeant for every officer under normal
14 circumstances. This means every police officer and his
15 supervisor that is clearly responsible for them, and
16 that supervisor thus becomes much more responsible for
17 making sure the officer does his or her job in a
18 constitutional and professional manner. Body cameras
19 have also played a major part in the culture change
20 that is starting to take place in the Oakland Police
21 Department. They were first introduced several years
22 ago and are now required for all police department
23 personnel. They must be turned on for all enforcement
24 stops and other stops by Oakland Police. Perhaps more
25 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

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1 a far higher percentage of African and American --
2 African American and Hispanics that they stop with no
3 corresponding increase it yields; that is contraband
4 or some other reason to justify the stop. Dr.
5 Eberhardt will look at film recordings of enforcement
6 stops and consensual encounters Oakland Police have
7 with African American and Hispanic citizens. Her work
8 will focus on helping officers improve their
9 relationship with these communities. Police reform is
10 not easy. There is strong pressures for police to
11 solve crimes, particularly ones that shock our
12 conscious. Police officers almost by definition tend
13 to interact with people in crisis and seldom see the
14 best in our community. This can have potentially
15 devastating consequences on the officers' own personal
16 lives, and in their interaction with the community. We
17 must remember that many policemen and women are young
18 and impressionable. They can easily be lead to believe
19 the sometimes harsh rhetoric in our media and from our
20 politicians is a call for them to indulge in
21 unconstitutional behavior. This puts an added burden
22 on police supervisors who must never forgot they are
23 part of an organization that has the power of life and
24 death. We must demand accountability. Thank you.

25 CHAIRMAN CASTRO: Thank you, Mr. Chanin.

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1 Ms. Jones-Brown.

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

8 My comments today are intended to actually
9 humanize and individualize the victims of police
10 behavior that is questionable or clearly illegal, and
11 the double victimization of those folks by judicial
12 processes that do not hold those police officers
13 accountable. I want to step back for a moment to
14 conversation from an earlier panel where Ms. Heather
15 MacDonald talks about black-on-black crime and the
16 National Bar Association's president was talking about
17 her failure to look at white-on-white crime. In 2011
18 there were roughly 4,000 white arrestees for the
19 offense of homicide and roughly 4,000 black arrestees
20 for the offense of homicide. The idea that Ms.
21 MacDonald would concentrate only on black arrestees
22 for such offenses is an indication that white
23 supremacy lives and white privilege is not recognized.
24 To attempt to tell a group to which you do not belong
25 what they should be concerned about is inappropriate

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1 and offensive. My comments today hopefully will help
2 to, again, individualize and humanize the individuals
3 who have suffered at the hands of those who are
4 charged to protect and serve them. So what is most
5 disturbing for me at this juncture where we are today
6 is that we've been here before and we've been here
7 repeatedly. My interests in this topic began in 1997
8 when I learned that four different cases that were
9 decided within one month of each other, three of them
10 decided in one week, which all involved black
11 civilians dying at the hand of the police, none of
12 which resulted in criminal responsibility for the
13 police officers. So during a single week in November
14 1996 the criminal justice system in three different
15 states failed to hold police officers criminally
16 liable for killing three different people under
17 circumstances that had the victims lived, been tried
18 and convicted, they would not have been subject to
19 the death penalty or even lengthy prison sentences.
20 Two of the victims were shot. One was suffocated.
21 Their names were Johnny Gammage, Carolyn Adams and
22 Tyrone Lewis. The deaths occurred in Brentwood,
23 Pennsylvania, New Brunswick, New Jersey and St.
24 Petersburg, Florida. They ranged in age from 18 to
25 39. Their underlying offenses for alleged traffic

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

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1 individual citizens to that of the police. In fact,
2 the impact of the Garner decision when it was made in
3 1985 was immediate and substantial. In Memphis where
4 the Garner killing occurred, the number of blacks and
5 whites killed by police while unarmed and not
6 assaulted dropped to zero. That number had been one
7 white and thirteen blacks during the period of 1969 to
8 1974. Even in New York City the number of suspects
9 killed by the police dropped from 26 in 1984 to 11 in
10 1985, but rose to 30 in 1989 when the Graham V Connor
11 decision was announced. The Graham v Connor decision
12 allows the police deference in making decisions about
13 when to use deadly force, and that is the focus of
14 that case. After that case was decided, the cases that
15 I was investigating went from 4 to 11 to 24 in 2001,
16 and as we see the continuing footage over and over
17 recently the idea that the police decision making is
18 given deference in such cases continues.

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

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

18 CHAIRMAN CASTRO: Thank you. Mr. Blanks.

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

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

25 We should stop and think for a minute about

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

10 The National Police Misconduct Reporting
11 Project is an effort by the Cato Institute to gather
12 reports of credible allegations of police misconduct
13 to policymakers and others to make informed
14 assessments of the nature and circumstances of police
15 misconduct. At [PoliceMisconduct.net](https://www.police-misconduct.net) we rely primarily
16 on local media outlets to do the legwork when combing
17 through police blotters for arrests, tracking local
18 police press releases and covering court proceedings
19 to their final resolution. Our data too is incomplete,
20 but we do not often lack troubling stories to put on
21 our website nearly every weekday.

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

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

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1 received a civilian complaint, but roughly 1,000
2 officers have more than ten complaints on file. One
3 officer has over fifty complaints, but somehow still
4 remains in his position. Institutionally the New York
5 Police Department knows these 1,000 officers are repeat
6 offenders several times over. Multiple complaints
7 against a single officer over a period of months or
8 years implies that the officer must at times operate
9 too close to the line of impropriety. Those 1,000
10 officers represent fewer than three percent of New York
11 police officers, but can damage the reputation of the
12 rest of the department. Clearly some portion of these
13 1,000 officers are abusing their authority and the NYPD
14 is either unwilling or unable to remove them from duty.
15 And because the public can't know their names and
16 records, we cannot measure how effectively the NYPD has
17 addressed these incidents with any given officer.
18 Outside of the personnel records and complaints office,
19 there's another measure to determine which officers are
20 more likely to abuse people with whom they come into
21 contact.
22 Criminologist Jerome Skolnick noted that police
23 officers -- police supervisors sometimes look at
24 resisting arrest statistics to determine which
25 officers are often crossing the line. The thinking

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1 goes if an officer wants to mete out punishment for
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2 disrespect, a resisting arrest charge can justify a
3 night in jail. It can be used to explain why a suspect
4 came in with a few bumps and bruises or worse. Just as
5 civilian complaint numbers revealed a small minority
6 responsible for a disproportionate amount of
7 complaints, it appears that a small percentage of the
8 force generates the most resisting arrest charges in
9 the NYPD. The WNYC study I mentioned earlier found
10 that roughly five percent of NYPD officers account for
11 40 percent of resisting arrest charges since 2009 and
12 15 percent of officers account for nearly 75 percent
13 of them. In the legal regime in which their personnel
14 records were public, the names in each of these groups
15 can be cross-referenced. Public pressure could force
16 the department to take appropriate action against
17 specific officers to correct the behavior, if
18 possible, or move for termination; however, the
19 officers' disciplinary records remain off limits and
20 their questionable behavior continues to be tolerated
21 in precincts around the city.

22 Police -- excuse me, the alternatives to
23 legislative reform are as follows: Passing meaningful
24 legislation is going to take years of grassroots
25 effort and campaigning. In the meantime, citizens,

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1 journalists, governments and lawyers can compile data
2 that is publically available to use to shine light on
3 misconduct in their jurisdictions. Here in New York
4 the Legal Aid Society is compiling a database of
5 misconduct allegations against NYPD officers to act as
6 a clearinghouse for defense lawyers. A database like
7 this warehouses publically available information from
8 court proceedings so it can be used in future cases as
9 Brady material. After a six month Sun investigation
10 showed how much money police brutality lawsuits has
11 been costing the city, Baltimore in Maryland started
12 its own of publicly searchable database civil suits
13 and publishing the results of those cases. The city
14 should go further by removing the nondisclosure clause
15 it typically attaches to settlements that prevent
16 plaintiffs from discussing the facts of the case
17 rather than after accepting the settlement. Americans
18 cannot effectively address police abuse of deadly
19 force without first addressing police violence, and we
20 cannot hold police accountable if we cannot even
21 measure how often they are acting inappropriately.
22 Policies and laws that shield officers from
23 consequences of inappropriate violent behavior or
24 abuse of authority produces a culture of tolerance, if
25 not encouragement, of that behavior. Data indicates

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1 that only a small minority of officers repeatedly
2 abuse their authority, but the laws that protect those
3 officers' anonymity make them indistinguishable from
4 the majority of law-abiding officers. This minority's
5 tolerated presence in the ranks tarnishes the
6 reputation, legitimacy and authority of their fellow
7 officers and their departments. For these reasons
8 making police discipline more transparent and more
9 effective across the board is in law enforcement's
10 interest and public interest alike.

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

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

21 HON. LAWRENCE MARK: Or maybe the contrary.
22 Prosecutors don't present cases as aggressively.
23 Maybe they would if they didn't have this what's
24 perceived as a conflict of interest, a case involving
25 --

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1 COMMISSIONER YAKI: I see what you mean. I
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2 guess my mindset is viewed -- has been skewed by
3 reading the Ferguson transcript of the grand jury
4 where the prosecutors there seem to be rather
5 zealously promoting one view rather than the other.
6 Would your judge be able to -- would your judge be
7 able to step in and ask the prosecutor why are you
8 cross examining, essentially cross examining some
9 witnesses and not cross examining others? We know one
10 of the criticisms in Ferguson was that the officer,
11 Darren Wilson, was allowed pretty unfettered
12 testimony, but in the circumstances of unidentified
13 witnesses it appears the prosecutors were indeed
14 trying to undermine, undercut or otherwise diminish
15 the value of their testimony.

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

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

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

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

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

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

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

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

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

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

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

3 COMMISSIONER YAKI: Well, everything
4 but state of mind.

5 HON. LAWRENCE MARK: Right.

6 COMMISSIONER YAKI: Thank you.

7 CHAIRMAN CASTRO: Commissioner Kladney.

8 COMMISSIONER KLADNEY: Judge Mark.

9 HON. LAWRENCE MARK: Right.

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

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

22 COMMISSIONER KLADNEY: Right, okay and so.

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

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cases the grand jury testimony is never disclosed to

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1 the defense if there's a plea, but if the case goes to
2 trial, certainly the testimony of witnesses who
3 testify at trial, their grand jury testimony will be
4 disclosed to the defendants and will become public.

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

13 MR. JONATHAN BLANKS: Well, absolutely. I
14 mean police conduct on the website that we run in
15 Cato, we track pretty much any kind of police
16 misconduct, whether it's a DUI off duty or if it's,
17 you know, a domestic violence, anything like that
18 because it also -- collecting this data not only just
19 shows what the individual officer is doing, but it
20 shows how that officer is treated within the judicial
21 system that he's in. So sometimes you'll see cases
22 that seem like really serious offenses, but because of
23 whatever reason, the charges that were very serious
24 get knocked down to something that doesn't even get

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1 them fired, and so I think being able to track every
2 sort of misconduct that police -- that police commit
3 is very important.

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

7 MR. JONATHAN BLANKS: Yeah.

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

11 CHAIRMAN CASTRO: I'll let you ask one.

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

24 MR. JAMES CHANIN: Well, executive boards,
25 review boards are actually police reviewed, police --

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1 police only organization -- they're not organizations.

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2 They are review of serious incidents by the police
3 themselves, not -- not civilian review boards, which
4 is like the one I was on, so this is -- this -- this
5 --

6 COMMISSIONER KLADNEY: Like a debrief
7 situation.

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

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

22 MR. JAMES CHANIN: California, as far as I
23 know, is the most restrictive state in the nation
24 about disclosing any police activity. For example, in
25 the shooting of Tamir Rice in Cleveland, you saw the

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1 Town of Independence, Ohio came up and they said well,
2 we fired this guy because he freaked out on the range. ²¹¹
3 In California they would be arrested for that. Even
4 though we are considered a liberal state, the assembly
5 and senate are more or less bought and paid for by the
6 police union, so you would never see a -- a force
7 review board made public. When I was in Detroit, they
8 had that kind of thing where they have command
9 accountability sessions where they would discuss
10 complaints and incidents in public and then they'd
11 have private sessions as well, but not in California.

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

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

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

10 COMMISSIONER KLADNEY: Thank you.

11 CHAIRMAN CASTRO: Commissioner Achtenberg.

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

22 MR. JAMES CHANIN: What changed was we made
23 a motion before Judge Henderson in Federal Court to
24 put the whole department in receivership because the
25 monitors who -- we had two teams of monitors, they

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1 were very good, but all they could say was you're
2 doing badly, and then they would say well, we'll never
3 do it again, and then three months later so on and so
4 forth, so and finally we created a position where they
5 would have the power to hire and fire the police and
6 not only criticize, but make changes, so we got a new
7 police chief, Sean Whent, with the body cameras and -
8 and the focus on supervisory accountability, I think
9 are the main things.

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

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

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

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1 reform their agencies?

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

12 COMMISSIONER ACHTENBERG: Very interesting.
13 Thank you very much.

14 CHAIRMAN CASTRO: I've got a couple
15 questions. Mr. Edwards, when you talked about in terms
16 of about procedural justice, questions about why
17 you're being stopped, who is being stopped as a
18 precursor to the discussion that we were having here
19 today what happens when you are stopped, really
20 resonates with me personally as a Chicagoan. Many
21 years ago when I was a young lawyer, I from a very
22 economically depressed community in the southeast side
23 of Chicago, I was coming home for the weekend to visit
24 my parents and on the way back north I got pulled over
25 by an unmarked police car, and as a young man of

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1 color, I was always taught do not get out of your car.
2 If you're ever stopped by the police, keep your hands
3 on your wheel. Do not step out of the vehicle. So
4 that's what I did. The officers immediately came to
5 my door with their hands on their holsters, demanding
6 that I get out of the car, which I did. One officer
7 took me to the back of my car while the other officer
8 proceeded to go into my passenger compartment and
9 begin to search my glove compartment and other areas.
10 As I was presenting -- finding my license and looking
11 at what was going on, they popped the trunk, and when
12 I asked the officer what are you doing, he said don't
13 worry about it. We're searching your vehicle. I said
14 well, you know what, this is an illegal search of my
15 vehicle. How do you know that. Well, I'm a lawyer.
16 The officer that was with me called into his other
17 officer who was already inside my glove compartment
18 and said let's go. This guy's a lawyer. Now at that
19 point in time, still running through my mind, even
20 though I'm a lawyer, even though I know this is
21 happening in violation of my rights, the first thing
22 I think about is they can plant something. Next thing
23 I think about they can say I reached for something.
24 So I was very cautious and nervous. So I didn't even
25 want to ask them for their badge numbers or their

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1 names. As soon as they began to withdraw, get into
2 their unmarked vehicle, I decided that I would follow
3 their vehicle and got their plate number. I had a
4 friend in media. We were able to track down who the
5 officers were, and I submitted a complaint to the
6 Office of Police Review in Chicago. Months later I got
7 a letter saying, one paragraph, we looked at this,
8 there's no basis. So I know that this happens many
9 times in America, and luckily for me I was a lawyer
10 and able to advance my rights and luckily nothing
11 happened as a consequence, but I know all too well
12 that that's not the case for many people of color in
13 the United States, and recently ACLU did a report on
14 stop and frisk in Chicago, and the point that you made
15 today about people being picked up and -- and
16 ultimately no action is taken, we had, I think it was
17 250,000 cases of that in Chicago where resulting in no
18 action. Could you speak a little bit more because
19 that's even -- yeah, 250,000 cases where no action was
20 taken as part of the stop and frisk, which I think was
21 even worse than what was going on here in New York.
22 Could you speak a little bit to that issue, if you
23 have some --

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

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

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1 driving at a certain time in a certain neighborhood
2 and look a certain way. That's not generally how they
3 -- they -- they deal with other communities, and so I
4 think data collection is a big part and we've even
5 worked with police departments that weren't aware of
6 how bad their disparities were. When we showed them the
7 data, it puts them on alert but also motivates them,
8 and particularly the police chief to go for reform, but
9 it's also why I talked about looking at arrests and
10 stops really more as precious commodities, not
11 something to be treated as we're going to stop everyone
12 in this community, but something that needs to be much
13 more protected, and if you want to have better police
14 community relations in addition to treating people
15 fairly when you stop them, you really have to think
16 about is this a good use of police resources. I also
17 think quickly that how police evaluate their
18 productivity and their success needs to change. It
19 can't just be -- certainly crime rate is important, but
20 number of arrests I think is overvalued. It has to be
21 about how are we relating to the community. Are we
22 arresting fewer people, diverting more people could be
23 actually signs of progress and productivity in a
24 different way. So we have to kind of reevaluate those
25 metrics.

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CHAIRMAN CASTRO: I definitely agree that

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1 we need more data collection, but I think there's a
2 further step, and I'd like you to comment on this. The
3 next step is what do we do with that data. So for
4 example back in Illinois we have a state rule that
5 says any police officer who does a stop has to report
6 the race and ethnicity of the person that they
7 stopped. A couple years ago the Chicago Tribune did an
8 investigative story on McCreary County, which is a
9 county that's increased in its Latino population that
10 many of the stops were of whites, and when you look at
11 the data, the actual cards they were filling out, you
12 saw a checkmark white and it was Arturo Hernandez and
13 another white was Mario Moreno, and it turned out that
14 they were miss marking the ethnicity or the race of
15 that person in order to make it seem like there wasn't
16 disparate impact. So in Illinois there's no
17 accountability. We collect the data but it sits there
18 and unless a newspaper investigator looks at it and
19 even then there are no consequences, so just
20 collecting the data is not enough. Is there anything
21 else you would suggest?

22 MR. EZEKIEL EDWARDS: Well, I think I mean
23 there are a number of things. First of all, there's
24 certainly if you find looking at the data that there

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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

1 Court, et cetera, but where there was a collaborative
2 agreement that involved the police. It involved
3 business community members, healthcare professionals
4 and also the community's civil rights group to figure
5 out why are relations with the police and the black
6 community so bad. Why are the police shooting so many
7 unarmed African American men. We have to solve this.
8 The police are part of our community and so are the
9 community, and I think that kind of re-envisioning a
10 shared community goal and approaching it from that
11 angle using data and discussing it, it takes a long
12 time, but I think that's something that we really need
13 to do as -- as local community.

14 CHAIRMAN CASTRO: One question --

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

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

21 MR. JAMES CHANIN: Chanin.

22 MR. EZEKIEL EDWARDS: -- Chanin about
23 northern California, but Seattle Police Department,
24 which I was mentioned was a lead program, has also
25 been involved in lawsuits due to excessive force and

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1 racial profiling, same with the Portland Police
2 Department. The LA Police Department, of course, has
3 been under a consent decree for many of the same
4 problems and so you certainly see racial profiling
5 run amuck in places like Phoenix with the Latino
6 community and so many police departments I think are
7 -certainly have these problems and others have been
8 looking at ways to solve them. And if you go down to
9 Florida, we've seen a similar kind of outrageous
10 disparities in places like Miami Gardens. So this is
11 a national problem. It's just that the data that we
12 focus on right now is more in the northern cities.

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

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

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

you know, calling them racist or things like that

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1 which are sort of conversation stoppers. We focus on
2 the law enforcement aspect, what -- why are you
3 stopping this person and what have you found from
4 stopping them. If you can't justify that consistently
5 the same for whites and Asians as you do for blacks
6 and Hispanics, then you have to change.

7 MR. EZEKIEL EDWARDS: Just quickly I would
8 also say that I would just, you know, want an honest
9 conversation because when I was a public defender in
10 the South Bronx, and I arraigned countless people for
11 marijuana possession and then I'd go back to the
12 upper west side where I grew up, and I have friends
13 who would buy it and have it delivered to their home
14 and they're two very different worlds, but so why are
15 we -- why do we think it's okay to jail back in 2006,
16 '7 and '8 a black man who's 19 or a black woman who's
17 30 and crisscrossing the train, switching train cars
18 because she's uncomfortable with a guy who's on the
19 car, why are we arresting and throwing those people
20 in jail if we're not willing to do it to white folk
21 who are doing the same thing, and if the answer is
22 from the police it's a crime fighting tool, right, we
23 don't care about marijuana. This is how we bring down
24 crime, then let's talk about it. Let's at least

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acknowledge yeah, we do treat African Americans

1 differently in the South Bronx for the same thing
2 because we think it's an effective crime biting tool.
3 I don't agree with it, but let's have a discussion
4 about that and -- and we the community certainly about
5 how they feel about that instead of somehow pretending
6 that it's okay.

7 CHAIRMAN CASTRO: Commissioner Narasaki.

8 COMMISSIONER NARASAKI: Thank you, Mr.

9 Chair. I have a few questions. So my first question
10 is are there studies that exist that look at the
11 efficacy of independent review boards as it relates
12 to use of force? So are there studies that, for
13 example, would show that if you have an independent
14 review board that has all of the power it needs to
15 function effectively, do -- does use of force, does
16 racial profiling, do complaints go down or not? The
17 second question is according to the DOJ Office of
18 Community or Anti-Policing Services, they said one of
19 the challenges has been that there's no accepted
20 official definition of racial profiling, much less an
21 operational definition that describes exactly what
22 collected data and results would clearly identify
23 racial profiling, so there's a challenge in terms of
24 what this data means, and I'm wondering what -- what

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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

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1 really get them involved in a constructive way? One
2 of the readings we had said that the Department of
3 Justice reviews were a very important tool for police
4 chiefs because that enabled them to be able to
5 leverage the Department of Justice's basically bad cop
6 in order to get some of the changes through.

7 MR. JAMES CHANIN: Well, the unions -- what
8 I tried to do more recently is figure out anything
9 that we have in common with unions, and there are some
10 things. One is the early warning systems which are the
11 -- the systems, we have a computerized system in
12 Oakland, which we're building a new one now, which
13 basically identifies outliers based on certain things
14 that go into this early warning system, such as
15 resisting arrest, automobile accidents, all sorts of
16 different things. There's a long list of them, and
17 then it looks at outliers, and then the outliers are -
18 - they talk -- their cops have to talk about them, and
19 some of them are okay, their reasons; they're in the
20 SWAT team or something like that. Some of them are
21 not, and then they work with those officers before
22 they get in trouble with themselves, say through
23 alcoholism or some problem they're having domestically
24 or with the community before they do something
25 horrible to somebody, and it's nondisciplinary and

1 we've gotten union on board for that. I've also
2 worked with them on the radio systems which are
3 defective in Oakland and gotten them and spoken for
4 them. So those are things that I've tried to do, but
5 very often it's kind of hopeless in the wrong
6 leadership and the wrong unions.

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

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

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

19 MS. DELORES JONES-BROWN: I'd like to jump
20 in on the data collection discussion because the
21 National Science Foundation has appropriated
22 \$1,000,000 to the Center for Policing Equity, UCLA, to
23 collect data from police departments on pedestrian
24 stops, vehicle stops and the use of force. Currently
25 the idea is that departments volunteer to provide that

1 information. One of the suggestions I put in my
2 statement is that, as you mentioned before, any
3 department seeking federal funds, they should
4 volunteer to report their information to the national
5 database, is what it's called.

6 On the issue of defining racial profiling,
7 the mathematicians have gotten, I think have overly -
8 have made this issue overly problematic.

9 Constitutional rights are private and individual.
10 Social scientists tend to aggregate data and so the
11 notion that if I have the experience that the chairman
12 had and I perceive that it involves some racial
13 profiling the mathematicians say that they really
14 can't measure that, and so we've gotten caught up in
15 who -- who is at risk for being stopped, the innocent
16 -- behavior of innocent people of color as compared to
17 behavior of folks who happen to be of color and also
18 be involved in criminality, and that also is
19 determined to be part of the equation of whether or
20 not a stop that might be based on race, that the
21 person who stopped believes it's based on race,
22 whether the perception of the person stopped or the
23 perception of the police officer or what the police
24 officer says is what is actually racial profiling.
25 There are ways in which clearly disparate racially and

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1 ethnic disparate stops get explained away by really
2 complex mathematical equations and I think therein
3 lies our problem in trying to define what actually
4 constitutes racial profiling. However, in cases like
5 in New Jersey where we have police officers dealing
6 what the chairman who talked about they plead guilty
7 to falsifying the records about the racial identity of
8 people being stopped so that they can cover up the
9 fact that they were engaged in racial profiling, they
10 didn't get a lot of media attention, but it certainly
11 indicates that we've had those examples take place in
12 other police departments, and so the notion is if they
13 weren't racially profiling, why are they falsifying
14 the information then.

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

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

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

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

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

19 MR. JAMES CHANIN: I mean -- I mean I don't
20 know about everybody, but we agree with it, and we
21 just can't -- and it's -- and it's resulted in
22 pounding away in a sense, lowering the number that
23 have been stopped in the first place because now they
24 know they have to justify it with something that they
25 find or see or do.

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231 COMMISSIONER NARASAKI: I just have one

1 more question. Someone suggested to me that one
2 possible intervention would be to tie salary raises
3 of the entire department to overall reduction in
4 complaints of, you know, excessive use of force or
5 complaints in general of how police are treating
6 community members. Have you seen that in practice?
7 How does that strike you; bad idea, good idea?

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

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

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

22 COMMISSIONER NARASAKI: Well, I think the
23 thinking is that it might serve as an incentive for
24 the good cops to have maybe less of a blue line and
25 drive out the bad cops, because, you know, so it's an

1 overall team effort and it creates incentive for
2 people to do what's in their individual best interests
3 in terms of taking a harder stand against -- because
4 my -- the sense I get, whether it's border patrol or
5 immigration, you know, or in this context, people
6 pretty much know who the bad people are. They've seen
7 it. They know it. They talk about it, and so the
8 question is how do you get them to do something about
9 it?

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

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

21 MS. DELORES JONES-BROWN: Right, police are
22 -- quite frankly, yes, the fact that they all have
23 guns and they depend on each other to have their back
24 and so the notion that an officer could get keyed out,
25 you're going on a call and you need backup and the

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1 other officers don't come to back you up and then they
2 prevent you from getting back up by keeping your radio ²³³
3 tied up, and so those safety concerns are really
4 cogent with police officers.

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

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

21 COMMISSIONER NARASAKI: I mean you have a
22 right to be afraid. I was in the back of a cab in
23 California near Disneyland and the cab got pulled over
24 for speeding on the freeway even though he was going
25 the rate of speed, and I was annoyed by this fact, and

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1 I asked for the cop's badge number, and he went at me.

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2 He refused to give me his name and number and tried to
3 intimidate me and threaten me with arrest for -- and I
4 was just the passenger in the back of the cab.

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

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

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

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1 MR. JAMES CHANIN: I agree with you.

2 CHAIRMAN CASTRO: Commissioner.

3 COMMISSIONER YAKI: Thank you very much, Mr.

4 Chair. The first is more of a statement, but if Mr.

5 Chanin has a comment on it, I appreciate it. You

6 worked with Michael Haddad in Oakland a lot, I

7 presume.

8 MR. JAMES CHANIN: Yes.

9 COMMISSIONER YAKI: And I bring this up

10 because I was a little -- I was a little disturbed by

11 a comment that a previous panelist had made, Mr.

12 Smoot, about an expert named Bill Lewinski who

13 testified about use of force by cops -- by police all

14 the time, and he made it seem like he is the expert on

15 the subject of how reliable testimony is 48 hours

16 after the fact. I just wanted to point out that, Mr.

17 Haddad, who your friend is, has disqualified Mr.

18 Lewinski from testifying before and has made -- has

19 raised the issue that Mr. Lewinski is someone who

20 testifies routinely on behalf of police officers in

21 excessive force shootings, so I'm not sure how

22 independent an expert he may be, but I just wanted to

23 raise that issue.

24 This is for Mr. Blanks. You raised about

25 the data issue and about the disproportionate number

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

14 MR. JONATHAN BLANKS: I'm not against tying
15 federal funds to -- to compliance with, you know,
16 federal prerogatives; however, I, getting back to a
17 point earlier, with a data collection of how many
18 complaints they have, what you have is an incentive
19 for the police to then start cooking numbers about
20 what -- you know, what they're going to report. Like
21 you had the case here in New York, I don't mean to be
22 picking on New York; they're really good at -- at
23 documenting it here, Adrian Schoolcraft was an officer
24 in Bed-Stuy and he had a tape recording of what the
25 police within his own unit were doing to drop down the

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severity of crime because they wanted to keep the

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1 crime numbers down so they started kicking it down to
2 like misdemeanors instead of really grotesque assault
3 and battery. He recorded it and then the retaliation
4 against him was severe. They actually had him
5 involuntarily committed and he had a recording of that
6 incident when they said they oh, he was suicidal. It
7 was absolutely not true, and his lawsuit is still
8 pending, if I'm not mistaken. And so any time you have
9 these sort of like hard lying stats and benchmarks
10 that you're asking to be fulfilled, I'm afraid of the
11 unintended consequences of the lengths that they will
12 go to and the lengths that they will use to enforce
13 blue wall when they're talking about the civilian
14 complaints. I mean even there's a human rights watch
15 paper from about ten or fifteen years ago that
16 discussed the various levels of difficulties of filing
17 a complaint and if you go into an independent board,
18 that's fine, but not every jurisdiction has that and
19 so if you have an intake officer who's going to take
20 the complaint, they are going to severely -they very
21 often they are going to severely dissuade the person
22 from filing the complaint and if that person has a
23 record or if that person has maybe friends or
24 relatives that don't have documentation to

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1 be in this country legally, they are going to use
2 intimidation against those people. So I'm not against
3 it in theory, but I think in the process that I'm
4 afraid of the unintended consequences.

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

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

18 COMMISSIONER KLADNEY: Thank you, Mr. Chair.
19 I think this question is going to be directed to Judge
20 Mark and Professor Jones-Brown because I think it
21 focuses more on New York than anywhere else, but the
22 chair spoke about possible opportunities. He talked
23 about that example when he was stopped as a young man,
24 possible police misconduct, and I've always felt
25 there's a real question as to whether the fourth

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1 amendment exists anymore when it comes to vehicle
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2 searches. If a policeman is going to write you a
3 ticket and you don't allow him to search your vehicle,
4 he says he's going to arrest you and impound it, he
5 can search it on the impound, and today the FBI lab
6 situation came up where, I can't remember it exactly
7 in the news; it was 250 plus people were convicted on
8 evidence out of the lab that was testified to by FBI
9 officers who were -- was inappropriately done or
10 wrongfully done. I really can't remember. I heard it
11 in the news this morning at 6 o'clock, and here in New
12 York you've had quite a few cases, especially in
13 Brooklyn, of people being convicted on wrongful
14 evidence. I guess my question is are officers being
15 charged when this is found or is there a crime
16 actually committed by them that they are being
17 prosecuted for or is it just that these folks are let
18 out of jail?

19 HON. LAWRENCE MARK: Well --

20 COMMISSIONER KLADNEY: Or prison, I should
21 say.

22 HON. LAWRENCE MARK: I don't think there's
23 one answer to that question. I can say, though, that
24 if a police officer violates a citizens's rights,
25 there hasn't been a real effective solution to that

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1 problem, and I can tell you the exclusionary rule
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2 where when the court finds that there's been a
3 violation of the Defendant's rights, evidence has to be
4 excluded. Sometimes that's the end of the case for the
5 prosecution. Sometimes it's not, but it's never been a
6 particularly effective remedy for addressing people's
7 violation of their constitutional rights, which isn't
8 to say that, therefore, the evidence should be
9 admitted. I'm not suggesting that at all, but U.S.
10 Supreme Court sanctioned remedy for violations of
11 constitutional rights, people's legal rights has never
12 been an effective solution. I think that as a society
13 we have to look at ways that where the police violate
14 people's rights that there's an effective remedy for
15 that.

16 COMMISSIONER KLADNEY: Any ideas?

17 HON. LAWRENCE MARK: I think ultimately, you
18 know, lawsuits against police officers, it's not the
19 easiest thing in the world. People who -- more often
20 than not when people's rights are violated, they're
21 poor people, powerless people and bringing a lawsuit
22 is not an easy thing for someone in that situation,
23 but I -- I think ultimately police departments have to
24 take action against their -- their officers when they
25 violate people's rights, and that

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1 may be wishful thinking, but -- but maybe there's some
2 creative ways to -- to provide incentives for them to ²⁴¹
3 do that. You know, there have been a number of
4 suggestions here this afternoon about that federal
5 money, salary increases. Those are very interesting
6 ideas that I think could be seriously considered.

7 COMMISSIONER KLADNEY: Thank you, Your
8 Honor.

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

25 CHAIRMAN CASTRO: Thank you.

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1 quickly on a point. I worked at the Innocence Project
2 at one point, and I just wanted to respond that in
3 hundreds of cases where people have been exonerated
4 through DNA testing, there's almost never the kind of
5 I guess the kind of strong accountability for officers
6 or prosecutors. In fact, it's hard enough for people
7 who have spent decades in jail to even get
8 compensated, just get compensated, let alone
9 accountability. I do think, and again this is somewhat
10 off script, but when we talk about accountability,
11 while of course, we want to have there's a certain
12 vengeance involved there. Each time you have a
13 wrongful conviction or somebody's rights are severely
14 violated, it's a learning opportunity and a teaching
15 opportunity for police, for prosecutors, for the
16 community. Every time a plane crashes, you know, we
17 have sent investigators in to try to figure out
18 everything that went wrong so we make sure it doesn't
19 happen again, and we don't do that in the same way
20 with wrongful convictions and violations of rights,
21 and while I think certainly we want to find out how
22 can you, you know, bring in sometimes harsh remedies
23 to bear, which is very hard to do with qualified
24 immunity and absolute immunity and, I think

1 it's also again a larger community-based discussion
2 that should happen with prosecutors, the wrongly
3 convicted, the defense lawyers about how this went
4 wrong so we can try to get it right and have a more
5 kind of holistic idea of -- of -- of accountability as
6 opposed to just how do we then throw another person in
7 jail, et cetera.

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

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

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

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

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departments themselves, and police departments have to

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1 police themselves and --

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

7 HON. LAWRENCE MARK: Again, judges play an
8 important role in the -- in the federal decision in
9 New York, the lawsuit that was brought on Judge
10 Scheindlin's decision that it's had an extraordinary
11 impact. I think stop and frisks were clearly being
12 overused in New York for many years even before her
13 decision started to decline and since the decision it
14 declined tremendously and very interesting because one
15 would think even if you felt that the police
16 department was overusing that technique and -- and you
17 would think, though, that the overuse of that
18 technique would lead to less crime, that even if less
19 than 10 percent of the people that you're stopping and
20 frisking are carrying a gun or some other contraband,
21 you would think that that would reduce crime, it would
22 be effective in reducing crime. The remarkable thing
23 is thanks to a judge's decision or at least in large
24 part to a judges's decision the number of illegal

1 stops and frisks has plummeted in this city and crime
2 has continued to go down. I mean it's really
3 remarkable, if you think about it.

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

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

18 VICE CHAIRMAN TIMMONS-GOODSON: I agree
19 with you.

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

22 VICE CHAIRMAN TIMMONS-GOODSON: Please,
23 Professor.

24 MS. DELORES JONES-BROWN: So the bulk of my
25 statement has to do with the shift in the Supreme

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1 Court, the United States Supreme Court's reasoning
2 about these issues, and I think that the Connor
3 decision, the Graham versus Connor decision was a
4 mistake, and I think that it has contributed to the
5 rise in incidence or the number of incidence or the
6 frequency of incidence that we see. I think the other
7 challenge is when officers choose to have a bench
8 trial, that judges have to be willing to say that the
9 officers have done something wrong that is illegal and
10 I'm most disturbed by Judge Sheindlin's, that's Gerald
11 Sheindlin, his decision to say that Anthony Baez's
12 death was unnecessary and avoidable and then to acquit
13 the officer of wrongdoing. I think that kind of -the
14 announcement itself confuses the public because how can
15 you say that it's unnecessary and avoidable, but then
16 not hold the officer criminally liable, and I think
17 that local judges are under pressure, just as
18 prosecutors are under pressure, to stand by the police
19 and I think that they have to be brave and when wrong
20 is wrong, they have to be willing to find criminal
21 liability or else the system will never have the kind
22 of legitimacy, particularly for people of color who
23 need most to trust in the system.

24 COMMISSIONER KLADNEY: Especially elected
25 judges.

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

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

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

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

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

4 MR. LUM: Yes.

5 MR. SABOL: Yes.

6 MS. SCRIVNER: Yes.

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

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

17 In some ways the missions of CRS and the
18 Commission I think compliment one another. The
19 Commission seeks to inform the public of developments
20 in national civil rights policy and improve the
21 enforcement in -- in civil rights law. CRS on the
22 other hand, we seek to address the tensions that come
23 from the community conflicts that necessitate those
24 laws. So while our missions are different, both
25 organizations share a vision to preserve the

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1 importance of justice and equality for all. And just
2 recently I and your former staff director, Marleen, had
3 the distinct privilege of being in Selma, Alabama to
4 help commemorate the 50th anniversary of Bloody Sunday
5 and the historic voting march from Selma Montgomery,
6 so violent resistance when state troopers attacked the
7 nonviolent with whips, batons and teargas as they
8 tried to cross the Edmund Pettus Bridge. It was on
9 March 7, 1965, arguably marked one of the lowest
10 points for law enforcement community relations in
11 history, and actually during that important time in
12 history, CRS was there to resolve conflict and reduce
13 the tension. CRS's first director was a man named
14 LeRoy Collins, and he worked behind the scenes to
15 ultimately help broker the agreement for the second
16 march that's between King and the Alabama state
17 troopers, which helped keep the peace the agreement
18 held. Because you remember in the movie which was
19 shown, the marchers stopped in the middle of the
20 Pettus Bridge, kneeled down saying we shall overcome,
21 and King then turns the group to go back to Selma.
22 That was an agreement that CRS helped mediate in that
23 day. And one point raising is that law enforcement
24 community relations are strained and compromise and
25 communication are just not easy in those situations.

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The marchers were trying to cross the Pettus Bridge

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1 were inspired in part by the February 1965 shooting of
2 Jimmy Lee Jackson, an unarmed, young African American
3 man by an Alabama state trooper. Selma marchers
4 traveled a long distance to protest police brutality,
5 and this scenario continues today. As we examine
6 Ferguson, when another deadly confrontation between
7 police and young unarmed young African American man,
8 Michael Brown stir nationwide protests and
9 demonstrations. Both cases sparked an important
10 national dialogue about community police relations,
11 and from Ferguson, to Sanford and back, here it's New
12 York and Eric Garner, CRS was on the ground from the
13 date of each incident. CRS worked with all the
14 involved parties, the elected officials, law
15 enforcement and community groups to coordinate
16 effective community dialogues with the goal of
17 prioritizing issues and developing action steps that
18 all the parties could take to improve partnerships
19 and strengthen mutual trust going forward. CRS has
20 actually played this sort of roll in local and
21 nationwide dialogue by facilitating discussions that
22 help communities develop community capacity networks
23 and plans to promote peace and resolve conflict in
24 neighborhoods and schools. I would say similar to

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1 Selma today, self-diplomacy, self-marshall training
2 remain useful tools during large planned protests. In
3 2007/2008 CRS assisted local law enforcement officials
4 after the shooting death of Sean Bell in Queens, New
5 York. Those who are here today and locally you
6 probably remember the chaos that happened at that
7 time. Streets were closed. Bridges were blocked. CRS
8 provided contingency planning assistance, self-marshall
9 training with community organizers and police in
10 preparation for some of the those events. We responded
11 to twenty-five -- we were involved in twenty-five
12 community events and there were six highly publicized
13 civil disobedience demonstrations. CRS helped the
14 community leaders and police restore peace in the city
15 at that time.

16 Following the September 11 terrorist
17 attacks and with the increase in violence and
18 misunderstanding against Arabs, Muslims and Sikh
19 intensified, the need to promote and educate
20 understanding became apparent. As a result at that
21 time CRS developed and Arab, Muslim and Sikh cultural
22 awareness training program, and what we call our AMS
23 program. CRS/AMS program is a four hour program that
24 brings together law enforcement, government officials
25 and Arab, Muslim, Sikh communities together to foster

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1 mutual understanding of strengthened police community
2 relations. It covers cultural behaviors,
3 sensitivities, stereotypes and expectations during
4 police community interactions, individual
5 interactions, and to supplement that training, we also
6 created a rollcall video for law enforcement called
7 The First Three to Five Seconds. The video was
8 developed to provide officers with fundamental
9 understanding of Arab, Muslim and Sikh cultures during
10 nonemergency interactions. Also following that model
11 in 2014 CRS created a transgender law enforcement
12 training, and it's finally analyzing a rollcall video
13 as well. It's been very well received. In developing
14 the program we brought together roundtable meetings,
15 transgender leader, law enforcement representatives,
16 with the goal, again, of improving relationships
17 between transgender communities and law enforcement.

18 Currently we're also developing a program
19 for dealing with individuals with intellectual and
20 developmental disabilities. I know this was mentioned
21 in earlier panels as well. It's my hope that that
22 program too, like the other programs, will enhance law
23 enforcement's ability to recognize nonthreatening
24 behaviors from those with disabilities and help
25 prevent tragedies like the death of Ethan Saylor, a

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26-year-old Maryland man with Down syndrome who died

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1 while being restrained by police. The incident was a
2 callous case. People with cognitive disabilities are
3 increasingly being secluded in communities and no
4 longer confined to institutions. The world is
5 changing and our law enforcement must be better
6 equipped and trained to serve its community members.

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

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

16 MR. WILLIAM SABOL: I'm Bill Sabol. I'm the
17 Director of Bureau Justice Statistics. BJS is the
18 principal Federal statistical agency in the Department
19 of Justice, and core to its mission is developing
20 national statistical programs that describe criminal
21 events, offenders, and the operation of justice
22 agencies at the federal, state and local level.
23 Important to understand about BJS is that it's
24 enabling legislation to data collected by BJS should

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be used only for statistical purposes, shall be

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

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1 Deaths in Custody Reporting Act in 2000 to capture
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2 data on persons who died in the custody of prisons,
3 jails, en route to an incarceration or in the process
4 of arrest. In general our approach to measuring force,
5 just like lots of our statistics, is through a
6 combination of administrative data and survey data so
7 that we can -- so that we can compare what we get from
8 official sources with citizens' perspectives, just
9 like the dark figure of unreported crime where you see
10 our crime data come only in terms of crimes known to
11 police and the National Crime Victimization said
12 they'd get the information of crimes not reported to
13 police. We adopt that same perspective and force,
14 citizen reports versus to the extent we get them,
15 official statistics. So the citizen reports come from
16 this survey called Police Public Contact Survey, and
17 to keep it on force is to try to understand the nature
18 of the interaction between the police and the public.
19 So it tries to capture the events. It tries to capture
20 what the police do and what respondents did in that
21 contact. So for example, it asks respondents about
22 whether the police shouted at them, cursed at them,
23 threatened them, used electric shock or pointed a gun.
24 It asks respondents whether they disobeyed or
25 interfered with the officer all the way to whether

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1 they physically did anything to the officer. We
2 implement these surveys every three years since 1999.
3 The most recent one between 2011. We're fielding the
4 current one, and just a couple statistics in terms of
5 what we found. According to PPCS there are about 47
6 million people who were 16 and above who had at least
7 one contact with police for a traffic stop, pedestrian
8 stop or other type of contact. That number ranged
9 between 40 and 47 million between '99 and 2001. The
10 data showed that in less than 2 percent of those cases
11 did the police use force in the most recent contact
12 with -- with civilians, so that amounts to over time
13 to between 400 and 800,000 incidents of force. Given
14 that force is used in those incidents in the majority
15 over three quarters of them, citizens said the force
16 was excessive. The PPCS captures a range or a
17 continuum of force of nonfatal forces, including,
18 shouting, cursing and things along those lines and
19 typically the most common use of force is threatening,
20 pushing or grabbing. In about a quarter of the cases
21 respondents report police pointed a gun at them. They
22 used pepper spray or shock devices in about 9 percent
23 of the incidents. So the picture is that a lot of the
24 contacts, relatively small -- relatively statistically
25 small fraction of cases the citizens report police use

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force.

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1 Jumping to the back end in the data we
2 capture on the deaths in the process of arrest, in
3 response to the Deaths in Custody Act we started
4 collecting data through state reporting systems in
5 2003. We collected them through 2011. Suspended the
6 collection because of concerns about methodology, and
7 we'll come back to what we're doing on that. But
8 between 2003 and 2009 we captured the data on the
9 civilian deaths, and one of the things we found was
10 out of about 4,800 deaths we captured over that
11 period, about 40 percent of them were due to a cause
12 other than a law enforcement officer homicide. The
13 majority of non-law enforcement homicidal causes were
14 suicide or intoxication deaths. Our data are similar
15 to what the FBI collects in supplementing homicide
16 reports in what they call justifiable homicide, and
17 they show some similar patterns and trends. For
18 example, both sources show that about 30 percent of
19 the persons who die as a result of law enforcement
20 homicide are black. About 42 or 45 percent are white.
21 However, we had concerns that both our data and their
22 data weren't capturing all of the deaths that were
23 occurring, so we did a study where we matched cases,
24 made comparisons and during that period between '03
25 and '09. The data

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1 we're capturing only about half the expected number of
2 deaths. In the later years by 2011 we reduced that to
3 about 30 percent or so by using alternative methods.
4 So our intention is to spend our resources starting in
5 May with some pilot studies that will combine, I think
6 it was mentioned by the Cato Institute, open-source
7 data that takes into account all these types of things
8 to cases that are potential cases and follow up with
9 direct reporting on the cases with law enforcement
10 data. So we're working, as I said, on both ends, the
11 citizens' side, and the deep end, the arrest-related
12 death process to try to improve those, the data on
13 what we have on this topic.

14 CHAIRMAN CASTRO: Thank you. Ms. Scrivner.

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

17 CHAIRMAN CASTRO: Yes.

18 MS. ELLEN SCRIVNER: Okay, thank you.

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

21 MS. ELLEN SCRIVNER: Get closer, okay.

22 MR. CHAIRMAN: Might go closer to you.

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

25 CHAIRMAN CASTRO: Try the button again I

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think maybe. There you go.

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

1 Thank you for the opportunity to be here,
2 and as I read the panel names, this was the federal
3 officials panel. In the interest of full disclosure, I
4 am no longer a federal official. So we have to get
5 that out of the table. I did have that experience, but
6 right now I'm working in police reform, and all of my
7 experience really tells me that's where we need to be,
8 and what I've heard here today just confirms that we
9 really need to be focusing on police reform because
10 simply changing a particular practice, such as a
11 different training program, implementing a new program
12 to respond to complaints or bringing on new
13 technology, they will all have specific results, but
14 that will not get us to the results that we're
15 seeking. The reason being I, in my view, we are really
16 at a very pivotal point in policing in terms of the
17 relationship of the community and we need to be
18 talking about the need for systemic organizational
19 change, and I've not really heard a lot about that
20 today in terms of changing not just different programs
21 and different initiatives, but really changing
22 organizations across the country, and of course, we're
23 then talking about cultural change as well, and that
24

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1 change needs to be embedded in a court philosophy that
2 has the capacity to change the direction of the
3 culture of police community interactions, and that it
4 will start to become a cohesive organizational change
5 strategy that can be implemented across the country,
6 but what we're really looking at it would be embedded
7 in constitutional policing. Clearly not all police
8 departments have cultures that are an affluence to the
9 community, but those that do, we've heard many
10 examples, your examples today, and what was so
11 recently seen are characterized by racist messages,
12 overreliance on tactics and harassment. They do not
13 represent the community, and they tend to use force
14 rather than words. Until Ferguson I think many of us,
15 myself in particular, really believed we had witnessed
16 a history of civil rights gains, and that culminated
17 in the Violent Crime Control Act of '94, which
18 introduced community policing and achieved a number of
19 objectives that improved relationships between police
20 and the communities they served, and that included the
21 introduction of the community policing philosophy.
22 That was built upon community engagement and
23 collaborative problem solving, and those are two key
24 foundations of community policing, and they have very,
25 very specific kinds of meaning. However, many of us

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1 saw community policing losing priority status after
2 the event of 9/11, which I think everyone could
3 understand, but then also what became known as the
4 metrics issues or the numbers game where departments
5 used analytics to identify potential crime hotspots
6 and realistically they did start to bring crime down;
7 however, if you lived in one of those hot spots, you
8 may not see it as all that great and you may question
9 yes, it's bringing it down, but what is it doing to
10 bring it down. So over and above those events I don't
11 think we had any idea, however, just how serious the
12 situation was becoming until the national spotlight
13 was focused on Ferguson and here in New York City,
14 Cleveland and then when you think it cannot get any
15 worse, we see what happens in North Charleston and
16 then Tulsa where, again, unarmed men of color are
17 being murdered, and watching those events transpire
18 when you're talking about Selma, it kind of like
19 brought tears to my eyes as I watched this, realizing
20 that we were celebrating the 50th anniversary of Selma
21 and so many of us thought we had really made such
22 tremendous gains since that time and since the days of
23 that policing and to find out that maybe we hadn't
24 made the gains that we thought we had and then maybe
25 we were kind of kidding ourselves was kind of

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1 difficult to accept, but we have to accept it. We
2 have to move on. As Delores Jones-Brown talked about
3 in her testimony, we've been there before repeatedly,
4 and now we need to move forward and do something very
5 different. We need to face what we thought was
6 happening and hope for what was not necessarily
7 reality and we need to lay a groundwork for new
8 initiatives within a framework of 21st Century
9 policing strategies where the protect part of serve
10 and protect does not mean harassment that generates
11 nothing but anger, resentment and lack of trust.
12 You've heard here today many of the directions in
13 which we need to go. There are a lot of great ideas,
14 but we need to do it within a comprehensive way that
15 touches all of the bases and not just the police but
16 the Criminal Justice System as a whole. As body cams
17 are great for transparency, technology can decide
18 hotspots all may be acceptable to prosecutors and
19 courts, but if we do not have real collaboration with
20 the community as to their use, will we ever really
21 know their true value, and that's true of probably any
22 implementation, even some of the you've heard about
23 great training programs here today. You can have the
24 best subject matter experts, very persuasive speakers,
25 but we need national leadership to really start making

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1 the kind of changes that have to occur and within that
2 context the community's voice needs to be heard. It
3 needs to be more than just sitting at the table. It
4 needs to be actively involved and in decision making
5 and reshaping the culture, and so we're talking a
6 whole lot more than a citizen review board or citizen
7 training program, and one of the things that would be
8 recommendations that I will be making will be that we
9 really start to need to look at how we can put
10 together a regional kind or concept of a regional
11 system of institutes across the country,
12 organizational change institutes where police and
13 community go there together, police leadership and
14 community leadership go there together to start to
15 learn how can we change the culture of these
16 organizations. We've got very smart people in many of
17 these communities. They can contribute their ideas and
18 their knowledge. Hopefully the task force on 21st
19 Century policing, as it is the final recommendation,
20 are released. Hopefully that too will add to this
21 whole notion of creating comprehensive change and will
22 open the opportunity for a very new kind of dialogue
23 on race and policing because in my view that's where
24 we need to be if we're going to really move forward
25 and have true constitutional policing. I offer to all

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1 of you that this -- this dialogue that we've started
2 today is a really critical first step in making those
3 changes occur. Thank you for the opportunity
4 to be part of it.

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

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

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

21 MR. WILLIAM SABOL: When I look at the
22 trends there's been in terms of the number -- okay, so
23 we know that the data we have, both the data that BJS
24 has collected historically and the number of homicides
25 are underreporting the total number of homicides, but

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1 relative to the expected numbers in '11 or so or
2 between 2009 and 2011, that number of homicides is
3 relatively flat, so that would lead me to believe
4 there's definitely more coverage going on, but the
5 answer to the question is more complete data on the
6 number of homicides by law enforcement officers trying
7 to get that number down, and then a corollary of that,
8 I think, it ties both of my panelists' comments
9 together is understanding the characteristics of the
10 police departments where those things occur at higher
11 than expected rates or lower than expected rates,
12 whether that's the composition of the police force
13 relative to the community or different policies and
14 practices they might implement, whether it's proactive
15 policing, community policing, trying to understand
16 what's associated with that. One of the challenges is
17 that these are, quote, statistically rare events, so
18 we're at a floor that where things, you know, if you
19 have one or two in one year it could be high in some
20 communities. If it goes down to zero the next year,
21 you know, that just could be natural variation, so
22 it's just a real challenge to try to detect those
23 things, and it's going to take a lot of work, but I
24 think looking for the underlying patterns of the
25 relationship between the characteristics of the

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1 organizations and how they reflect the community to
2 try to find out where the anomalies might be, I think
3 is a starting point in that.

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

25 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

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

10 CHAIRMAN CASTRO: Thank you. Commissioner
11 Kladney.

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

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

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1 the FBI.

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

5 MR. WILLIAM SABOL: That's correct.

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

13 MR. WILLIAM SABOL: Well, statistical
14 agencies in the country typically operate under the
15 presumption that participation involuntary, and it's
16 based upon a concept of trust and credibility, that is
17 that we're honest, credible brokers that people give
18 us the data. We'll treat it appropriately and put it
19 out, and I think that's really a core principle, a
20 good principle as opposed to simply mandating things.
21 We have, BJS has done mandated collection. We do that,
22 and one of the things we've learned even under that
23 some people don't participate when it's mandatory even
24 when the commissions had -- when they were calling out
25 people at high rates. So mandating

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doesn't necessarily ensure compliance. I think the

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1 voluntary participation kind of goes to the core of
2 one of the principles of our country of democratic
3 participation, and personally I prefer people want to
4 give us the data. We treat it appropriately, that
5 they're responding, you know, as part of their
6 civilian, their civil responsibility it to provide
7 accurate data to inform the nation about what's
8 happening in crime. There are police shootings or
9 whatever the statistic of interest might be.

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

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

15 COMMISSIONER KLADNEY: The FBI numbers.

16 MR. WILLIAM SABOL: Well, the stuff we're
17 getting from the arrest-related deaths it's
18 interesting the fact reads that Congress is providing
19 encouragement to the states to provide data on the
20 deaths in the process of deaths. The encouragement is
21 a penalty potential reduction in funding through one
22 grant program, and that's a discretionary penalty for
23 the Attorney General. Our approach is essentially to
24 try and use modal methods to try to identify, capture

1 events and then follow up and confirm them and capture
2 the data on those. I think that we can do well with
3 that methodology. I say that based in part in the
4 last couple of years of the program before we
5 temporarily suspended the methodological work, we
6 were seeing improvements particularly where our
7 methodology was applied more clearly consistently
8 across state, and we were using more open source to
9 nominate and follow up. So I think there's value in
10 continued in this -- in this vein. As said, you know,
11 or the mandate doesn't necessarily ensure compliance
12 and the mandate raises a whole bunch of issues about
13 what compliance means. So for example, even under the
14 Deaths and Custody Act it's a little unclear what
15 compliance is. So if through the states or the law
16 enforcement agencies they provide a count of the
17 number of deaths but not every element that congress
18 has specified, is that full compliance? Is that good
19 faith effort? Is that partial compliance, and it
20 raises a lot of questions about how one measures
21 that, particularly said with a potential penalty so
22 that we reward good faith efforts or do we punish
23 good faith effort in these issues.

24 COMMISSIONER KLADNEY: Okay, let me try it
25 this way. What percentage of compliance do you think

1 you have in your programs?

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2 MR. WILLIAM SABOL: In the BJS programs,
3 quite high. For example, we survey law enforcement
4 agencies. Well, we actually conduct a census of them to
5 capture data on their characteristics, and we get about
6 99 percent response rate. We do a sample survey of
7 about 3,700 agencies periodically, and we get over 99.5
8 percent response rates and we're asking questions
9 about, you know, programs, policies, practices, things
10 along those lines. So we have very high compliance in
11 the surveys that we do in those programs.

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

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

17 COMMISSIONER KLADNEY: So we should ask
18 them?

19 MR. WILLIAM SABOL: Yeah.

20 COMMISSIONER KLADNEY: Yeah.

21 CHAIRMAN CASTRO: Commissioner Yaki.

22 COMMISSIONER YAKI: Thank you very much.
23 Just to follow up on something Commissioner Kladney
24 had to say, I asked the previous panel the question
25 about is there a way to condition federal funds on,

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and I wasn't even talking -- I was talking beyond
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1 data. I was talking about its tuning procedures by
2 which to discipline police officers with high number
3 of complaints or something along those lines, but I
4 think it's applicable to this situation as well, which
5 is how much -- how confident are you that the data
6 that you're getting is accurate and true versus there
7 may be some cooking of the books, as one person put
8 it, to make sure their community wasn't number one or
9 number 2 in these kinds -- these kinds of reports or
10 they didn't want to show up on some top ten list,
11 whatever it is that communities do because they don't
12 like to be -- be -- be seen as the bottom feeders of -
13 - of any particular societal problem? I'd just like
14 your comment on that.

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

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

15 COMMISSIONER YAKI: Let me just ask, I mean
 16 do you think that in the -- in the age of Twitter and
 17 in the age of Facebook and in the age of social media
 18 is that as relevant now as it was when the statute was
 19 first enacted because it seems like everyone knows
 20 something may or may not happen, and I raise a point
 21 about what the chairman said about CNN, that headline
 22 because just to make a very clear point, Walter Scott
 23 in North Charleston would never have been reported but
 24 for the fact that someone was standing by there with a
 25 cellphone camera? That would have never made it

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1 anywhere, and on another set of statistics that I know
2 that our Dr. Goliday was struggling with has been
3 working with in terms of a report we're also doing on
4 stand your ground, is the absolute positing of
5 statistics on when police use their discretion to
6 determine that a homicide is deemed lawful and
7 therefore not entered into the books as -- even though
8 the police may make that conscious decision, that may
9 be wrongful in that instance. How many times is that
10 happening and not being reported as well? So I mean
11 there are a lot of -- I just wonder how relevant it is
12 now in when in the pursuit of transparency and
13 accuracy we want, and quite frankly, what other
14 panelists talked about, which was the public shaming
15 of some of these departments to get their acts
16 together, why -- why we would want to hold back that
17 kind of information.

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

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

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

10 MR. WILLIAM SABOL: We would still patch
11 that data at the death in the process of arrest and
12 try to capture that information. And you are pointing
13 out a really important point, which was what I said at
14 the outset, when we think about data collection, we
15 want to try as best we can; we don't do it all the
16 time, to get a public and police perspective. So in
17 that survey that we do, you know, we have information
18 on a continuum of force, police yell at you, kick you,
19 point a gun at you. In principle, administrative data
20 you're going to hear from Dave Klinger and other folks
21 who have captured that data and a similar type of
22 continuum force is measured from the police
23 departments we can assess whether or not there's
24 corroboration between the two. You're absolutely
25 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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1 statistics. That's an ongoing challenge that we're
2 trying to get, but I go back to what we're trying to
3 do in these cases now by relying on open source,
4 whether it's a news media report or something like
5 that, we capture an element that we can use and we
6 then contact the police department for confirmation or
7 not. We don't necessarily take the report as gospel
8 because we have this other information, and we try to
9 do some kind of forensic audit to try to figure out
10 what's going on with it.

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

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

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

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

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

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

16 CHAIRMAN CASTRO: Commissioner Achtenberg.

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

21 MS. ELLEN SCRIVNER: Right.

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

25 MS. ELLEN SCRIVNER: Well, what I was

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talking about is we -- let me back up for a minute.

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1 We've been like talking all day, and so many different
2 meetings that I go to, we're talking about really good
3 things, like implicit bias training, very good,
4 procedural justice training. I'm talking about let's
5 bring that together into a more systemic, cohesive
6 way, and the way we do that is we start to look more
7 at how do you make organizational change within an
8 organization, not just changing a specific program,
9 but really changing the whole organization from top to
10 bottom in ways that need to be changed, and one of the
11 ways that you could do that is if, and but it does
12 require resources, if we develop like a network of,
13 John Jay would be a good example of one, where people
14 could come together, police and citizens together to
15 work on how are we going to change the culture of this
16 organization, and embedded in that cultural change is
17 the constitutional policing, and I think we pretty
18 much know what constitutional policing is based on a
19 Department of Justice pattern and practice initiatives
20 because when they go in and they look at the patterns
21 and practices, inevitably what they're really looking
22 at are patterns and practices that lead to
23 unconstitutional policing behavior, whether you call
24 that misconduct or basically the people aren't being

1 served appropriately, and so you start to bring all
2 that together. Rather than -- my concern is we don't
3 approach it like a bunch of different silos, that we
4 start to weave it together. And I'm not suggesting
5 that's easy, but I do think we've really started to
6 identify the framework and what the pieces need to be
7 and now we need to start putting that together, and so
8 I'm going to turn that back to you guys to do that or
9 help anyway.

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

12 CHAIRMAN CASTRO: We do a lot of things.
13 We make a lot of recommendations.

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

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

21 MR. GRANDE LUM: I really like Ms.
22 Scrivner's point of community-oriented policing is
23 really about collaborative problem solving in the
24 community, but the communities can be at different
25 states. It can be a recent immigrant community, the

1 Somali community or the Burmese community that's
2 recently moved in, they may not be as ready to engage
3 in that, but I think a group like community relation
4 service can help play the third-party because
5 depending on, for example, there may be great mistrust
6 of law enforcement. There may not be a willingness to
7 immediately come to the table and by first having
8 conversations amongst themselves that bring together
9 leaders that they can identify or to develop leaders,
10 that's the way that then they will be able to engage
11 with law enforcement to come together maybe with a
12 facilitator to increase the ability of true
13 engagement. I think that is an important piece, as Ms.
14 Scrivner talked about, which is if you're going to
15 have cultural change, the community has to engage in
16 it. It can't just be independent, happening without
17 their voices included in that. And I think training
18 can be helpful to folks. Community advocates can be
19 helpful. The community organizations are the ones who
20 have pushed a lot of what's going on here about this
21 issue of excessive use of force, and they're going to
22 have to be part of the answer as well.

23 CHAIRMAN CASTRO: Commissioner Narasaki.

24 COMMISSIONER NARASAKI: Thank you, Mr. Chair.

25 Sorry. So I have a few questions. One for

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Mr. Sabol, are the studies that are done, I'm very

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1 interested in the surveys that you do, are they done
2 in Spanish or are they done in other languages?

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

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

17 MR. WILLIAM SABOL: With respect to Asians
18 in the sample, I can't -- I don't point -
19 specifically I don't know. I mean I can get you. I
20 can talk to the census bureau folks to find out what
21 challenge they have had. With respect to the Spanish
22 language we've measured a change in improvement in
23 response rates simply by translating surveys into
24 Spanish. So we've seen improvements in doing that.

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COMMISSIONER NARASAKI: And then I wanted
to thank Director Lum for coming because I know it was

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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. Scrivner 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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1 like that, and it's important. There is a lot of
2 federal resources that can be brought to bear on these
3 situations and it's important because the community
4 that's involved, they don't see different components.
5 They just see Department of Justice, so I think that's
6 true. I do want to say very carefully, though, for CRS
7 we have to be very careful to stay within what I would
8 say our lanes are. We do not litigate. We do not
9 investigate, we are there to be an impartial third-
10 party. So we in certain situations have to act very
11 separately and keep confidentiality and not seek
12 publicity for working, which you're trying to work
13 between parties, say law enforcement, government
14 officials, community because you're trying to help
15 them work through a situation. We stay away from the
16 other portions of our investigation and prosecutorial,
17 but in those situations where the circumstances are
18 appropriate, we're trying to help them work out their
19 own problems. We're trying to help them work solutions
20 when -- when appropriate to the issues that they face
21 around these issues.

22 COMMISSIONER NARASAKI: And we had -- we had
23 people testify about the important need to bring in
24 line officers as well as chiefs of police. I'm
25 wondering if you've seen good examples of that, anyone

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1 on the panel in terms of, you know, really trying to
2 drive change, not just as the chief -- leadership is
3 always important as well, but leaders can only lead if
4 people actually want to follow them, right.

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

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

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

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

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

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1 Department could go in just based on a series of
2 complaints that they were hearing. They didn't have
3 to have somebody file an actual suit. So that became
4 very different than the consent decree, and they still
5 have people out in the departments working with the
6 department and police chiefs like this. Now it's
7 turned to the point where the Cops Office and the
8 Civil Rights Division are encouraging police officers
9 to ask for that kind of assistance rather than they go
10 out there first. So that's kind of a seat change. The
11 consent decree is still out there and there are
12 probably some issues that the only way they're going
13 to get solved are through a consent decree. Consent
14 decrees are costly, but the cities really have to come
15 up with that money or the counties. Somebody has to
16 come up with it, not the Justice Department. So they
17 will go out there and do that work and they usually
18 last longer, probably much longer than anybody ever
19 anticipates they're gonna last, so I think given the
20 length of time, the cost and the fact that change is
21 relatively slow with consent decrees because of all
22 the different people that have to weigh in, my sense,
23 and this is not my -- this is just my sense of what
24 I'm seeing based on my own experience having been in
25 the Justice Department, but also what I'm seeing now,

I think there are many people that are really moving

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1 in the direction of the pattern and practice
2 initiatives and trying to avoid the consent decree,
3 unless it would be absolutely necessary and that's the
4 only way you can go.

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

11 MR. WILLIAM SABOL: Well, we're doing the
12 one pilot study. That starts in May. Hoping to have
13 some results by December. In terms of capturing data
14 on a wide array of force from police departments, this
15 is long-term effort, and again, I know you'll hear
16 some more about this in the next panel. So we'll be
17 having expert panel meetings later this summer or fall
18 to help identify what's important. I think there's
19 been a lot -- I think the survey work we do shows
20 something about the extent to which force is used in
21 traffic stops. I think there's a question about what's
22 important to capture and improve policing, like what
23 are the -- what elements are important for training or
24 changing police behavior. So that's kind

1 of the front survey that will start with an experiential
2 and then pilot tests. I want to rely on some of the 291
3 results that the researchers who are working on use of
4 force are fielding right away just in terms of saving
5 money. So probably wouldn't be fielding surveys for a
6 year and then later this year we'll implement -- we'll
7 survey between July and December, we'll do that Police
8 Public Contact Survey again. So those are the basic
9 things in the next year. Oh, and then the fourth thing
10 is even though we know that both our data and SHR
11 data, Supplementary Homicide Reports data, are
12 limited, we're gonna conduct that study, start looking
13 at the relationships between agencies and
14 characteristics.

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

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

23 CHAIRMAN CASTRO: Now the FBI data that's
24 collected only includes police shootings that result
25 in a fatality. So this additional force data that

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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

1
2 accountability and the use of force. Do any of you²⁹³
3 have any knowledge about international standard
4 and how maybe there's some best practices there
5 that we could apply here?

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

8 CHAIRMAN CASTRO: The what?

9 MR. WILLIAM SABOL: The international
10 statistical standards.

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

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

21 CHAIRMAN CASTRO: Good point.

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

25 CHAIRMAN CASTRO: Good idea.

Commissioners, any other questions? Commissioner

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1 COMMISSIONER KLADNEY: I believe
2 Sean Goliday of OCRE has a question.

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

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

17 MR. WILLIAM SABOL: Yeah, so there are two
18 parts to that grant program. One is the one you
19 identified where the statistical analysis centers can
20 get 50 or 60,000, and the topics they work on are open
21 to that, and we've identified police fatalities as a
22 priority area in the past and it still is. A second
23 opportunity is we have what we call an enhancement
24 grant, which is essentially a three year program at

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1 about 150 a year to develop statistical
2 infrastructures that's informative for the state and
3 locale, but also it helps us understand data that
4 might be available that we could capture. So that
5 program can be used in that way. The summations are
6 closed or just closing. I haven't seen what people
7 have come back with this year in terms of
8 applications. In the past folks have collected data
9 in terms of use of force, but they definitely can.

10 THE WITNESS: Is there an effort to
11 encourage states and local jurisdictions to do just
12 that?

13 MR. WILLIAM SABOL: Well, there are a lot of
14 priorities, and so our goal has always been to state
15 priority areas. So for example, we want to know a lot
16 about what happens in the courts. We don't have good
17 court data for a variety of reasons. So that's a
18 priority area. We want to improve the use of criminal
19 records for understanding flow through the system. So
20 that's a priority. So we're really leading up to the
21 states to negotiate that with, whether they're in the
22 governor's office or universities, with the agenda
23 that's really important for them, in part because we
24 always view this funding as seed money and not
25 permanent money, where it's an opportunity to take, I

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1 know it's not a lot, but over three years to sort of
2 expound on something and hopefully establish its
3 relevance so that either the state supports us or if
4 it's data that we can use, we can support it. So it's
5 to allow that kind of experimentation.

6 DR. SEAN GOLIDAY: Thank you.

7 CHAIRMAN CASTRO: Commissioner Narasaki.

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

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

22 MR. WILLIAM SABOL: I'm probably going out
23 of my area of expertise, but I agree with Ellen.
24 Policing is local. It's not primarily a state
25 function, except for the state police, but the state's

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1 Attorney General can set priorities and establish
2 what, you know, at least go on record as saying this
3 is important stuff to bring forward in an
4 investigation. So they can have a role. Now it's
5 not the governor. It's the governor's office.

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

8 MR. WILLIAM SABOL: There might be grants.

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

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

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

23 MS. ELLEN SCRIVNER: And some of the
24 homeland security grants are administered statewide
25 and they -- but they cover local expenses.

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COMMISSIONER NARASAKI: Thank you.

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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
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1 final panelist is Mr. Sam Walker from the University
2 of Nebraska.

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

8 MS. HEATHER MACDONALD: Yes.

9 MR. FRITZ UMBACH: Yes.

10 MR. DAVID KLINGER: Yes.

11 MR. JON SHANE: Yes.

12 MR. SAM WALKER: Yes.

13 CHAIRMAN CASTRO: Thank you. Ms.
14 MacDonald, please proceed.

15 MS. HEATHER MACDONALD: Thank you very
16 much, Chairman Castro. This is a great honor to be
17 testifying before the U.S. Civil Rights Commission.
18 It must be the most incredibly resilient body I've
19 seen, and if any of you keel over during our
20 presentations, we're not going to take it personally.
21 It's been a long today.

22 Any police shooting of an unarmed, innocent
23 civilian is a tragedy. The police should constantly
24 refine their tactics to try to ensure that such

1 mistakes never happen. Moreover, the police have an
2 indefeasible obligation to treat everyone with
3 courtesy and with respect and within the confines of
4 the law, but while we need to make sure that the
5 police are properly trained in the constitution and
6 courtesy, there is a larger reality behind the issue
7 of policing and raids that remains a taboo topic, and
8 that is black crime. Unless we bring down the black
9 crime and victimization rates, policing is going to be
10 heaviest in black neighborhoods, increasing the
11 chances that when an officer's use of force goes awry,
12 it will have a black subject. Every year approximately
13 6,000 blacks are murdered nationally. This number
14 represents a homicide death rate six times greater
15 than the whites and Hispanic death rate combined, and
16 that black death by homicide rate is a function of the
17 black crime rate. Black males between the ages of 14
18 and 17 commit homicide at ten times the rate of white
19 and Hispanic male teens combined. The black homicide
20 rate for all age groups is seven times that of whites
21 and Hispanics combined. That crime rate means that
22 police presence and use of proactive tactics will be
23 heaviest in black neighborhoods. In Brownsville,
24 Brooklyn, for example, the per capita shooting rate is
25 81 times higher than in nearby

1 Bayridge, Brooklyn. Brownsville being predominantly 301
2 black; Bayridge being predominantly white and Asian.
3 Every single one of those shootings is going to draw
4 police into the neighborhood where they're going to be
5 looking to make proactive stops to prevent a
6 retaliatory shooting. Now for the reasons that we have
7 already heard today, saying anything definitive about
8 police shootings is difficult. Historically around one-
9 third of the 400 police homicides reported to the FBI
10 each year have black subjects. Such a figure is easily
11 consistent with the black crime rate. Blacks make up
12 over half of all homicide perpetrators in the country,
13 and in 2013 were 42 percent of all cop killers, despite
14 being merely 12 percent of the population. From 1980 to
15 1998 young black males murdered police officers at
16 almost six times the rate of young white males.
17 According to Gary Kleck, a criminologist at Florida
18 State University, police officers are less likely to
19 kill a black suspect threatening or attacking them than
20 a white suspect. Kleck's findings comport with other
21 research on officer behavior. In New York City in 2011
22 police officers killed nine suspects, an
23 extraordinarily low number when compared to the size of
24 the New York police department and the city population
25 itself.

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Blacks were 22 percent of those fatalities. Whites

1 were 44 percent of those police fatalities. Yet
2 blacks were 67 percent of all suspects who fired at
3 the police. No white suspect fired at the police. A
4 2014 simulation study out of Washington State
5 University found that officers waited longer to assess
6 the situation when confronted with black suspects than
7 with white suspects. Who are some of the victims of
8 the elevated black crime rates? On March 11 of this
9 year as protestors once again converged on the
10 Ferguson, Missouri Police Department, a 6-year-old boy
11 named Marcus Johnson was killed a few miles away in a
12 St. Louis park, the victim of a stray bullet fired in
13 a dispute. There were no mass protests over his
14 killing. Al Sharpton did not call for a Justice
15 Department investigation. Few people outside of St.
16 Louis even know the boy's name. As heartbreaking as
17 such killings are, crime rates were much higher twenty
18 years ago. Over 10,000 minority males are alive today
19 in New York City who would have been dead if the
20 city's homicide rate remained at its early 1990s
21 levels. Behind this historic crime drop lies a
22 policing revolution that began in New York and spread
23 nationally. In 1994 the New York Police Department
24 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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1 who support them. These community members are rarely
2 heard in the national media. By all means, let us do
3 everything we can to make sure that police
4 departments use force only as a last resort, but
5 there is no evidence that police shootings of blacks
6 are on the rise or that they are a function of
7 racism, explicit or implicit. In fact, the government
8 agency most dedicated to the proposition that black
9 lives matter is today's data driven police department
10 exemplified by the NYPD. If we spent as much time
11 figuring out how to lower black crime as we spent
12 talking about alleged police racism, the alleged
13 policing problem would melt away. Thank you.

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

16 MR. FRITZ UMBACH: Thank you, Chairman
17 Castro.

18 Anyone with a conscious viewing the video
19 of Michael Slager killing Walter Scott must share
20 North Charleston Police Chief Driggers' response of
21 being sickened by the event, and the personal
22 testimony today confirms the reality of police use of
23 excessive force, but much about such practices is
24 unknown. Today I want to briefly map out what we do
25 not yet know about the problem and its solutions and

1 what we do know what is going to get us the systemic
2 change we all want. The first questions are obvious.
3 How frequently do police use lethal or excessive
4 force, and are they doing so more frequently.
5 Certainly widespread use of camera phones and social
6 media have brought a welcome national focus on the
7 problem, but is it the focus or the problem itself
8 that is growing? The answer is we don't know and
9 likely cannot know the scope and trajectory of the
10 problem until we construct a comprehensive national
11 database. It is revealing of our moral compass that we
12 track so much about law enforcement and crime in
13 America but do not reliably collect data about the
14 police use of serious force. The shortcomings of the
15 DOJ database on officer-involved shooting, the FBI's
16 numbers on justifiable homicides and the 2014 Death
17 and Custody Reporting Act are all well known, and I
18 need not repeat them here, but until we have reliable
19 numbers, however, it will be irresponsible to
20 speculate about the size and nature of the problem and
21 certainly the incomplete data we have points in many
22 different directions. Here in New York City, for
23 example, where the police have been exceptionally
24 transparent in their annual shooting report, the
25 incidence of police use of lethal force has been low

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1 for decades and shows no sign of increasing. The next
2 obvious question is do police officers subject
3 minorities to disparate treatment when using serious
4 force. Again, we do not really know. As even
5 ProPublica acknowledged in their off-sided study of
6 the alarming racial disparities in police killings,
7 although they, quote, found evidence of disparity in
8 the risks faced by young black men and white men,
9 this does not prove that police officers target any
10 racial group. The data is far too limited to point to
11 a cause for disparity. No doubt as Stanford
12 University's Jennifer Eberhardt has demonstrated in
13 her careful studies, implicit bias does shape police
14 officers' behavior. They judge, for example, faces
15 that are the most stereotypically black as the most
16 likely to be criminals, but while implicit bias is
17 certainly real, how much of the clear racial
18 disparities in the police use of serious force it can
19 explain, and how much is best explained by other
20 factors is simply unknown. Implicit bias might
21 contribute significantly or negligibly to police use
22 of force. We just do not know. So if we know so
23 little about the problem, what do we know about the
24 solution? There are solutions we know work and then
25 there are solutions that we know don't work or yet

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1 have not yet worked. One of the most frequently cited
2 solutions to problems with police brutality,
3 increasing the diversity of police forces has an
4 intuitive appeal and so it's played a central role in
5 call for police reform for a half century. But the
6 evidence on the value of this goal is rather mixed.
7 The most rigorous studies have shown that increasing
8 the share of black officers on a police department has
9 only a very modest impact on the frequency of the use
10 of lethal force by that department and at the
11 individual level, the research consistently
12 demonstrates that black police officers are no less
13 likely to use physical force than are white officers
14 and some studies shows they are actually more likely.
15 And at the recent DOJ study of Philadelphia's police
16 department reveals, black officers were nearly twice
17 as likely to misread a harmless object and weapon or
18 innocent act as threatening when often called by
19 police scholars as threat perception failure, than
20 were white officers. In short, while cities with more
21 minority residences experience a greater rate of
22 police use of deadly force, police departments with a
23 greater share of minority officers do not experience a
24 significantly lower rate. Of course there are many
25 arguments for greater diversity in our nation's police

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1 forces, but there is not yet evidence that reducing
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2 police use of lethal force is one of them. Another
3 frequent proposal of community policing has also not
4 lived up to its promise for reducing police violence.
5 In a careful study of sustained excessive force
6 complaints in 232 cities of more than a hundred
7 thousand residents, researchers found that the extent
8 to which individual police department embraced
9 community policing had no impact on that department's
10 use of force. And as a recent DOJ report on the San
11 Diego police department reveals, even that
12 department's comprehensive and brazen community
13 policing, sometimes hailed as the best of its kind,
14 did not inoculate that force against persuasive sexual
15 abuse of vulnerable citizens by its officers. So what
16 does work? Four decades of consistently rigorous
17 studies consistently demonstrate that cops who have
18 been to college are much less likely to use force and
19 are more likely to deescalate risky encounters with
20 citizens. Recent events demonstrate just how important
21 those findings are. Because the current legal
22 justification for the use of force is so very broad,
23 we should aim to reduce not just illegal or
24 illegitimate police use of force, but also what cops
25 among themselves call lawful but awful use of force.
And education seems the way to do so.

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

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1 problem of police brutality, the evidence does point
2 to a rather simple solution, require cops to have a
3 four year college degree.

4 CHAIRMAN CASTRO: Thank you. Mr. Klinger.

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

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1 about and one of the previous panels was talking
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2 about. What I want to focus on today basically
3 piggybacks upon what Fritz was talking about in terms
4 of trying to figure out ways to reduce the use of
5 deadly force. And the starting point for understanding
6 deadly force is understanding that law enforcement is
7 a dangerous business, and every year we have some
8 dozens of police officers murdered in the United
9 States, and so we cannot look at the use of deadly
10 force in a vacuum. We have to understand it as a
11 response to the danger that police officers face. With
12 that said, there are ways that we can reduce the use
13 of deadly force because not every time a police
14 officer shoots he or she should absolutely have done
15 so, and I'd like to break up shootings that didn't
16 need to happen into really three types. The first is
17 what I call a bad actor, a police officer who is a
18 bad, evil individual who wanted to kill somebody,
19 simply a murderer, for lack of a better term. The
20 second type of situation we have police officers who,
21 for whatever reason, make poor choices. They misread
22 the situation. They believe their life is in jeopardy.
23 They believe that someone is presenting a threat and
24 they just are simply wrong, not excusable wrong, but
25 simply wrong; they made a really dumb

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1 choice. And then the third situation, which is what I
2 want to focus on for the rest of my testimony is what
3 police officers and Fritz alluded to is poor tactics.
4 And these are situations where police officers, not
5 because they are making a bad choice in the final
6 frame, but rather the way they set up the encounter,
7 find themselves in a situation where a reasonable
8 officer confronted with a particular situation would
9 reasonably use deadly force. And in my written
10 testimony I talk about the Tamir Rice situation in
11 Cleveland, this tragedy, as an example of that where
12 the driver officer places the patrol vehicle about
13 ten, twelve feet away from an individual who has been
14 reported to have a gun. The passenger officer spots
15 an individual with a gun and he's ten, twelve feet
16 away without any cover and he goes ahead and shoots.
17 The analysis that most people have been taking on
18 that is that the passenger officer made a mistake. He
19 didn't know that the gun that Mr. Rice was carrying
20 wasn't a real gun. Had that been a real gun, we can
21 have two dead police officers. So what I want to do
22 is I want to step back and talk about how it is that
23 when police officers approach situations improperly
24 and place themselves in danger, this can lead to
25 shootings that can otherwise have been prevented. Now

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1 this is not something that is rocket science. This is
2 not something that Dave Klinger made up on the fly.
3 This is something I was trained in thirty plus years
4 ago as a young police officer with the City of Los
5 Angeles, and something that I was reminded of as a
6 young police officer in the City of Redmond,
7 Washington, and this is how police officers structure
8 things can create situations where shootings might
9 occur and can preclude situations from evolving to
10 points where police officers need to use deadly force.
11 And I wrote a piece about a decade ago for something
12 called Ideas in American Policing with the Police
13 Foundation where I talk about police shooting of this
14 ilk as what Charles Perot calls normal accidents. That
15 is when things become tightly coupled and when things
16 become interactively complex, bad things are gonna
17 happen. And once again, that's in my written testimony
18 for anybody who cares to look at it. And so if we
19 think about police work as complexity interactive
20 social circumstances where one or two or three or five
21 police officers, one or two or three or five citizens;
22 some may be suspects, some may even be hostages, some
23 may be innocent bystanders, whatever the case might
24 be, we can see that Charles Perot's framework makes
25 sense that we can have bad things

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1 happening. So what can we do in law enforcement, we
2 can teach officers and remind officers to de-couple,
3 to reduce the interactive complexity. And there's
4 another line of literature from organizational
5 sociology, social psychology called Higher Liability
6 Theory that talks about the way that you can reduce
7 situations where bad things happen is by creating
8 particular types of culture, which is a term that we
9 have heard about a lot today, and they talk about the
10 notion of mindfulness, that when police, excuse me,
11 when members of organizations are mindful, and there's
12 five things that I lay out in my written testimony;
13 preoccupation with failure, refusal to simplify
14 interpretation, sensitivity to operation, commitment
15 to resiliency, and then deference to expertise. When
16 we have organizations that operate this way, we reduce
17 bad outcome, and if police departments can develop
18 this type of mindfulness, my argument goes, they will
19 in fact be able to reduce the number of situations
20 where officers shoot where they didn't need to have
21 to, and I'm gonna take -- I'm gonna challenge Fritz's
22 argument about the need to have college educated
23 police officers. I think that's a good idea for all
24 sorts of reasons, but in terms of the use of deadly
25 force, one of the things that we know is that the most

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1 dangerous job that any American citizen can have is
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2 being on the flight deck of an aircraft carrier.

3 You've got flight operations where people are loading
4 high octane jet fuel. You've got 500 pound bombs.

5 You've got missiles. You've so on and so forth. You've
6 got planes that are taking off. You've got planes that

7 are landing, and you know what, the U.S. Navy has

8 found out ways to not have accidents, and the last

9 time the U.S. Navy had a fatality in terms of a mass

10 conflagration on an aircraft carrier flight deck was

11 literally decades ago. And one of the ways that

12 they've been able to avoid this is through the process

13 of developing mindfulness among everybody who is on

14 that flight deck. The average age of the people that

15 are working on that flight deck 19, 20 years old. So

16 organizationally we can create mechanisms to avoid bad

17 outcomes in situations that are inherently complexity

18 interactive and tightly coupled. Thank you.

19 CHAIRMAN CASTRO: Thank you. Mr. Shane.

20 MR. JON SHANE: Commissioner Castro, thank

21 you. I approach the issue from a knowledge

22 perspective, one where the use of force and

23 information become part of an embedded part of

24 management and are routinely used to examine police

25 policies and practices relative to legal principle and

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1 community sentiment as a matter of police performance.

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2 It has been said that measurement is the first step
3 that leads to control and eventually to improvement.

4 If you can't measure something, you can't understand
5 it. If you can't understand it, you cannot control
6 it. If you cannot control it, you cannot improve it.

7 The intent is to control police use of force through
8 training, supervision and policy development, which

9 is likely to produce less incidence as well as

10 prevent organizational accident, related to it by

11 capturing, analyzing and reporting on data to ensure

12 a complete picture emerges about trends and patterns

13 across the nation that can inform local policies and

14 practices. So what is the problem? At present we do

15 not have good national understanding of police use of

16 force because we don't have good data. Most of what

17 is known about police use of force is the result of

18 sporadic and piecemeal research, funded by The

19 National Institute of Justice, the Bureau of Justice

20 Statistics and research agendas of a few scholars

21 involving a few cities or single cities. This lack of

22 data and information has led to a fundamental and

23 public misunderstanding about police use of force

24 which is the final feature of the police role. As a

25 result the emotional arguments filled with red

herrings,

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1 ad hominem attacks and non sequiturs replace logic and
2 reasoning that is grounded in fact. Compounding the
3 problem is the present use of force data system
4 compiled by the FBI Uniform Crime Report, Justifiable
5 Homicide is meager and relies on summary data.
6 Summary data or aggregate data, as we call it in
7 social science, is a problem defined as information
8 loss which occurs in the substitution of aggregate or
9 macro-level data for individual or micro-level data,
10 and this limits utility. For example, aggregate data
11 can summarize average characteristics for a group, but
12 cannot assume those characteristics apply to every
13 member of a group. The reverse is also true, which is
14 reaching a group conclusion such as a national picture
15 based on exceptional cases which are individual and
16 local cases. Both of these errors point to traps in
17 every day reasoning, which leads to stereotyping and
18 hasty judgements. We need to determine empirically
19 what individual incidents look like, not just rely on
20 one group averages, one proposed solution. The United
21 States law enforcement community needs a more flexible
22 and in-depth data system, a more comprehensive
23 incident-based data system that is disaggregated with
24 micro-level details about the use of force and
25 available for law enforcement executives, researchers,

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

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1 in one year to make a statistically reliable
2 comparison to identify trends and patterns because
3 police use of force is a very low frequency event. The
4 data would be entered into a system similar to the
5 National Information Crime Center, which is known as
6 NCIC, through a web-based application housed at and
7 maintained by the FBI. Legacy data could eventually be
8 migrated to the interuniversity consortium for
9 political and social research for archive. Such a data
10 system would be consistent with the national research
11 platform funded by the National Institute of Justice,
12 the National Data Collection Committee of the Division
13 of Policing at the American Society of Criminology,
14 the findings from a joint report issued by the
15 National Sheriff's Association and the Treatment
16 Advocacy Center on justifiable homicide by law
17 enforcement officers involving the mentally ill, the
18 findings from a recent police executive research forum
19 study on being proactive about preventing use of force
20 situations, and the Police Foundation report titled
21 Five Things you Need to Know About Open Data in
22 Policing. So what is the intended outcome? An
23 indispensable tool for managing a police agency is a
24 steady flow of information that indicates performance.
25 Armed with such information, law enforcement

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1 executives can proactively manage community
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2 expectations and reactions improve training,
3 supervision, agency policy and make a stronger case to
4 require the resources it needs to be more effective
5 and efficient at delivering police service. Policing
6 community can use the data to confirm or dispel any
7 doubts and answer mutually important policy questions,
8 such as where does the perception of widespread or
9 epidemic of police citizens -- of killing of police
10 citizens originate. Is it the media, community rumor,
11 outright lies? How can we control this perception?
12 What can the police and community members do together
13 to reduce hostility and misunderstandings between the
14 police and the community. What can the police and the
15 community members do together to reduce violent crime
16 and antisocial behavior, which often occasions
17 negative police interactions? What can police and
18 community do to maintain open communication about
19 police use of force, particularly involving officers
20 and citizens of different racial groups or ethnic
21 groups, which is a perennial source of tension.
22 Lastly, unarmed does not necessarily mean not
23 dangerous. So what are the implications for the
24 community when an officer resorts to deadly force
25 after perceiving a dangerous threat from an unarmed

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1 person? What are the implications for the officer as
2 well? An incident-driven use of force reporting
3 system is such a tool because it will produce more
4 detail, accurate and meaningful data than is currently
5 produced by traditional data summary system.

6 Some final thoughts. The media frequently
7 seizes on isolated use of force episodes which
8 distorts the public's perception about the
9 justifiability and rate of use of force. Only with
10 sufficient and reliable data can we estimate the
11 incidence of prevalence of use of force, and only
12 after we have a factual understanding of the nature
13 and extent of use of force the term such as crisis,
14 epidemic, widespread, discrimination and disparate
15 treatment be applied in the public discourse. To do so
16 beforehand, as has been done in the recent past, is
17 irrational, irresponsible and counterproductive to
18 promoting desirable police-community relationships. As
19 a nation we are best served by experts who act and
20 opine from the head based on attributes that are
21 directly relevant by those who have devoted themselves
22 to understanding complexity of police work and who can
23 guide rational discussion toward a productive outcome.
24 We are not well served by dilettantes who act and
25 opine from the heart based on attributes that are easy

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1 to evaluate or with incomplete information. Thank
2 you. 32

3 CHAIRMAN CASTRO: Mr. Walker.

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

9 I want to begin my -- my testimony by
10 associating my remarks with the testimony of Ellen
11 Scrivner in the previous session. She is absolutely
12 right when she says they we are at a pivotal, historic
13 moment in the history of policing in this country. The
14 moment is here. These hearings are extremely important
15 in that regard, and I also want to associate myself
16 with her view that we need to think in terms of
17 systemic police reform, systemic organizational
18 reform. Now I have chosen on this occasion to focus on
19 three specifics, but I believe that they work and are
20 effective only in the context of broader reforms. What
21 I have to offer you today is a three part
22 recommendation. One involves a respectful policing
23 initiative. The second involves deescalation policies
24 for police departments and the third early
25 intervention system. Now respectful policing

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1 initiative, I gave similar testimony to the
2 President's task force in January. What it means,
3 that we have a serious problem in this country of
4 officers using offensive language, including racial
5 and ethnic slurs, common vulgarities and worse. This
6 happens all the time. This is a national problem.
7 This happens day in and day out, and it has several
8 different harms. First of all, it's an injury to the
9 person to whom it is -- it is directed. Second, it
10 harms the community because these events accumulate
11 over time, particularly in African American
12 communities and low income, high crime neighborhoods.
13 Third, many of these incidents escalate up into more
14 serious incidents involving the use of force or even
15 deadly force. Third, when they go unpunished, and
16 that does appear to be the case, it undermines the
17 standards of professionalism within the department.
18 So there are four specific harms. Now how do we
19 achieve this? Well, the President's interim report
20 adopted the recommendation we put a stop to this
21 problem. They did not accept my recommendation that
22 all departments be required to conduct annual in-
23 service training on respectful policing, and that
24 they do that by making federal funds, federal Justice
25 Department funds contingent upon the certification of

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1 that that training program occurs annual in-service
2 training. I didn't think they were gonna accept that
3 part of the proposal, but I thought I'd put it on the
4 table and make them think about it anyway. So I think
5 what it can do, respectful policing, it's not soft
6 policing. It's not being nice. It's being firm. So for
7 example, in a jaywalking incident an officer can say
8 sir, I want to ask you to walk on the sidewalk; you
9 are a danger to yourself and a danger to traffic. I'd
10 like to ask you to move now. That's not disrespectful.
11 It's not offensive. It's firm. It's law enforcement
12 and it's maintaining order. What I believe can happen
13 is that if officers in a department and in communities
14 over time are respectful in that regard and not using
15 the offensive language, you will begin to develop a
16 culture of mutual respect and trust and we will have
17 fewer confrontations between police officers and
18 citizens. We'll have fewer instances of use of force
19 and so on, and that will build legitimacy, trust and
20 legitimacy in the police. The President's task force
21 put huge emphasis on legitimacy because that leads to
22 cooperation by people with the police in terms of
23 reporting crime, reporting neighborhood problems,
24 becoming witnesses in -- in criminal cases. So
25 respectful policing is effective

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1 crime control. It's at the cornerstone of effective
2 crime control. Now the second part of my
3 recommendation is deescalation. That is where officers
4 respond to a perceived, you know, disrespect or
5 hostility without escalating up. We have a very
6 unfortunate tradition in policing in this country.
7 That acquired a label a number of years ago called
8 contempt of cop, and so police officers sees, you
9 know, a little disrespect, noncooperation or hostility
10 and officer says to himself okay, I'll show you who's
11 in charge here, and the force then escalates. So
12 deescalation is -- goes hand and hand with respectful
13 policing, and you'll get all of the same benefits,
14 especially in terms of crime control and community
15 trust and legitimacy. The third part of my proposal
16 calls for early intervention systems. I don't know if
17 anybody has testified about them so far, but they are
18 computerized databases of officer performance. There
19 may be as few as five. There may be as many as twenty-
20 five performance indicators, uses of force, citizen
21 complaints, outcomes of the investigation of those.
22 You can put in arrest. Resisting arrest charges are
23 always a good indicator, traffic stops and so on, and
24 then when you run the numbers, it always turns out
25 that at the far end you have a small group

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

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CHAIRMAN CASTRO: Thank you, Mr. Walker.

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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

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1 wouldn't be sitting here asking you those questions.

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

6 MR. JON SHANE: Well, slightly. I don't want
7 to give you the impression that we have to have one
8 hundred percent information because that answer never
9 happens. We never have one hundred percent
10 information. There's always a dark figure, something
11 that's not reported, something we don't know about.
12 What I am suggesting is that without data what happens
13 is the heart fills in the blanks. We fill in things
14 through vicarious experiences. We look for variables
15 and attributes that would be easy to fill in that are
16 known to us, such as age, sex --

17 CHAIRMAN CASTRO: But we do have data.
18 We just maybe not have all the data.

19 MR. JON SHANE: We don't have very good data
20 because it's at the aggregate level. It's not at the
21 fine intimate level where we're able to measure
22 interactions between the officer, the offender, the
23 location and all the other situational aspects that go
24 into use of force. It's not enough to say we have a
25 hundred fifty police officers killed every year and we

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1 know nothing about the various incidents that take
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2 place or the offenders that do these things or the
3 environment under which these occur.

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

14 MR. JON SHANE: No, I'm not suggesting that
15 you don't take action. What I'm suggesting is that the
16 action be predicated on the best data that you have.
17 And we know we can get better data. We don't have it,
18 and what happens is when we don't have it people fill
19 in those attributes with things that are completely
20 inaccurate, and we're seeing a lot of that in policing
21 today. A lot of people have a fundamental
22 misunderstanding of how policing works, the
23 interactions that take place, all on the contextual
24 variables. We jump to conclusions about the fact that
25 someone is unarmed, that suddenly means they are not

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1 ~~dangerous research. The FBI is saying it's only about the Tennessee~~

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2 versus Garner incident today, some of which has been
3 flawed. Those people don't know what they're
4 referring to. They don't understand the facts and
5 when we have facts, we makes better decisions than we
6 do when we rely on emotion.

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

24 MR. FRITZ UMBACH: All good questions. First
25 of all, I want to make clear that this is not my

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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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1 COMMISSIONER KLADNEY: Thank you, Mr.
2 Chairman. Mr. Klinger.

3 MR. DAVID KLINGER: Yes, sir.

4 COMMISSIONER KLADNEY: I read with
5 great enjoyment your paper.

6 MR. DAVID KLINGER: Thank you.

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

12 MR. DAVID KLINGER: Yup.

13 3 COMMISSIONER KLADNEY: The way they look,
14 the way they operate and all that, and just like
15 Professor Umbach wants all these policemen to have a
16 college education. Well, that's not gonna happen
17 'cause it's too expensive. You got to pay them more
18 money. You got to educate them. I mean if that's what
19 you want, that's what it is, and I'm just talking off
20 the top of my head, of course, but with you it's
21 changing the entire culture. It's changing a culture
22 that has been, like you said, bending granite; it
23 hasn't changed a lot in many, many decades and even
24 Mr. Walker, Professor Walker, he was quoted yesterday
25 in the paper talking about police unions having to

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1 change. He says it's important for unions to become
2 honestly self-critical about police conduct and not
3 blindly defend each and every egregious incident by
4 officers. And officers defend each and every -- I
5 mean I forget who just said this, but officers on the
6 police department know who the bad officers are, and
7 so my question is how do you propose to go into the
8 depth of detail and change that you have put forth in
9 your paper?

10 MR. DAVID KLINGER: Basically what I would
11 argue is that the fundamental and tactical training is
12 something that every officer in the United States gets
13 to some degree or another, and so the first step is to
14 make sure that every officer who goes through a basic
15 police academy gets the appropriate tactical training
16 about creating distance, time and space, how to
17 interact with people. This includes some of what Sam
18 was talking about in terms of deescalation because
19 when you think about it when there's a distance
20 between you and an adversary, then there's going to be
21 less of that personal involvement, but at any rate,
22 get everybody trained up. One of the things that we
23 know is that some states around the country do not
24 require satisfactory number of hours in fundamental
25 tactical training. They might get a little bit of it

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1 in the academy, but no force-on-force training, not
2 appropriate scenario-based training, and then what you
3 start to do in terms of building up the organizational
4 culture aspect of it, is you have to make sure, one of
5 the things I talked about was up and down the entire
6 chain of command. The chief needs to understand this.
7 His or her underlings need to understand it. The
8 patrol supervisor needs to understand it, the watch
9 commander lieutenant and the line supervisors need to
10 understand it, and then what you do is you start to
11 create an environment where if Klinger and Shane are
12 on patrol and Walker is our sergeant, he rolls up as
13 we are just done with a situation where there's a call
14 with a man with a gun or something, he debriefs us. He
15 makes sure that we did the appropriate stuff. If we
16 didn't do the appropriate stuff, he goes hey guys,
17 remember, you pulled up a little bit too close. You
18 engaged this individual too quickly, whatever the case
19 might be, and once you start getting that engrained in
20 the culture, you know, talking about bending granite,
21 if you engrain that, that becomes the granite, high
22 expectation of appropriate tactical performance, and
23 we're not going to put up with inappropriate tactical
24 performance. What we're going to do is we're gonna
25 teach you how to do it right and we're gonna hold you

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1 accountable, once again up and down the chain.
2 Oftentimes what happens is the chief says I wash my
3 hands of this. My guys should know better. Well,
4 sometimes the chief doesn't know what he or she is
5 talking about, and so what we need to do in my
6 opinion, national academy. We need to talk about this
7 at the FBI. We need to start promoting people based on
8 their capital acclimate instead of their ability to
9 know the manual, so on and so forth.

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

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

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

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

13 COMMISSIONER KLADNEY: Professor Shane.

14 MR. JON SHANE: Yes.

15 COMMISSIONER KLADNEY: Do you agree with
16 that approach or an approach like that? Do you think
17 that officers can honestly approach issues of tactical
18 or strategic problems?

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

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

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

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

25 COMMISSIONER KLADNEY: Thank you.

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1 Professor Walker.

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2 MR. SAM WALKER: I want to comment on that.

3 I'm a little dubious about the reporting anonymously.

4 I think police officers with awesome powers, law
5 enforcement officer with the power to take human life,

6 they need to answer honestly to supervisory for their

7 action. Now, There's a different way of getting at

8 that. Because I mentioned this PTSR, you know,

9 framework review means department on a regular basis

10 annually, do a review of incidents that have occurred.

11 Maybe there are a few high speed pursuits and

12 accidents and so on and/or shooting incidents and you

13 go back and reconstruct, this is internally; this is

14 not just department, this is internally and you're

15 looking at is officers do things, make decisions that

16 could have been different that would have had a

17 different outcome of that incident that might have,

18 you know, avoided the tragedy that occurred. So I

19 think that's the way you get at the kind of

20 information that -- that you're talking about there.

21 There's different paths to the changing the culture of
22 a department.

23 COMMISSIONER KLADNEY: I think that people

24 should stand up and say what they believe, but I think

25 police officers and that department kind of mentality

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1 is very difficult to change. I think -- I actually
2 represented a police department at one point, and boy,
3 to discipline an officer, you got to have him in a
4 corner for other people to come on board.

5 MR. SAM WALKER: Can I comment on that?

6 COMMISSIONER KLADNEY: Sure.

7 MR. SAM WALKER: Police departments are not
8 granite. They're organizations. They're organizations
9 of people, and are very complex. They're far more
10 complex than granite. Granite is a rock, and just I
11 began my -- my career in 1974, teaching, and in 1974
12 the -- the -- the -- the current deadly force policy
13 was just beginning. It actually originated with the
14 New York City Police Department. That's common. That
15 changed. That changed a lot of behavior. I do believe
16 that actually we got rid of a lot of bad shootings,
17 some other things that happened along the way, but in
18 1974 the term domestic violence was only just
19 beginning to appear in the field of criminal justice.
20 Well, today probably every police department has, you
21 know, some domestic violence policy, guiding officers
22 on how they should handle those kind of incidents,
23 major change. In 1974 few departments had really
24 restricted policies on high speed pursuits, very
25 dangerous, and we brought those under control in

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1 many ways. In short, police departments are not
2 granite. They change. They have changed, and all of
3 the three that I mentioned have changed the culture of
4 departments in the sense of what officers know what
5 they can get away with and what they can't get away
6 with. So I am guardedly optimistic about the future
7 because departments ain't granite and the
8 possibilities of change are very real. We just have to
9 take advantage of this opportunity to continue the
10 reforms that we have made.

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

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

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

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

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1 issue of policing and excessive use of force?

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

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

21 MS. HEATHER MACDONALD: Well, my point was
22 that the black crime rate, which is very, very
23 elevated, compared to the national average needs an
24 explanation. There are young black men who are being
25 killed at ten times the rate of white and Hispanic

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1 young black men combined. I think that is an equal
2 problem, at the very least, to unjustified police
3 shootings. There are many, many more thousands of
4 black men who are gunned down by other blacks than by
5 the police, and again, every time a representative of
6 the law uses force without justification, that is a
7 horrific abuse of power, but if you want to bring down
8 the black crime rate, which I think is the reason -
9 it's not I think, it is the reason why police are
10 overwhelmingly more disproportionately represented in
11 black communities, you're going to have to ultimately,
12 I think, make sure that more young black men are being
13 raised by their fathers. So that's not -- your
14 question is bringing together two different
15 phenomenon. I'm not saying that any police officer is
16 engaged in a use of force justified or unjustified
17 based on whether the target comes from a fatherless
18 home, but I am saying that ultimately I think any
19 discussion of policing crime and race cannot ignore
20 the black crime rate, and if you want to look at
21 causes, I think family breakdown is for me the most
22 salient.

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

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

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

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

10 MS. HEATHER MACDONALD: That's true, but
11 the rate of victimization by people that you're
12 familiar with is when you take all ages combined when
13 it comes to homicide, it's seven times higher for
14 black males than for whites and Asians and Hispanics
15 combined. I would say that is also a problem worthy
16 of national attention. By all means, let's do
17 everything we can to bring police use of force down.
18 I would disagree with the sense of the panel, as I
19 understand it, except for the last observations by
20 Professor Walker that police culture has not changed.
21 I think it has changed enormously for the better over
22 the last couple of decades. Policing is far more
23 professional than it ever was. Police corruption is
24 down. Police use of force is way down. I totally
25 agree with Professor Walker that police courtesy is a

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1 constant deficit that departments have to work at, but
2 my -- my point is is that there is a tsunami of
3 violence in the black communities, and that's why
4 police are there disproportionately and you are not
5 going to bring the police use of force to equal levels
6 as it is against whites and Asians until you bring
7 down the black crime rate because as justice
8 department studies have shown again and again, the
9 most important predictor of police behavior is
10 civilian behavior.

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

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

19 VICE CHAIRMAN TIMMONS-GOODSON: Thank you.

20 CHAIRMAN CASTRO: Commissioner Yaki.

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

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

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

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

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

7 COMMISSIONER YAKI: No, yeah, I know. I
8 understand. But when I read what you had to say, and I
9 -- and I understand it completely, the idea that you
10 call it the normal accident, I looked at it as the
11 accident waiting to happen when you -- when
12 circumstances -- when you create the circumstances
13 that cause the eventual outcome, whether you call it
14 the accident waiting to happen, you call it the normal
15 accident or I call it you sit there and you put
16 gasoline on the fire when you drive up within three
17 yards of a 12-year-old holding a mock rifle and you
18 have no ability to make determination, in the two
19 seconds it's gonna take that person to turn around or
20 not and have relatively much higher aim than if you
21 were twenty-five away, you're putting gasoline on the
22 fire. Mr. Walker, I've been, even as elected official
23 sometimes policemen don't recognize you sometimes and
24 they call you names when they tell you to get out of
25 your car or what have you, and I understand how that

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1 goes from a personal point of view. From an entire
2 body of people's point of view I can understand how
3 that rage would just simmer beyond, but the question
4 I really want to ask is is this -- is this an issue
5 of resources because having gone through this in San
6 Francisco and other -- and in other areas, you always
7 hear people say well, we could do it but for money or
8 training, but for we need the 5,000,000 dollar
9 training simulation center, but for all these things
10 we could do all these things, but is it -- is it
11 really possible or is part of the -- part of the
12 inherent problem the blue wall that will always
13 continue to be there? Do we need more of what
14 Mr. Walker calls early intervention, other people call
15 it early warning. I call it find some way to get
16 leverage, get some of these bad cops out sooner. How -
17 - how do you do that? It just -- we seem to be
18 repeating ourselves on this issue time and again and
19 it's getting worse and if you measure the sentiment in
20 the African American community, it's getting worse, so
21 instead of just talking about data and talking about
22 training, what is it that we can really do, real
23 world, realistically? Is it about money? Is it about
24 leverage, using money on police departments? Is it
25 about -- is it -- I mean what is it, I guess, because

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1 I'm grasping for it myself?

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

12 COMMISSIONER YAKI: Mr. Klinger.

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

21 MR. SAM WALKER: Yeah.

22 MR. DAVID KLINGER: But what I'm talking
23 about is going to take a little bit of time in terms
24 of training. So over the next few years perhaps,
25 curriculum is written in every state, here's what

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you're gonna do. As a supervisor you're gonna talk to

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1 your troops, don't use this language, and you're also
2 gonna learn how to be tactically proficient yourself
3 so that you know what you are supposed to be doing.
4 And like I said, go back to the FBI national academy.
5 If you want to promote in a major metropolitan police
6 department, you better know about command and control.
7 You better know about what appropriate tactics are,
8 why you don't rush into a house, why you stay outside
9 unless there is a crisis ongoing in the house, so on
10 and so forth. So it will take a little bit, but not a
11 lot.

12 COMMISSIONER YAKI: I have to disagree.

13 MR. DAVID KLADNEY: Okay.

14 COMMISSIONER YAKI: You're talking about
15 individuals who are in -- who are at their most basic
16 in a fighter flight mode in terms of making decisions,
17 just like that when they -- when they encounter a
18 situation. When you look at like an airline pilot who
19 needs 10,000 hours of training in order to react to
20 what happens when something goes wrong, and it's about
21 repetition, repetition. That to me is more than just
22 telling someone how to do it. It's more than just five
23 hours or ten hours of training. It's probably hundreds
24 of hours of training time and again to make

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1 sure these -- these individuals don't react the way we
2 don't want them to in the situations that you're
3 talking about.

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

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

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

25 CHAIRMAN YAKI: Okay.

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

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

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

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1 characteristics of the suspects, the characteristics
2 of the officers, the weapons involved on both sides,
3 whether shots were fired by a suspect, how many rounds
4 police officers discharged, presence of bystanders,
5 the geographic location, and so what we were able to
6 do is we were able to then map where in St. Louis the
7 shootings occurred, and that was the basis for the -
8 for the report that you looked at and one of the
9 things that we found was that once you control for
10 levels of violence across St. Louis neighborhoods,
11 race washes out, socioeconomic status washes out and
12 what's really driving the use of deadly force in St.
13 Louis at least is the level of violence in the
14 community, and one of the things that we say it was a
15 paper that I did with Rick Rosenfeld, Dan Isom used to
16 be the chief in St. Louis and a graduate student by
17 the name of Scott Decker -- excuse me, Mike Decker,
18 anyway what we were able to demonstrate was that this
19 is what's going on in St. Louis, and then at the end
20 we said we have no idea if this is what's going on in
21 Chicago, Los Angeles, New York, Baltimore, and that's
22 why we're calling for a national database, and we look
23 at not just those shootings that resulted in
24 fatalities, but woundings and off-target shots. So
25 what we're looking at is deadly force, and this is not

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1 something that I invented. This is something Jim Fyfe
2 353
3 did with The City of New York literally forty years
4 ago using data from the early 1970s, and Jim called
5 for the national database. Others have called for the
6 national database over the years, and so when you have
7 this fine grained information that Jon is talking
8 about, we're then able to really look carefully at
9 what is going on in the microdynamics of shootings as
10 well as plotting across space and time.

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

15 MR. DAVID KLINGER: What we would need is we
16 would need literally millions of dollars to get the
17 data collection system up and running, piloted,
18 squared away and then have a computer interface,
19 similar to what Jon was talking about in terms of the
20 Police Foundation process for reporting the near
21 misses, but what I envision is at the end of the month
22 or end of the year, what happens is someone from the
23 crime analysis section of every police department
24 across the country, they go to the computer and it
25 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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1 next screen and then it goes to the FBI, the Bureau of
2 Justice Statistics, eventually going to be archived at
3 IPCSR, and that's gonna take to some money, and I
4 think that working with BJS, FBI, whoever, there are
5 people out there that know how to do this; myself
6 including at the lower rung, but there are people that
7 really have a lot of experience with this, but it's
8 gonna take a few million bucks and a few years to get
9 it up and running because we want to get all the bugs
10 worked out and we want to get it so that we know that
11 once the whole national database system is spooled up,
12 we've got all the bugs out so that we're not finding
13 problems with it, and so we have to pilot it and we
14 have to pilot it appropriately.

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

18 MR. DAVID KLINGER: Right.

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

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

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

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

17 MR. FRITZ UMBACH: One of the astounding
18 things about the history of police brutality in New
19 York City is the shocking difference between the level
20 of civilian complaints against what was known as big
21 blue, NYPD, and the Housing police. By 1980 about one
22 in three officers in the NYPD had a civilian
23 complaint. For the Housing police it was less than 1
24 percent, an astounding difference. For criminologists
25 who are used to dealing with disparate rates, that was

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1 astounding. One of the important factors was the fact
2 that the Housing police had a micro precinct system.
3 There were reporting rooms that the police turned out
4 from that were in every Housing development, and as
5 opposed to a large geographical unit where the cops
6 were remote, in fact the precinct's local; they can
7 talk to the cops every day, and this allowed a certain
8 amount of community leverage and input in the nature
9 of policing in public housing for many years in New
10 York City, and until about 1985 public housing was
11 safer in New York City than the surrounding community.

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

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

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

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

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

17 So this mandatory nationwide system
 18 database, this aggregated data collection, Mr. Shane,
 19 Professor Shane, we heard from Mr. Sabol from the
 20 Bureau of Justice Statistics, I believe that's where
 21 he's from, that he thought -- I guess it wasn't -- he
 22 thought mandatory might not be a very good idea. I'm
 23 more of the command and control school, even though I
 24 understand that it's not always appropriate. I'm
 25 wondering why you say mandatory nationwide, and what

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1 other attributes of the system does there need to be
2 in order to get us once and for all a set of data that
3 we need to have some meaningful analytics when it
4 comes to addressing this problem?

5 MR. JON SHANE: Well, in terms of mandatory,
6 we're not going to reach full compliance, I think,
7 unless we -- we mandate it. We have relatively good
8 voluntary compliance with the Uniform Crime Report,
9 and we know that there are issues with that. I think
10 if you mandate it and it becomes a routine part of
11 organizational culture and organizational performance,
12 you're more likely to go back to the system to pull
13 data out of it to self-reflect, to look at what
14 neighboring communities are doing, not necessarily
15 because it is voluntary. As far as the attributes are
16 concerned, I think what Professor Klinger said is
17 correct, you have to get down to the lowest level, and
18 we're doing that in piecemeal part right now with --
19 for his research, for example, but we're not doing it
20 throughout the United States, and that's what's really
21 important. Most police departments today, as we sit
22 here, have access to the National Crime Information
23 Center, which is called NCIC. In that framework
24 somewhere we can also replicate a system that we are
25 talking about that

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1 would capture some of the data he's discussed and that
2 I've discussed, and make it available right there on
3 the terminals that they have now, using that current
4 structure.

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

9 MR. JON SHANE: Absolutely.

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

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

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

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

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

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

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

6 COMMISSIONER ACHTENBERG: Sure, no, no,
7 absolutely.

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

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

14 CHAIRMAN CASTRO: Yup.

15 COMMISSIONER ACHTENBERG: Jim Chanin, who
16 has done such incredible work in terms of putting the
17 Oakland Police Department in receivership and ten
18 years later actually helping them make enormous
19 improvements in the way they perform, he observed that
20 this supervisory accountability he thought had been a
21 really key element of what had changed, not the only
22 one, but one of the ones. Supervisory accountability
23 is what he identified it as, where the direct
24 supervisors are held responsible for the conduct of
25 their troops, and therefore, you know, every day

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1 they're in there getting reports back and forth, 361
2 making -- taking small corrective action to make sure
3 that the guys and gals on the ground are doing it
4 according to Hoya (ph), was my understanding of what
5 that meant. I'm wondering, Professor Walker, and the
6 others of you that are familiar with that concept, is
7 -- is that part of what you're talking about when
8 you're talking about responsive -- responsive policing
9 or however you referred to it?

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

18 COMMISSIONER ACHTENBERG: Please.

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

23 COMMISSIONER ACHTENBERG: Sure.

24 MR. FRITZ UMBACH: And it has to be a good
25 cop/bad cop system with the cops. Legalized

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

12 CHAIRMAN CASTRO: Commissioner Heriot.

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

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

25 MR. FRITZ UMBACH: Doesn't matter what you

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1 major in. It has absolutely no impact.

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

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

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

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

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

25 MR. FRITZ UMBACH: So outside of the

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1 southwest the experiences with Latinos is the same as
2 with the African Americans. Increasing Latino share
3 of the police department makes either no or very
4 little impact on the police use of lethal force or
5 excessive force.

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

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

14 COMMISSIONER HERIOT: Okay. Anybody want
15 to comment?

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

24 COMMISSIONER HERIOT: Okay.

25 CHAIRMAN CASTRO: Okay. Commissioner

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1 Narasaki.

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2 COMMISSIONER NARASAKI: Thank you. I have
3 one theory that maybe because people in college learn
4 to deal with a much broader, diverse set of other
5 students than maybe where they come from that that
6 might help them have actually better skills, but I'm
7 just making that up. So I just have a few things. One
8 is for Ms. MacDonald. I have to say that, you know, I
9 agree with your point that we should really care
10 what's happening with African Americans and, you
11 know, I was pleased to see the administration really
12 lead on a new initiative focused on black men and
13 boys and get both corporations and the philanthropic
14 community more involved in trying to figure out how
15 can we support to make sure they succeed. I think
16 where I part company with you is the notion that
17 somehow it's just about families and a lack of men
18 because as we know we have a growing lack -- we have
19 a growing number of divorced families in all
20 communities, and I hate to think that that's gonna
21 mean that we just are facing a slew of problems. I
22 would invite you to consider that part of it is
23 perhaps the persistence of poverty, the growing
24 resegregation of schools, the kinds of schools that
25 minorities are ending up in. In Philadelphia they've

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1 closed so many high schools that now there aren't even
2 enough desks for the students going to those schools.
3 So I think there are a lot more issues than family
4 structure. I think there's some public policy issues
5 that have not helped along the way, and I do think
6 that this focus on policing and the relationship of
7 police to minority community is actually related to -
8 is actually not unrelated to the issue, and that is
9 this, is that to the extent that we don't address the
10 problem of relationships with minority community and
11 police, the minority community that you -- that we
12 agree require and deserve enforcement by law
13 enforcement to help protect these families, what we
14 see is a growing disengagement from the communities
15 themselves and being able to be effective partners
16 with police. If they don't trust police, they're not
17 gonna report. They're not gonna be witnesses. There
18 are a lot of things that are gonna break down in what
19 happens in the ability of law enforcement to do it's
20 job. So I don't see it has totally an either/or
21 proposition, as I am concerned that you may see it as.
22 We had a lot of testimony today that in fact part of
23 the challenge is the discriminatory enforcement on the
24 war of drugs, right. Many former policemen testified
25 that even though there are high prevalence of drugs in

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1 more prosperous white communities, that's not where
2 the police were going, right, because police didn't
3 want to tangle with families who could defend
4 themselves and make their life a challenge if they
5 actually went after their kids, so then they targeted
6 black kids. We heard testimony today that in fact in
7 this whole stopping of over stopping and frisking of
8 minority kids, you in fact saw a higher rate of hits
9 when you search white suspects than when you search
10 minority suspects, and that's because some positive,
11 perhaps it's a lazy shortcut to do racial profiling,
12 and again just stop all these people and you have to
13 maybe because you're concerned about really being able
14 to justify what you did with white kids, you're more
15 likely to actually have done a good job in trying to
16 figure out whether someone has drugs. So I think the
17 way that -- what bothers me about the way you're
18 approaching this is is leaving out sort of the white
19 part of the equation and really looking at are -- is
20 police treating communities equally, fairly and that's
21 the challenge right. Communities need to feel like
22 they've been treated fairly, and at some point it
23 doesn't actually matter whether the reality is of what
24 police are doing. The perception becomes reality, and
25 that's what we have address. So I don't want to

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1 engage on that. I have other questions that I want to
2 ask, but I just wanted to lay that out. And I'm sorry
3 that I'm not giving you a chance.

4 COMMISSIONER HERIOT: Let her answer. Let
5 her answer.

6 COMMISSIONER NARASAKI: I didn't ask a
7 question.

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

12 CHAIRMAN CASTRO: That's right.

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

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1 I wanted to ask whether there was in fact research on
2 that issue and whether you had thoughts about that in
3 how you do deescalation?

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

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

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1 that to happen?

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2 MR. DAVID KLINGER: Even though I've talked
3 about granite, I share Sam's optimism and we have to
4 have both carrots and sticks and we have to explain to
5 police executives people are concerned, and we have
6 evidence from other industries, once again coining one
7 of Sam's terms, law enforcement is an industry; we
8 have evidence from other industries that if you create
9 mindful employees and you hold them to account and you
10 create a safety culture, what will happen is law
11 enforcement will be safer for the law enforcement
12 officers and the use of force will go down because
13 what we're gonna do is we're gonna structure our
14 encounters in a better way, and you keep getting that
15 message out and you keep getting that message out, and
16 that is the argument that says this is what
17 professional policing is, and we are going to reward
18 you in terms of the IACP starts putting out rewards
19 for agencies that are on top of things in terms of
20 safety culture, and then the Federal Government can
21 come in and State Government can come in and kneecap,
22 metaphorically, organizations and police leaders who
23 aren't doing this. And one of the things is states can
24 start taking control in terms of your POST, police
25 officer standard training for your state. This is

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1 what we expect. If you want to get the state
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2 certificate, the state POST certificate to be a
3 supervisor, to be a chief, whatever the case might be,
4 you have to have these forms of training. If not you're
5 out.

6 MR. SAM WALKER: I'm in.

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

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

22 COMMISSIONER NARASAKI: So how do you
23 break through that?

24 MR. DAVID KLINGER: Well, my argument is
25 that what they were talking about is good cops being

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afraid to roll on bad cops. My argument is the bad
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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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1 they don't know the basic tactics and they don't
 ³⁷⁴
2 understand how the review process should roll, then
3 you don't hire that chief, and if that becomes the new
4 standard, then that will be the new standard because
5 people are gonna start training themselves and getting
6 the appropriate mindset because they want to be chief
7 somewhere.

8 COMMISSIONER NARASAKI: Okay, so I will
9 defer to the Chair about whether there's time to let
10 --

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

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

17 (Round of Applause)

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

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1 via e-mail at [PUF briefingcomments@USCCR.gov](mailto:PUF_briefingcomments@USCCR.gov) and
2 that's PUF, and that stands for police use of force,
3 [PUF briefingcomments@USCCR.gov](mailto:PUF_briefingcomments@USCCR.gov). It is currently 6:01
4 p.m. eastern and I am hearing by adjourning this
5 hearing. Thank you.

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

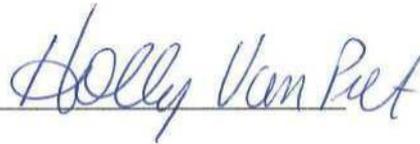
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