RACE-2015/03/03

THE BROOKINGS INSTITUTION

WHAT'S NEXT IN THE NATIONAL CONVERSATION ABOUT RACE AND POLICING IN AMERICA?

Washington, D.C.

Tuesday, March 3, 2015

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P R O C E E D I N G S

MR. HARRIS: (in progress) -- Science and Director of the Center on African-American Politics and Society at Columbia University. I also happen to be a nonresident senior fellow here at the Brookings Institute and I would like to welcome you here to our panel on race and policing in America.

The events and protests surrounding the deaths of Michael Brown in Ferguson, Missouri and Eric Garner in New York City illuminated troubling realities about the fractured relationship between communities of color and American law enforcement. These highly charged situations raised a number of important questions about policing and the criminal justice system more generally.

What should be done with regard to police misconduct and officer involved shootings? What role should the federal government play when there is a breakdown between police and the communities they serve? Which reforms should be enacted to better relationships between law enforcement and citizens? What important lessons can be drawn from Ferguson? And where do law enforcement and people of color go from here?

Now, our discussion this morning is timely. The Department of Justice is expected to release a highly critical report accusing the Ferguson police of racially discriminatory practices and recently President Obama unveiled findings or recommendations from his taskforce on 21st century policing. One of the recommendations calls for “cases of inappropriate deadly force” to be handled by a special prosecutor.

So, to provide us some perspectives on these issues, we have among leading experts the country on issues of race and policing. To my left is Naomi Murakawa, who is an associate professor of African-American studies at Princeton University. She is a political scientist by training. Professor Murakawa is the author of “The First Civil Right: How Liberals Built Prison America”, which is published by Oxford

University Press. It's a great book. It provides a groundbreaking analysis of the root of the conflicts that lie at the intersection of race and the legal system in America.

Professor Jeffrey Fagan is the Isidor and Seville Sulzbacher Professor of Law at Columbia University. One of the nation's leading criminologists, Professor Fagan is the author of numerous studies on race and policing. He was an expert witness in *Floyd v. the City of New York*, a case that found that the New York City's police department's stop and frisk policy, which as you know targeted black and brown residents, was unconstitutional. He also provided testimony to the President's task force on 21st Century policing.

We also have Sergeant Delroy Burton who is the chairman of the D.C. Police Union. The union represents 3,600 officers, detectives, and sergeants who make up the District of Columbia's Metropolitan Police Department.

Sergeant Burton has been a police officer since August 1994 and he also told me -- you're also a resident, you grew up in Washington, D.C.

MR. BURTON: I did.

MR. HARRIS: He has worked in many patrol assignments that require special training. Sergeant Burton has worked as a vice investigator prior to becoming a detective and later became sergeant. He began working for the D.C. Police Union in 2006 and was elected union chairman in 2013 with his term beginning April of last year.

So, with that, I just want to open it up to the panelists starting with Naomi. What do you see as the critical issues in regards to race and policing in the United States?

MS. MURAKAWA: And I have seven minutes, is that right?

MR. HARRIS: Give or take a few.

MS. MURAKAWA: All right. So, what are the critical issues? So, I think what's important to remember right now is that we have this seemingly large mobilization for policing reform and I think it's so large because what we have are people mobilizing

around what appears to be a cluster of high profile murders of unarmed black people, but what we have in this consensus, I think, are some different views and actually some very competing views.

So, there are those, I think, like Glen Beck, who protest the killing of unarmed black people as anomalous cases, that is, they're the outliers of a police system that is otherwise basically legitimate versus those who see these as paradigmatic cases, the murders that illuminate racial violence that is at the very core of normal, routine, daily policing in post-Civil Rights America. And this racial violence can certainly be seen in the chokeholds and the shootings, but it's also policing that is death by a thousand cuts, the accumulation of racial taxes, of humiliating and frightening pat downs, of fines for traffic violations, compounded by court fees, which then become arrest warrants for nonpayment as we've seen in Ferguson and beyond.

And police are so crucial because they are the big scoop, they are the opening portal into what is now the largest per capita punishment system on the planet, in the history of the planet, and that's not just the more than two million in prison and jails, the four million on probation, it's the million on parole, it's the 200,000 wearing ankle bracelets, and that whole process starts with the police, with their annual 10 to 12 million arrests a year, less than 5 percent on charges of violent crimes, and nearly a third of all those arrestees are black, more than twice their proportion in the population.

So, from this sort of deceptively large mobilization, I think it's fair to say, looking at the recommendations of the Obama Administration, that what's happening now is that a potentially transformative moment is being reduced to a set of proceduralist and technological fixes to policing, and I think actually the proposed fixes are more likely to expand police power rather than to limit it. So, there are calls for more training to address implicit bias, for hiring more people of color, for more data collection, more research, more technologies. In other words, it's all more, more, more and all of this is going to spell exactly what it spelled in the past, from the Kerner Commission, from the

Katzenbach Commission, which is more federal dollars going to state and local police.

And we could go through these proposals case by case and argue how they're not going to do very much good. So, all the data that says we need more police officers of color, police officers of color have slightly different perspectives in policing, but the evidence suggests that they arrest and they shoot to kill at the same rates as their white counterparts. Body cams. We're still early in the evidence with this but I actually think what we should do is look at the history of other examples of police monitoring, by which I mean dashboard cams and the videotaping of police interrogations and we should look at the trajectory of those reforms and see something happening, which is, initially police resist because they feel like they're being criticized and over-monitored and then they come to accept it because the thing that we thought we were monitoring them with is actually the thing they get to use to surveil us.

So, dashboard cams are now supported, for example, by the International Association of the Chiefs of Police because it helps them to quash what they think are frivolous complaints and lawsuits from civilians and it also helps them in terms of evidence collection.

We also have these calls for more and more training and back in the 1960s the training was called "protocol for good police community relations", and then in the '90s it was called, "how to behave as good community police" and today it's often referred to as, "how to police with procedural fairness or procedural justice", but without confronting what is distinctive about the U.S. punishment system, which is its reach and its racial concentration, these kinds of reforms are simply altering the politeness with which police perform these massive numbers of arrests that are so deeply concentrated in communities of color.

A lot of these reforms sound new because they tap into new technologies and cut into cutting edge research from social psychologists, but they actually fall within a long tradition of liberal law and order, by which I mean the efforts to

build a procedurally perfect police force in the name of racial fairness and historically these efforts, in large police systems in ways that continually escalate violence against people of color.

Okay, so that's a lot of trashing the reforms that are on the table, so what kind of reforms do I think that we should be moving towards? The reforms we need to move towards are those that actually can train the substance of what police can actually arrest for, so the question isn't just how police are arresting, it's how much they're arresting, that's what we have to address.

So, we should begin, for example, by noting about 80 percent of state court caseloads are filled with non-traffic, misdemeanor cases. This is not just about the politeness of policing or lack of name-calling. It's that we have a bloated criminal code and then we put it on police's doorstep and ask them to enforce all of it, and there's nothing in the taskforce commission that says limit the number of arrests or stop arresting for misdemeanor offenses.

So, I'll close by asking us this question, which is, that in 2011 there were about 44,000 arrests of black children, that is, aged 17 or under, on charges of disorderly conduct, and the way arrest data are counted is that's the most serious offense. And here's where I think we should ask ourselves if we could confirm with body cams that every one of those 44,000 arrests of black children was performed with courtesy by an array of racially diverse, polite police officers who listened and followed protocol, would these figures be acceptable? And if you answer no, then you have to turn away from the procedures of policing to the substance of what they can actually arrest for.

MR. HARRIS: Jeff?

MR. FAGAN: In the Vietnam era we called that pacification, the procedural justice move.

I have a cold so I can't really hear myself either, so if I start mumbling, please let me know.

I want to take a little bit of a historical tact. In 2000, in my city of New York, Phil Hayman of Harvard University, Harvard Law School, gave a talk at a symposium that was convened to kind of celebrate the crime declines that had taken place in New York and other large cities during the 1990s. And he called it the new policing and it was a big celebration of the new policing, and he identified three prongs of the new policing. The first prong was -- and he attributed these causally, which of course to law professors attributing causation is really risky business -- but he attributed causally these crime declines to this new policing model and he said there were three prongs to it. One was comp stat, which essentially was using crime statistics as a form of intelligence, gathering intelligence on criminals, on places, on movements of people from place to place, and then using these to target and allocate officers and tell them where to go. It didn't tell them much what to do when they got there, but it told them where to go.

Then the second was management reforms, which meant using the same intelligence information and crime metrics to hold people accountable, to hold police commanders accountable, essentially to make them address and ameliorate the crime problems in their jurisdictions, but not for the way that they did it. So, whether procedurally fair or making a lot of misdemeanor or whatever the theory was, they told them what to do.

And the third was proactive and aggressive policing, and this, I think, is part of what gets us in trouble today. This means stop and frisk, it means the kind of misdemeanor arrests that Naomi talked about, it meant full criminal justice processing for people, no more citations, no more releasing people at the precinct, you went and spent a night in jail before you could see a judge. Using arrests in lieu of citations or summons, which summons are generally civil, in this case we're going to use criminal forces.

And Phil's talk and his paper that was in that symposium issue were a remarkable example of what the late Andrew Taslitz called Racial Blindsight, meaning, willfully disregarding the racial proportions of what was actually happening. And here's

why, he gave this talk only a few months after the 1999 completion of an investigation done by then attorney general Elliot Spitzer of New York City's stop and frisk program, the NYPD stop and frisk program, which found, like the Floyd case a decade and a half later, rampant civil rights violations in both 4th and 14th amendments and very strong evidence of discrimination against black and brown people in the city.

His talk came less than a year after the killing of Amadou Diallo in a hail of 41 bullets in a botched stop and frisk in the Bronx. A few months before the killing of Patrick Dorismond, who was an African-American man who was accosted by undercover police officers in a reverse sting and they tried to coerce him into buying drugs and he didn't want to buy the drugs, and so they got into a struggle, they kept saying, no, you can't go anywhere, you have to buy drugs, and a struggle ensued and Patrick Dorismond died in this conflict.

It happened a few months after the New Jersey Turnpike incident when four young men returning from a basketball game were stopped and shot by New Jersey State Troopers. And it's happened just almost simultaneously with the publication of a full page ad in the *New York Times* taken out by a large coalition of youth serving organizations who said, we can't do our work with young people because they're constantly being stopped and frisked, and they're bitter and they're angry and they don't want to hear anything that anybody says, and they're afraid to leave their homes.

So, this was -- Phil was just remarkably tone deaf and what was also interesting was that the people in New York who were the greatest beneficiaries of the crime decline, the highest crime neighborhoods, were the people who were the angriest, and they had good reason to be angry.

In the same symposium in 2000, Paul Cheverny, who was a law professor at NYU, he says, we really can't run government by violating peoples' civil rights, and those were really pretty prescient words, this was in 2000, and he says, if we believe violations to be inevitable in the law enforcement process, then something is

wrong with the organization of policing. And the years since Paul's talk at that symposium would suggest that, in fact, this might well be the case.

In the years after, there were consent decrees against putting police departments under court control in Los Angeles, in Pittsburgh, in New Jersey with the state police, and a few other smaller cities, and this was just in 2000.

Paul spoke about litigation across the country over police misconduct that had cost cities over the next decade roughly a billion and a half dollars, one billion of those dollars, by the way, was in New York City alone.

There were consent decrees after 2000 that were roughly in about two-dozen cities against police departments, putting them under court control. And to use a phrase that's popular here and has been, I think, ever since the commission on the Iraq war, we can connect the dots. And if you start connecting the dots you can connect from the Floyd case that Fred mentioned, to all of the unconstitutional stops, fatal shootings, things that just happened in the past year, to the unregulated, complete surveillance of an entire municipality in Compton, California, which of course is a black city for the most part, and Latino and other immigrants as well.

So, the majority of the burdens that formed under this new policing, that Phil Hayman, who was the former DOJ guy under Bill Clinton, the majority of those burdens fall to minorities, to black and brown people, mostly in cities, and as we know now, in the smaller municipalities that are now surrounding cities, places like Ferguson, Ohio (sic).

So, what's happened is that we really are seeing essentially the deregulation of policing. Since the Kerner Commission report, since the President's commission in 1967, and, more important, since the case of *Terry v. Ohio*, which changed the standards under which police can engage citizens on the street, we have deregulated -- constitutionally deregulated policing.

And I want to argue that we've actually politically deregulated policing too

through a form of extraordinary deference. In the constitutional law it's been a one-way ratchet ever since *Terry* in 1968. We're hard pressed with maybe one exception, *Hudson*, right, I'm looking at Paul Butler -- *Hudson* may be the one case that actually sort of told the police, not so fast. Everything else has been deference, deference, deference to the police.

So, it's been a one-way ratchet. We give them deference in ways that we don't give any other public policy domain or public policy actor, and there really are few limits today on what police can do in terms of stop search, street detentions, use of force, or even falsifying evidence or testimony at trial. In effect, again, policing is deregulated.

And the second development that I think has reinforced this is that we've left it up to the courts to regulate the police -- local governments have basically stepped back in this process of deference. We now have a political system that has decided not to regulate the police, not to exercise its given powers, statutorily at the local level, statutorily at the state level, to write regulations which would craft a new police design. I think it's one of the implementation design failures of the Obama Commission, as far as I've read into the commission.

The strategy of using the courts to regulate the police just simply hasn't worked and we can see that over the past 20 years, going back really to the mid-1990s, all of these cases have arisen and it's really a whole lot of trouble. And I think we have to ask hard questions: can courts really regulate policies of thousands of police forces every time they step out of line? Is it doing any good for the mission of law enforcement to have to actually manage -- for courts to manage their everyday affairs? Does that management actually remedy the harm that get police into trouble in the first place?

The work of Joanna Schwartz at UCLA would suggest, no, a very clear no, and she's studied how these court interventions have worked.

Can courts be responsive or nimble enough to respond to problems in

policing as they pop up in a timely way and in a proportionate way? And the answers to all these are no.

So, what do we do to recreate what I think needs to be a democratic process of regulation of the police? Because I think that's where -- whatever the merits or non-merits of the Obama Commission's recommendations, it's going to have to be put in place by local government assuming back the role of regulating the police in ways that the courts simply have backed off from.

And so, the future of policing and race falls squarely on local government and the supervision of democratic control. So, what does the democratic project look like after Ferguson?

One is creating mechanisms of accountability. Deference means no accountability. We now need to create meaningful systems of accountability, which means -- and they have to draw from the authority of citizens, not just simply draw from some -- maybe a constitutional architecture, maybe a theory of government, I would leave that to political scientists, but I think it has to actually draw from a democratic process that engages and captures and expresses the will of the people, and particularly the people who are the most heavily policed and whose safety is on the line. It means transparency and discipline, and these are things that have been well documented as lacking in modern policing, in contemporary policing in the U.S.

It means transparency in administration and management, it means openness of administration, it means something as simple as mandates for police to account for their actions when things go wrong, but also when they go right. This actually is one of the better parts of the Obama Commission's set of recommendations.

It means that when violations occur there are meaningful consequences to the people who actually commit the violations. One thing that came out in the chokehold controversy in New York over the summer and into the fall is that there are no consequences when police officers violate both department policy and -- it's not state law

that it's illegal, it's kind of a state guideline that it's illegal -- but when those are violated, nothing happens and there has been documentation by some of the newspapers of roughly 150 chokehold incidents where nothing was done with police officers at the time.

Second is learning from their mistakes. We are -- policing is remarkable in not learning from its mistakes. It is one of the only public policy domains where that actually happens. In education we have built entire systems around looking at what works and what doesn't work. When there's an airplane crash or a train accident we convene crash investigations and we look closely at what happened to try and understand the patterns of failure and the lack of coordination that led to these catastrophic events. We don't do that in policing.

And, again, $1.5 billion, that can buy an awful lot of public service for things that could have been analyzed but until recently, until, for example, in New York in the last year, there has been no database that would capture actually what happened in all of the court cases that generated the billion and a half dollars. And now there is and they're starting a process of learning, but the police department is not engaged in the learning process. It's learning that's happening surrounding the police. And that's a problematic stance.

The third thing, and I want to end with that, is basically to say -- my colleague here is going to get really mad at me for this -- we really need to rethink the police. And I think -- I mean several things by this. We're in a lower crime era, a drastically lower crime era. Modern policing presents new opportunities and new challenges to that era. Eighty percent of the police force in New York City, for example, and probably elsewhere in the country, has been recruited since the advent of comp stat, broken windows policing, and all of that stuff. They have grown up in that system. They have internalized the values of that system, and they've benefitted from the system, for those who've advanced up the ranks.

So, I think we need to really seriously think about the design and

structure of policing. And I should move away now from what I'm going to say because you're really going to get mad, I think we actually have too many police. And I say that just simply looking around the country, looking at, for example, working with DOJ on the Ferguson investigation, 55 police officers for a population of 21,000, that's probably a little more than they need given what their crime patterns are. But that's just a small example.

It's a question that we never really ask, how many police do we need. We only ask how many police can we afford, but I think we need -- it's time to start asking, not only that, how many police do we need, what kinds of police do we need, what type do we need in an era when crime is now done through internet facilitation when there are national security threats, when there are technologically secured property that minimizes risks of burglary and theft, when there's transnational cooperation in crime, in an era of increasing competition, really, between federal and state enforcement. How many police do we need to carry out security and create security and call offenders to account, which is after all what they're in business to do? How many do we need to pull that off?

In a context of widening inequality, which is not going anywhere any time soon, how do we deal with police -- what kind of police do we need? Who are best suited to police individuals whose stakes in society are quite different than the ones who are actually doing the policing as well as the ones who are setting the architecture of policing? And what kinds of people?

So, Radley Balko of the *Washington Post*, who's a bit of a (inaudible) writer, in many respects, a brilliant writer, a very entertaining one, basically says, well, we've got a lot of warriors on the police force now who are still fighting a war that erupted 30 to 35 years ago starting around the Kerner era and moving into the crack epidemic and that is basically almost, by now, gone away.

And it's that urgency that drives policing and drives the tactics that we

see and I think that causes an awful lot of trouble.

There's research by Phil Goff, who's a social psychologist, who suggests that the police who actually do get in trouble are the ones who have a very particular profile. He talks a little bit about hyper-masculinity as being something that drives the need to command and control and demand respect and ask for the kind of deference on the street that police ask for from government.

So, I think we need a little bit more specialization. My proposal would be simply to really rethink the political terms of a smaller number of very highly paid, professional, seriously well-trained and regulated police officers. Some people who are very different than the past with the obsession with drugs and guns and gangs. We license barbers, we should be licensing police. We need, basically, a more skilled policing workforce that can carry out modern challenges and that can help us move off the dime that we're on now, because that dime is actually costing us a lot more than a dime.

MR. HARRIS: Okay. Sergeant Burton?

MR. BURTON: Wow. That's a lot to respond to. After listening to that, I don't know if I'm up to the task or if we even need the police, are the police any good. That's a lot of negative stuff and the reality is, there's a lot of truth to what both of them have said. I'm not here to refute or to say that the historically negative things that have happened with the help of police did not happen.

I'm not here to say or try to disprove anything that they've said. That's their perspective. The point of view that I want to bring to you today is the point of view from a policeman on the street that happens to be a black person, that happens to also be an immigrant that lived and grew up in the city, got a public education, and can see both sides of this issue.

So, the first thing I want to do is to thank my host and the Brookings Institution for hosting this event because I think one of the things that happened is we

don't honestly talk about police and race. We talk around the periphery, but we don't really honestly talk about it. We always talk about what the police need to do, and that is extremely important. We do need to change the way we view people, we do need to change our tactics, we need to constantly evolve, we need to use technology, all the things that you guys talked about, it's absolutely true that we need to do.

But the community also needs to change, particularly my community, the black community, our view of the police. Now, how do we get to where we are with our view of the police? We got there legitimately from being abused for centuries where the system completely discarded us as human beings, we didn't have any rights, there was no place to get your -- get redress for something that was done improper to you. It didn't matter who you were, where you were.

So, the director of the FBI gave a speech at Georgetown University a couple of weeks ago, Director Comey, and he said, "I worry that this incredibly important and difficult discussion about race and policing has been focused entirely on the nature and character of law enforcement officers when it should also be about something much harder to discuss."

He's talking about all of us and he went on to describe how police officers become cynical, because I see it happen. We were discussing this before we came out here and a lot of police officers after some time on the job, adopt the cynicism that all juveniles are bad, all kids are bad, and that's because we deal with society and juveniles that are at their worst, that are having a terrible day, that are doing bad things. The vast majority of people in the worst neighborhoods in the city are very good people, they just happen to be in very bad circumstances and we deal with the very, very small percentage of people that are doing bad things, but when you deal with those people constantly, it does tend to make you a little bit cynical, and the director was right about that.

So, that's an area that police officers need to look internally and change

and try to guard against that cynicism. I don't know how we get there, but that's something that has to be done.

As to your point about the training, that's absolutely true, but this goes to a pocketbook issue. Municipalities are strained for cash. They don't want to pay for that type of training. They don't want -- the professionalization you talk about is absolutely necessary, but in order to attract the type of professionals that you want and the long-term training that you need, for example, that attorneys and doctors and those types of professions go through, you will need to invest a significant amount of resources into policing to do that, and I don't think there's the political will at this time to do it, and it hasn't been there to do it.

So, going back to the conversation, black, white, brown, Asian, and how we deal with the police. Perspective is absolutely important in understanding what a policeman's doing, what a policeman's thinking, why did he do that, why did she do that, why did the person that I'm approaching react to me the way he or she did, particularly in the black community, and it's because of those centuries -- centuries of mistreatment at the hands of government, but particularly at the hands of police.

If you think about the Scottsboro boys, you think about Schwerner, Goodman, and Chaney, police officers were involved in that. You think about -- so, your point of view, your perspective, is driven by that collective experience and those experiences are passed down through all black families about what they encountered.

I'll give you an example of what I'm talking about. I live in Prince Georges County now even though I grew up in the city. That is a predominantly black county in Maryland. Most of the elected officials are black, most of the police officers are black, most of the people in powerful positions in government are black. However, the view of police, if you were to take a poll, would probably be the same as the citizens in Ferguson. Why is that? Perspective. And I believe that we, in the black community, view police through that prism, that lens of that collective experience and any negative or

any use of force, whether it's an officer involved death where the policeman hits a black citizen with a baton, when we view that, we're viewing it through that lens. And I'm not asking anyone to forget their history because that would be ridiculous. We don't learn if we don't know our history and learn from it and go forward.

But what I am asking, in terms of our interaction with the police, is maintain that history, but don't view every incident through that lens because that lens, when you view it that way, the reaction will be, oh, there they go again, there's another case of this violence against black people unchecked by any form, any system, any structure, there's no oversight.

And I don't believe that's necessarily true today. There are incidents -- in total. There are incidents of it, yes. I believe policing today has never been more professional. It should be much more professional than it is, but the training that police officers have now compared to the training that police officers received 20 years ago, 30 years ago, is significantly better. The quality of the police officers are better.

I think one of the things we have to guard against is the rhetoric, the very negative rhetoric that paints police officers as just the bad hooligans that are out there just brutalizing the public because then we will discourage the quality people that we want to get into this profession. I'm worried about that. I'm worried that right now the current discourse, making police the bad guy in everything, will lead to people not wanting to get involved. It reminds me of what happened with the military after the Vietnam War. We blamed those people we asked to serve for the bad things that happened during that war for a national policy. We have to guard against that in policing. We want very, very good people, extremely well trained, professional, and responsible, and responsive to the communities that they serve.

So, what I would ask of my community is that, study your history, understand what happened, why it happened, get to know your police officers, but don't view everything that happens between a police officer and a black person through that

prism, because if you do, you tend to think about it emotionally -- and with good reason, I'm not discounting that -- but then you cannot look at the facts dispassionately. And that's what we have to do to figure out what's going on.

The director also talked about gathering data. There is a data gap out there about what we -- the amount of force that's employed because almost all police agencies get some federal dollars in some way and they probably have to tie the data collection to that federal dollar. If you're going to take the federal money, you have to report this information so that we can do the research to find out exactly what's happening, because the scientific data is not there right now.

The thing that struck me the most about what Director Comey said, he was asked a question, you know, what's the biggest thing he would change in the American justice system if he could. He thought about it for a while and said, this is not going to sound the way you think it is, but, he said, the most important thing -- and I'm quoting -- "this is critical, it's hard to hate up close." The police in this country need to get out of their cars both literally and figuratively and get to know the people they serve and the people in the community need to know them. That is absolutely true.

One of the things that I hear repeated all the time is that nothing's changed, it's the same, it's the same, the police are out here murdering young black people, and that's not true. The fact is, we murder each other at a higher rate than any police involved killings, but we don't want to deal with that here in this forum. We're talking about what we need to do to get the police better

In terms of change and how things have improved, Congressman John Lewis from Maryland said, there are individuals out there that said things have not changed, well, you know, they need to come and walk a mile in my shoes and I will show them that it's changed. Things have improved. Things are not as bad as they sometimes are portrayed to be. The police are not the enemy of the black community. It's just like you said in terms of who needs the police assistance the most are the people that are

most upset with the police all the time and we have to figure out how to bridge that divide.

And I think the way to bridge that divide is police officers have to see the community, not just give lip service to it, they have to see the perspective of that young black man is like, oh, god, here we go again. And the young black man has to say, well, what is he thinking. I don't know what this guy is going to do. I'm just as nervous around him as he is around me.

Perspective is important. If we don't get that from each other, we're going to be here again having a very nice panel discussion like this when the next situation happens.

So, I think a lot of what they've said is absolutely true, but the key to moving forward, regardless of what the President's taskforce has said, is we need to see each other, we need to understand one another, we need to carefully view the other person's perspective and don't dismiss it like I've seen some people do on both sides of this issue. I've seen police officers do it, and I've seen advocates do it, the police perspective, oh, they're just -- that's an excuse. It's not an excuse. The key, and I think if I leave with nothing else today, perspective is absolutely important in understanding each others' point of view, and I think the improvements that we talked about can be made.

I think if the public -- because we work for you -- if the public is willing to put the pressure on the decision makers to put the resources there to make the types of changes that you believe should be made and to have a police department, regardless of where you are in the United States, that's reflective of what you want it to reflect. That's not a decision that I make. I am not a policy maker. I implement the law as its passed and I go with the policy that's written by the people that you elect to direct us and tell us what to do.

So, the power is in the hands of everybody sitting in the audience, every citizen. If we want to effect this change that everybody is mobilized about, don't just get upset when there's a high profile, police involved shooting. We need engagement all the

time -- all the time, not just when something seemingly goes wrong. We need that engagement and that conversation to take place continuously. And I'm looking forward to the rest of this discussion. Thank you very much.

MR. HARRIS: Thank you, Sergeant Burton. So, one of the themes that emerged in these presentations is the issue of accountability, whether it's the accountability of communities, communities of color in particular, or more accountability from the police department.

And so, there are two things I hope that we have a discussion among ourselves, two recommendations, the first one comes from the preliminary report from the President's 21st Century Taskforce on Policing about the use of special prosecutors in cases of controversial shootings, police shootings. What's the perspective on that? Would that be an important factor in allaying sort of the concerns of many of the community around issues of policing, particularly in communities of color?

Another issue -- Jeff, we had a conversation about this -- and Sergeant Burton mentioned growing up as an immigrant, a black person in D.C., and Naomi mentioned this idea of, you know, does the presence of diversity really make that much of a difference in policing. And I really want to have a dialogue about that because, particularly in the case of Ferguson, that's been one of the issues that the police department does not reflect enough the diversity of the people who are being policed. Does that really make a difference? Anecdotally, for instance, I grew up in Atlanta, Georgia, as a teenager, as a young person, a majority black city led by a black mayor; I never had any issues with the police department. This is a long time ago; I'm an old man.

And also shortly after that, in the 80s as well, I moved to Washington, D.C., sort of the same demographics. Never had any -- when I moved to Chicago, it was a different world, a different world altogether.

And so I wonder, how much does political power of communities of color

in any way influence the tone of policing in those communities? So, those are sort of two things. So, jump in. Let's go with Jeff, you're in the middle, so we'll spread out.

MR. FAGAN: Okay, so, let me address the first question with two words: Ken Starr. You really want to be careful what you wish for when you ask for a special prosecutor.

Now, probably the better example, because that's not a great example, there was a congressional inquiry and so on -- the better example is a bit of history from New York, and there's two examples, one is good and one is not good. The good one is Charles Hynes, who investigated the Howard Beach murder during the 1980s, mostly 1986, when four young white men chased a young African-American man onto a highway where he was hit and killed by a vehicle, it was an expressway.

And they brought in Commissioner -- they brought in Mr. Hynes to be the special prosecutor. He did a wonderful job and obtained convictions. The trial was quick and all of the things that we want justice to be, quick and certain and so on, were accomplished there, and he went on to become the Brooklyn district attorney where he had a good career and then a really bad career after that. His career can be segmented into two parts.

The bad one goes back a little further to the 1970s to a guy named Maurice Nadjari, who ran amok as a special prosecutor. He tried to indict everybody in state government. He basically became literally drunk with power.

So, I think it's a very, very delicate balance on special prosecutors about when you call them in, who you call in, how they're chosen, how they're vetted by the bodies that choose them. I'm not prepared to say that should always be the case. Certainly there are cases where there ought to be, but I think it's something that requires a whole lot more thought.

On the question of bias and diversity in the ranks, there's a kind of an anomaly, and I think Fred's prior is right, that a place where African-American

communities exercise stronger political power are places where there are fewer problems with the police. I think that's something that actually needs to be borne out by some careful research.

At the individual level, the best data that I've seen from a series of imperial studies suggests actually that non-white officers, particularly African-American officers, are actually less biased in their dealings on the highways conducting car stops and also on the streets conducting street stops than are their white counterparts. They are more punitive, they are more likely to search given a stop, they're more likely to stop given the exposure to a population that's eligible for stops, they -- I don't know the data on use of force, but I do know that at this very simple level of, one, who they stop, two, who they search, and three, whether they get it right, in other words, find something on the person they're stopping to look for them, whether it be a warrant or whether it be contraband, black officers are much better.

They are, on the whole, less biased than white officers and they are less biased -- they are still a little biased, but they are way less biased, and I think that's a really critical thing to understand.

So, there's, I think, reconciling the institutional perspective with the individual perspective is a challenge, (inaudible) think about as we move forward on a project of redesigning policing.

MR. HARRIS: Naomi.

MS. MURAKAWA: Yeah, so, the question -- I mean, in some ways I view both of these questions as a way of saying, we're just going to concede that the criminal justice system as it is basically acceptable and we just need better individual trials for the small handful of cases that result in fatal shootings, right, and maybe there would be some prosecutions, maybe it would make all of it appear more legitimate. It actually would not do much to cut against the basic day-to-day reality of policing.

So, independent prosecutors, fine. (Inaudible), but also not likely to

actually, in the end, do very much about what matters most to people, which is the day-to-day reality of being surveilled and harassed.

The question of diversity of the police force is something that, you know, liberals have been calling for really forever and police forces actually have become far -- far more diverse. On a macro level, I don't -- you know, NYPD is, what, more than 35 percent people of color now? I'm not sure anyone other than Braton would say that that's a police force that is modeling great racially just behavior and actions. The best data I've seen, I'm thinking about, is the Smith article from 2003, which is looking at all of the police departments that are addressing cities over 100,000 and the finding there is very clear, which is, those that have more diverse police forces do not, on an aggregate, have lower arrests, lower rates of use of force, and it's all coming out the same, right.

I also think there's something to be said about, you know, what it means to keep wanting something to look diverse. I mean, I don't know what to say -- yes, we have -- I don't know what our understanding of racial -- if our measure for racial justice is, we would like the distribution of resources in violence to stay exactly as it is now, which is completely inequitable, but we want representation within the 1 percent to have more black faces and we want the face of international power projection to be a black face and all of that violence to be moved, and now we want a police force that we want to be diverse and projecting all of that violence in a way that looks diverse, as if that sort of facial representation is that which makes it just. And, I'm sorry, if you are still being arrested by a black police officer, that does not diminish the level of violence that is being performed against you when you are being arrested and held in a cage.

MR. HARRIS: So, Naomi, I just want to -- before --

MR. FAGAN: (Inaudible) amendment to this.

MR. HARRIS: Okay.

MR. FAGAN: Friendly amendment is that, the one -- this is an omitted variable bias problem. And the variable that's never looked at that we actually look at in

New York and now in Newark is the diversity not of the rank and file who are on patrol and interacting on a daily basis, but of the command ranks, the places that actually set the tone, that establish the norms, that reinforce the norms, and so on.

If you look at the police force I know best, which is the NYPD, it is roughly 15 percent minority at precinct captain and above. And so, when there is a matter of policy or discipline or how are we going to respond to the death of Eric Garner, and so on and so forth, that is said by an old guard who are largely white, and with apologies to the folks in the room who are Irish, they're all Irish. And I have a little bit of that blood in me too.

So, there -- this is the omitted variable that we don't know. We need to think a little bit more and look a little bit harder at places that actually really are race conscious with respect to the question of essentially affirmative action within the command ranks. Who's setting the tone? Who's doing discipline? Et cetera, et cetera.

MR. HARRIS: I think Naomi raises an interesting point, because this is a classic issue regarding representation, race and representation, and institutions have had a history in perpetuating racial inequality, and the question, which is a difficult question, is that if you diversify the ranks and the -- or the institution and the practices are still intact, are you just merely legitimizing existing inequalities, in many ways taking away sort of the oppositional voice to sort of deal with those issues? That's a classic issue.

And Professor Fagan, you're talking about in many ways does diversity sort of shift -- this may have a tipping point aspect to it, where the greater diversity, the more likely there be norms that are more favorable to a fair policing practice?

MR. FAGAN: At the -- at the --

MR. HARRIS: At a particular level.

MR. FAGAN: At a particular level where those norms are set and reinforced.

MR. HARRIS: Right, right. Sergeant, so what do you have to say about

these two perspectives?

MR. BURTON: On the special prosecutor, I think the one part of it that has not been addressed is that it politicizes, and all things are political of course, but it's now going to politicize, overly politicize, I think, every single police involved shooting, so you will have to get, as you discussed earlier, who decides who the prosecutor is, what effect will that have on that district attorney -- for example, here in Washington, D.C., as most of you know, all serious crimes are prosecuted by the U.S. Attorney's Office. All of our shootings, all officer involved shootings are reviewed by United States Attorneys Office. They have a section that is a public corruption section that deals only with public corruption issues. They're not in any way associated with the line prosecutors that interact with the police officers on a day-to-day basis.

So, while I understand the perception that there is a symbiotic relationship between prosecutors and police officers, to the point where those prosecutors are tainted, I don't accept that as fact because I know that's -- in practice, that is not what happens.

And prosecutors themselves aren't going to come out and say that. They're a very conservative group. As a matter of fact, their voices have been absent from this discussion since it began and since people started saying the prosecutors and the cops are too closely interacting for them to be able to be unbiased in reviewing the evidence in any particular police involved shooting.

On the question of diversity, I think it does -- it makes a difference in terms of how the community feels and I had an experience when I was a patrolman in the fourth district up on Georgia Avenue that just kind of blew me away. There was a call for a disturbance, this was in 1998, and it was just a loud party. The neighbors were upset that these guys were making so much noise, and my partner and I, both black officers, we pull up to the scene and the funny thing, because the guy was from New York, and he said, wow, there's two of you, and I -- at that time I had no idea why he said that,

because I wasn't paying a lot of attention to the NYPD diversity issues and things like that because the MPD, the District Police Department, has always been diverse. It was racist, but we fixed those things-- it's true, you know, that's just history, it's a fact, but we've had black police officers for a very long time. At that time we were about 60 percent black, so he was blown away that the call was answered by two uniform black police officers, and I didn't get it at the time, but I get it now.

It does make a difference in the community where you see someone that looks like you. Now, having said that, it's not going to change the fact that there is going to be hostility between that part of the community that needs our assistance the most, where most of the violence occurs, where all the murders are happening -- for example, here in Washington, D.C., the seventh patrol district is approximately 7.7 or 8 square miles. At one point they were averaging 50 homicides a year for a ten-year period. There's an extreme amount of violence in that community and if -- you know, so we have to interact with people that are living with that on a day-to-day basis. They're brutalized by that kind of violence.

We have a decent relationship in that community, but we also have tension and the fact that we look like them doesn't always ease that tension.

So, you know, perception. Whatever my perception is, it's fact to me. It doesn't matter if it's true, and if the community perceives -- and this is where I think both of you are going with the -- or where the argument about the special prosecutor goes -- if the community perceives that that relationship is too close and too cozy and that's why officers aren't being indicted, then they want something done. And so, what do we do? I don't think an education piece is going to do anything about that because they've already concluded that that's the truth. So, we may have to, with all the perils and trepidation that come with having the special prosecutor -- we may end up there.

You know, I don't think most places that will happen, but in some places it will and so I just think it over politicizes and I think diversity makes a big difference

because, you know, you see someone from your government that represents you, looks like you, and I think it makes a difference.

MR. HARRIS: Okay. We're now going to open the audience up for questions. I see the gentleman with the black turtleneck had his hand up first.

MR. DUBOIS: (Inaudible) Dubois, community affairs consultant. First of all, kudos to Brookings, I mean, this is a wonderful panel, a Japanese-American, Irishman, and you know, Sergeant, we're still (inaudible) Nigerian or the Caribbean, but you know -- it's all good.

MR. BURTON: Jamaica.

MR. DUBOIS: Jamaica, oh, good. Good to hear it man. Anyhow, here's my observation and then a question. Diversification cannot be sufficient. Gentlemen, as a Columbia grad, I have to give the learned lady from Princeton has a gist on this model that you need to follow up on because nothing will be -- tell me if you agree that nothing -- we'll be here again, like the young lady noticed when you said, that we will be here again on this same issue unless there is a rigorous training, psych analysis, and better qualifications for police officers and not the police department being a (inaudible) where I can't become a stockbroker, so I'm a cop, so, (inaudible) and go and shoot as many as I can.

But I think the lady from Princeton has the gist on this, gentlemen, but don't you think that we need to do these things -- better training, psych analysis, and better qualifications for police officers, otherwise we'll be here every two weeks?

MR. BURTON: Is the question to me?

MR. HARRIS: I think for both Naomi and Delroy.

MR. BURTON: Well, you know, I don't disagree with the better qualification, better training, but you have to think about this. You're competing in the marketplace for that person, so is everyone else, okay. Policing is a competitive industry. Just in Washington, D.C., we have approximately 4,000 police officers with the MPD.

Right now there are 1,103 that are eligible to retire, that's the class of 1989 and 1990.

The Prince Georges County Police Department is also hiring, Fairfax County is hiring, Montgomery County is hiring, in addition to all the federal agencies that poach officers from us, because once we get them in the door, we do their background, we train them, it's much easier for another agency to take them. It is competitive and the better your candidates are, the better qualified they are, and we want them, the harder it is to keep them.

So, as a community, the decision we have to make is, we need to make our agency the place where people want to be with the line going around the building to get in here. Right now, that is not the case for us. Hopefully, we will get back there, but it's competitive and it's very, very difficult to attract and keep the highest quality candidates with so many other opportunities in the federal law enforcement sphere that we operate in, state, and some local law enforcement entities, plus all the other people that are competing for that guy from Princeton or Harvard or Yale or Johns Hopkins or wherever they may have graduated from.

MR. FAGAN: I agree.

MR. HARRIS: There's someone with their hand up back there.

MS. FREEMAN: My name is Jo Freeman. I come to this discussion with 50 years of experience as a protestor, which means I've dealt with a lot of police, and two years experience as a prosecutor, which means I dealt with a lot of police.

During the occupations of a couple years ago, I did extensive observations in both D.C. and New York of police-occupier relationships. Now, race wasn't directly a factor here. The occupiers in both cities were overwhelmingly white, overwhelmingly young, and mostly, though not overwhelmingly, female. The police, of course, were a little more mixed.

In both cases I watched the kids bait the cops. In New York, the cops responded by coming down hard on the kids. In D.C., they didn't. In New York, I

watched inspectors, who are mostly older, white males, come down, beat up, on the kids. In D.C., they didn't.

We've been talking about race as a factor. What is the factor of leadership? Don't those older, senior police officers of either race, communicate to their younger officers about what is acceptable behavior? What good is training if you don't start at the top with them telling the people underneath them what they can and cannot do?

MR. HARRIS: So, question -- yes, the role of leadership?

MR. BURTON: I think the role of leadership is essential and what the questioner points out is the significant difference between Washington, D.C., the MPD here, and the NYPD. We are the preeminent police department in the United States in handling First Amendment assembly and protests. This is what we do every single day, 365 days a year. People come here from all over the country to learn -- and all over the world, as a matter of fact -- to learn how we do these things.

For a senior level person to allow themselves to be baited into responding to use violence is unacceptable. That would never happen -- well, let me back up -- not that it could not happen here, if that did happen here, particularly with everything being filmed, the person responsible would be dealt with very, very harshly.

First of all, the city council in Washington, D.C. is very responsive and they pay attention to that. They passed some legislation a few years ago after the debacle in Pershing Park, where over 400 people were corralled and arrested, some people on their lunch breaks that weren't even protestors, under the Ramsey administration, and once we made that mistake of arresting innocent people that were not doing anything wrong, not breaking any law, they changed some of the laws here in D.C. about the way we deal with First Amendment assemblies.

We were already good at it, but I think we're now much better at it and we simply don't engage in the debate tactic. You can try it all you want and the individual

police officer or the individual police manager that gets involved and allows themselves to lose composure and professionalism, they will be dealt with very harshly and they always are.

MR. HARRIS: Jeff, you want to weigh in?

MR. FAGAN: I just want to -- the perspective of the questioner was absolutely right, it kind of reinforces the point that I was making. First of all, the white shirts -- we call them the white shirts -- so, the guys in white shirts are the inspectors and they are almost uniformly white men. In the Occupy protests, if you went back and looked at videos of the protests, you would see almost no white shirt women. You would see white guys, second, they were gratuitously violent, this has been established pretty much over and over again. Their venom had -- obviously, the protestors were pretty much white and their venom was really a class rage, not a gender rage, although there was elements of class/gender interaction to it. They were really angry at the women for protesting, but it was really about class.

You know, these are upper middle class people who had the time and the luxury to protest, in their eyes, and got what they deserved.

Now, if the white -- as the (inaudible), if the white shirt white guys are the leadership of the department in an everyday tactical manner, and only one of them actually was prosecuted, the guy who pepper sprayed a few women with no provocation -- I mean, he didn't even get baited, he just did it -- that's kind of illustrating what I was trying to get at before about the fact that if this is where -- it's not just a matter of tone and value that's being communicated, it's a matter of what's valued and what's not valued, and just two days ago in New York, on Friday, a lawsuit was filed by minority officers claiming racial bias in discipline within the ranks of the NYPD in terms of people who would resist assignments or actually it was around the quota system.

But still, the point being that the only -- if you actually looked into the discipline records, you would begin to see the same kind of bias by the upper ranks

towards their own people that we think -- and we saw in Floyd and other cases and in other places -- towards citizens. And that's trouble. And this is kind of what I was getting at about sort of looking -- really peeling away the layers and looking inside the institutions to understand how biases work.

MR. HARRIS: It's also true that undercover black police officers in New York City are more likely to be shot by other police officers.

MR. FAGAN: Yes.

MR. HARRIS: As another evidence of bias. There's a gentleman there with the blue.

SPEAKER: When a person gets arrested, it's obviously causing some harm, in other words, the guy might lose his job, it might be hard getting another job, he might get -- you know, other different things happen to people as a result of being arrested and we often don't think about how are we balancing this. In other words, maybe a guy stole a loaf of bread and now we -- the response is much more harm is done to him by the arrest.

So, how do -- I think we need to address that issue that we're arresting people for things which really don't amount to very much, causing tremendous amount of harm. I think Janet Yellen gave a speech that said a lot of the excessive unemployment among African-Americans in this country is due to criminal records.

So, we're creating a lot more damage than we're fixing and I think it gets to the point that both the fellow from Columbia and the woman raise, we have too many police arresting too many people and we have to sort of address that issue.

MR. HARRIS: Do you want to chime in, Naomi, and then we'll hear from the Sergeant?

MS. MURAKAWA: I think that's just crucial to look at the violence, the damage that's done by actually being just arrested, right, so one really important work to look at is a new book out by Amy Lerman and Vesla Weaver called "Arresting

Citizenship" and they're looking at these tremendously high arrest rates.

For every arrest, about half of those cases have to be dropped due to lack of evidence, but even that tells us something very important about the purpose of arresting, which is to sweep up someone for a little bit, often a homeless person who's maybe -- in Seattle they used to call it panhandling too aggressively, and just sweep them away out of the business district and then let them go.

So, what is it that we're asking police to do? It's to do our bidding in enforcing a system of racial and economic inequality that is just so vast and the only way, apparently, we have to deal with it is to call on the police, right, and it's not just the police that have been deregulated, it's vast deregulation of all financial markets, which is allowing for this kind of intense inequality, and I do think this fits with -- you know, there's just something that happens when people who think that they're progressive start talking about police officers and there's this tone and this way of talking about cops that is, you know, just reminds me so much of the sort of like early 1960s Northern white liberals who enjoyed looking South and thinking that Bull Connor had the monopoly on illegitimate violence, as if racism is the province of stupid white people, right, and uneducated white people, and this is the conversation that comes up on quality policing.

And the fact is, it's not a matter of the quality of what individual cops are, which is just a terrible way to assess structural inequality, the problem is that we are a culture that has one solution to every social problem and that's to criminalize.

And then we have these bloated criminal codes and tell police officers, mostly working class men and women, to go out and enforce those laws. That's our problem. That's actually not just a problem of police administration, that's our problem.

MR. HARRIS: Go ahead.

MR. BURTON: Since we're talking about perspective, to the question of the arrest for the loaf of bread, okay, if you're the shop owner, because the police make an arrest, whoever the person is that's arrested, you're right, it is traumatic, but if you are

the owner of that business and it's you that the person stole from, what do you want the police to do? It goes to the question of the law. We are going to enforce the laws. The law says, you come to the shop, you steal a loaf of bread, the shop owner wants you arrested, you call me, I will arrest them.

And then whatever happens once the case gets to the prosecutor's office, yes, a lot of those cases are dropped and it's simply because there is not the capacity in the prosecutor's office to handle all of those cases. It's not simply because there's not enough evidence. If we arrested everybody for every crime they committed and took it to the prosecutor's office, it would be running 24 hours a day, 365 days a year.

It's just not possible, the resources are not there to handle the arrests that we make. It's not that they are illegitimate or that there was not probable cause to make it, it's just that the prosecutor's office cannot handle it.

As to internal reforms, one of the things that we haven't talked about here, and it's a big problem in Washington, D.C., and I suspect everywhere, large corporations and government, is that anyone that wants to blow the whistle on misconduct on the inside of an organization does it at their own peril.

The Court of Appeals here in this town has gutted the whistleblower protection statute for District of Columbia employees, so reform can happen a bunch of ways -- the outside pressure, but you also need people inside the system to provide you with information, but if the system will not protect people who work in it, that want to bring forward misconduct, those people are not going to do it, they're not going to risk their careers because they see what happened to their colleagues when they try to right something that's wrong, and that's a part that we've left out of the discussion and I think it's an important part.

MR. FAGAN: I agree. The case in New York that I mentioned, the suit by the minority police officers came out of a whistleblower action.

But the story about the loaf of bread is interesting -- sort of getting into

Jean Valjean territory -- what does the shopkeeper want? He wants the guy not to do it again. He doesn't want the next guy to do it. And he wants to be made whole. Now, does policing help do any of those three things? Or, I think the bigger challenge is, if police are going to be the responders to those situations, how can police accomplish those three goals?

Will there be a deterrent effect? No. I think we understand deterrents pretty well and it's a little tough to claim that there's a deterrent effect from massive misdemeanor arrests. Will the shopkeeper be made whole? That's going to require something a little bit different, a different kind of response, perhaps some kind of restorative response, but that's a longer conversation.

Will it stop the next guy? Probably not. Right? So, why are we -- then that raises the question, this is Naomi's question -- why are we arresting all these people? What purpose is it serving?

I want to double down on the question and on the concept and raise the idea about going back to the consequences of arrest and raise the notion of what we call legal financial obligation, and a legal financial obligation, an LFO, shorthand -- this is the shorthand we use in law school -- if you're arrested you will have to pay a fine or a fee to apply for indigent defense services.

You will have to pay for the time you spent in jail, or partially pay, $15 a night, $30 a night, it depends on the jurisdiction. You will have to pay to file your defense papers. If you're on probation and you happen to have been caught smoking marijuana, you will have to pay for the urinalysis tests or if you are given an ankle bracelet for supervision, you'll have to pay $400 a month for that ankle bracelet.

If you are acquitted and you want your record expunged, depending on the jurisdiction, you will have to go to the prosecutor and pay somewhere between $35 and $75, depending on the jurisdiction, just to get your wrongful arrest expunged from the records.

Now, you can imagine -- so, let's think for a second about Ferguson, Missouri. There were 33,000 warrants issued in Ferguson, Missouri against a population of 21,000 people, mostly on traffic stops. Now, let's assume that not all of them were Ferguson residents, people came in from surrounding towns. So, you can do a little bit of math and set an upper and a lower bound on this, you've got an awful lot of warrants.

Every one of those warrants is in response to a stop, a traffic stop, that generated fines for broken tail lights, for license plates that were up -- et cetera, et cetera -- which were not paid because the people can't afford to pay the fines. And then a warrant is issued. And then, the next time you're stopped, which is a very high probability because there really is very strong evidence in Ferguson of racial profiling of motorists, you're going to go to jail.

So, the notion of the legal financial obligation being put upon a population that couldn't pay their stuff in the first place is really pretty pernicious. And, you know, we've got a lot -- as the sergeant said, we've got a really long racial history of this stuff and those kinds of petty interactions build up and they accrue and they lead to a very, very deep and broad legal cynicism, but also real burdens that people have to struggle with in everyday life about arrest records, for example.

So, this is when I go back to the democratic argument about, we've kind of defaulted, through deference, because we spent a couple of decades being terrified of the criminals -- we've deferred to the police and the legislatures have basically gone along with that in the sense of feeding kind of the same meter. And I think that's really a process that local government -- this is a project for local government, whether it be state or local, and that's the only way this is going to get undone. In a sense it's unfair to ask the police to try and undo that. They are simply given a set of orders that come down and they do it.

MR. HARRIS: A quick question -- well, the young lady in the front. We've gone to the back a lot.

SPEAKER: Hi. My name is Ofia Tyas and I'm a junior at the School for Ethics and Global Leadership. So, I completely agree with the belief that diversity of skin color doesn't really create diversity of mindset and doesn't create a change. So, with that, do you believe that it lies within the power of the justice system and the police department to create diversity of mindset and to acknowledge these biases, particularly with the fact that creating new training and changing the way we -- changing the police force, in a sense, will not change the mindset that people are bringing to these situations?

MR. BURTON: Good question. The question is, it's an American problem. Police officers come from the population. These things aren't germane only to policing, it's in every face of the American society and all systems within American society.

So, as the country changes its view on all of these issues, that will be reflected in the people that get into each one of those professions. Having said that, however, policing is a little different. We have to, in the profession, ensure that in addition to the changes that are going on within society as a whole, that when you come into this profession you understand that you may have your biases, and you will, everybody has them, but as you do your job, that can't get into you doing your job. Your bias cannot in any way interfere with the way you do your job. You can't let that be the reason for you doing something to a citizen, because we have tremendous power and until we, as a whole, the entire country, changes our view on race, religion, sexism, you name all the schisms and isms that we suffer from -- all of those things are inherent in us as a people, they're inherent in policing, it's in the military -- everywhere, because the people that get into these jobs and these professions are taken from you and we have that problem, not just the police.

MR. HARRIS: And the last question, the gentleman standing in the back.

SPEAKER: Thanks for taking my question. The young lady sort of mentioned something that I wanted to bring up. Professor Murakawa has said it that the -- it seems like the diversity issue seems not to make a lot of sense given that there's an overarching mindset that we're dealing with. I wanted her to perhaps illuminate on that mindset a little bit because it seems that when you join the police force, okay, you sort of subscribe to a particular mentality, a mindset, and I was wondering, what is the actual incentive for police department and law enforcement to actually change their modus operandi at this point? It seems like it's working for law enforcement right now.

So, what is the actual incentive?

Second question, this is for the sergeant, is to please be a little bit more specific about how the will of the people can influence change. And are you talking about a change in the mentality? Are you talking about change as far as policy?

MS. MURAKAWA: So, I'm going to just agree that the problem with racism in policing is the problem with racism that we have writ large, and actually, the Shooter studies, and the implicit bias studies that we have actually confirm that police do better than non-police in making these sort of instantaneous decisions.

So, then the questions we have to ask ourselves if we actually want to address lethal force isn't how do we get rid of these sort of micro processes in the brain for which we know police are doing better than most people anyway. The question we should ask ourselves is, why do we authorize people to use lethal force instantaneously? Right? And there's this consensus now, or at least there was, of calling for demilitarization of police as if, you know, that's the sort of new thing that people think that they observed in Ferguson.

And that's a fine thing to call for, but we should also acknowledge that, you know, Michael Brown wasn't run over by a tank, and Sean Bell and Tamir Rice were not gunned down with AR-15s, they were killed with standard issue handguns, so I think what we need to consider, if we're interested in lethal force, is what it is to have just basic

foot patrol walking around with guns and the authority to kill.

MR. BURTON: Regarding the specific will of the people, politicians respond to numbers, plain and simple, they respond to numbers. In my discussions with our city council, for example, there's a particular public official, and I won't say the person's name, has a very high popularity rating. Now, they take issue with the person, but they are loath to do anything to push back against that particular public official because they are worried about that popularity that's above 80 percent.

So, the will of the people, if we get involved and push and push, things can change, not just in terms of policy, law, everything that you want to see us do, because we work for you, we will do if you, the people, push the elected officials hard enough to make those changes.

And as to the -- just a little bit on the lethal force, you're right, it's an instantaneous decision, but we are in a society where we are having this protracted discussion about the Second Amendment and to put police officers in a situation where we are now authorizing the average citizen to walk around with guns and to tell that police officer that, well, you know, we're too quick to shoot or we have to figure out a way to go less lethal when we have people surrounding us with guns, it's just not a workable situation right now unless we are going to be getting all the guns out of this country, which we're not going to do.

So, we have to be able to meet force with force, whatever that force is. If it's a gun, I have to be able to go to a gun, if it's a baton, a knife, whatever it is, I have to be able to meet that force with force, and unfortunately, because we are as in love with guns as we are racist as a society as a whole, the guns aren't going anywhere and I don't think handicapping people that we ask to go out there and deal with the worst part of society on their worst days is going to be the solution to that.

So, I'm willing to entertain effective, less lethal options, but even they are fraught with peril. People protest against the Taser because in some rare instances it

may cause people to have cardiac arrest. People that have respiratory problems, if we go to less lethal of OC spray, that OC spray is a trigger for that respiratory illness that the person may have. For example, in the case of Eric Garner with his severe respiratory problems, had they used the less lethal of pepper spray on him, they could have induced a very horrific asthma response.

So I wish the solution was simple; it's not. It's complex. And so when they try to use sound bites to define what it is we have to do as a society, what we need to do as police, I think it harms all of us. I think discussions like these are the ones that we need to get at the root cause, have honest discussions with each other, things that we are not going to be happy with each other about, but if we don't do that, as I said earlier, we'll be right back here in a few years repeating this same thing. We need to change the discussion.

MR. HARRIS: Thank you so much. The panelists have given us a lot to chew on and have brought their expertise. And I think we really had a really great dialogue, I hope we are not here a year or two from now talking about the same issues, but I want to thank them for taking the time to come here to D.C., those of whom traveled, and the sergeant who, I guess, just had to come across town, to have this very important discussion. Thank you.

(Applause)

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CERTIFICATE OF NOTARY PUBLIC

I, Carleton J. Anderson, III do hereby certify that the forgoing electronic file when originally transmitted was reduced to text at my direction; that said transcript is a true record of the proceedings therein referenced; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken; and, furthermore, that I am neither a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

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Expires: November 30, 2016