

THE BROOKINGS INSTITUTION
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DEADLY FORCE:
THE LEGAL BASIS OF POLICE SHOOTINGS
OF UNARMED BLACK MEN IN AMERICA

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Opening Remarks:

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Panel:

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P R O C E E D I N G S

MR. FRIMPOL: Good morning, everyone. A very warm welcome to you all. We're extremely delighted that you're able to join us here today for our event on the top deadly force: the legal basis for police shootings of unarmed black males in America. A very time and important subject today.

My name is Kwajo Frimpol, Senior Research Analyst with the Race, Prosperity, and Inclusion Initiative here at Brookings. And our agenda for this morning is I'll firstly walk us through some brief statistics on the use of lethal force by law enforcement and how that's played out across the criminal justice system, and thereafter we'll break into our discussion panel with our distinguished panelists to discuss this topic here today.

So, to provide a brief overview of the topics we'll cover is firstly I'll go through some national statistics on the use of lethal force by police officers, and secondly, we'll look at how that relates to all victims across racial demographics, and thirdly, we'll look specifically at how this relates to unarmed victims across race, and lastly, we'll look at how this is played out in criminal case dispositions across the country.

So when we take a national outlook on the use of fatal shootings by police officers we can see that from 2015 to 2018 the total number of civilians that were killed by police officers ranged from about 1,700, which peaked in 2017, to about 1,400 up to the present time. And we can see that from 2017 onwards there was a slight national decline in these police shootings. And this trend has been reflected across racial lines. So we can see that white males, who constitute a majority of these fatalities, having also been trending downwards, followed by black males, Hispanic males, and Native American males. And it's important to note that for Native American males there's a relatively scarce public information on this racial demographic. And so it's very likely that

there's an underreporting of fatalities as relates to this group.

Now, when we take a much closer look at fatal shootings by all victims by racial demographic it reveals a slightly different picture. So on the left we can see the share of males across the U.S. population, across racial demographics. So first we can see white males constitute a majority of all males within the country at 31 percent, followed by Hispanic males, black males, and Native American males. And the chart on the right, we can see the composition of all victims of fatal police shootings across the country. And two key important points to note. First, we can see that all males constitute a majority of all these fatalities across the country, at about 91 percent. And secondly, we can see that white males are the largest number of fatalities of all victims of fatal police shootings, at 38 percent. However, we can see that black males are the second smallest segment of all males within the country at 7 percent. However, they represent the second largest share of all victims of fatal police shootings at 21 percent. In fact, black males are killed by police officers at 3 times their relative share within the national population and are twice as likely to be killed by a police officer as a white male.

So now let's turn our attention to look at fatal shootings of unarmed victims across racial demographics. So again we have the share of males in the U.S. population on the left, we have the breakdown of all unarmed victims in the U.S. population on the right. And here we can see that black males relative to their 21 percent share of all national fatal shootings in the country represent an even greater proportion of unarmed fatalities, at about 34 percent, a little over a third. And, more specifically, an unarmed black male is killed by a police officer at five times their relative share within the national population. And their four times as likely to be killed by a police officer as an unarmed white male. So this illustrates two key important points, is that clearly there is evidence of a racial disparity in the use of lethal force by law enforcement, even in this

decline in fatal police shootings across the country. And, secondly, black males, and in particular unarmed black males, are at a greater risk and have more vulnerability to being a victim of a fatal police shooting relative to their white male counterparts than all other individuals across the country.

So this leads us to look at 17 of some of the most prominent and well-known cases of black male civilians who are unarmed and killed by law enforcement, including individuals such as Freddie Gray, Tamir Rice, Michael Brown, and many other individuals. And when we take a look at the criminal case dispositions of these 17 black male victims who were unarmed, we can see some very startling results.

I want to draw your attention to the chart on the left, which shows the cases in which an officer was not criminally charged for murder or manslaughter. We can see indicated in green that one out of these eight cases is still pending -- it's relatively new from 2018 -- and the rest, seven out of eight, no criminal charges were brought against the police officers. And when we look at the chart on the right we can see cases in which officers were indicted or criminally charged. And two out of those cases the officer was charged and then the case is still pending, five have been criminally charged and not convicted, as indicated in black, and three have been criminally charged leading to no conviction as indicated in the red. So we can see across this spectrum that the cases in which an officer was not charged or not convicted far outweigh the cases in which an officer was criminally charged or convicted. In fact, only three out of these seventeen cases led to a conviction. And this rarity of attributing criminal liability to police officers engaging the use of deadly force is something that is reflected across a national scale.

We can see that from 2005 to 2017 only 80 total officers were arrested for the murder and manslaughter of civilians in the country, and only 28 out of those 80

officers were actually convicted, about 35 percent. And the rest were either not convicted or the trial is still pending. And so it's clearly seen that the majority of police shootings of civilians within the country are found to be legally justified.

And, so in conclusion, all the dispositions of these cases across the country are based upon a police officer's perception of a reasonable threat. And it may be a little bit difficult to read all the words here, but these are some of the accounts of the police officers who were responsible for the deaths of the 17th black male civilians that we showed previously. And what all these accounts illustrate is the fact that a police officer who engages in the use of force sees this as a perception of a reasonable threat and a fear for the safety of their own lives and what in fact provokes them to engage in the use of deadly force.

And so, in summation, there are a variety of legal standards that govern the use of deadly force and we would like to discuss those standards in our panel here today.

So please join me in welcoming our moderator, Camille Busette, Director of the Race, Prosperity, and Inclusion Initiative, along with our distinguished panelists.
(Applause)

MS. BUSETTE: So while we're getting mic'd up here, I want to thank you, Kwajo, for that excellent introduction. I also want to extend a very warm welcome to all of you who are joining us here at the Brookings Institution today, and also to our online audience, also joining us remotely.

Before we head into our panel, I want to say a few words about why we are here and what we hope to accomplish today. Last year the Brookings Institution launched a new initiative, the Race, Prosperity, and Inclusion Initiative. Our Initiative is focused on promoting equity and economic mobility for poor and low-income Americans

and for communities of color. As part of this initiative we have a particular focus on young men of color and on policies that can advance their prospects for the success. The experience of being young, black, and male is singular in the United States, and we are interested in promoting serious policy dialogue about that experience.

As Kwajo indicated in his opening remarks, our purpose here today is to use the 17 very high-profile cases of fatal police shootings of unarmed black males as a point of departure to understand the legal standards under which the use of lethal force by police is legal. We will be examining not only what the criteria are for the use of legal force by police, but also how those criteria have been implemented in police departments across the country. We will also discuss the implications of these cases for policy changes that have been contemplated at the state level.

And with that, it gives me great pleasure to introduce each of our distinguished panelists. So sitting right next to me is Ngozi Ndulue, the Director of research and Special Projects for the Death Penalty Information Center. She joined the Death Penalty Information Center staff as the Director of Research and Special Projects in September of 2018. Her career as a lawyer has focused on the intersection of racial justice and the criminal legal system. After graduating from Yale Law School she clerked for Judge Eric Clay on the U.S. Court of Appeals for the Sixth Circuit, and she's litigated on behalf of death sentence individuals as an assistant federal public defender in Phoenix, Arizona and is a staff member of the Ohio Justice and Policy Center in Cincinnati, Ohio.

Before joining the Death Penalty Information Center Ngozi served as Senior Director of Criminal Justice Programs at the national NAACP, where much of her work centered on providing unit training, strategic direction, and research to support the NAACP's criminal justice agenda.

Welcome.

Sitting next to her is Peter Bibring, who is a Senior Staff Attorney at the ACLU of Southern California and is Director of Police Practices for the ACLU of California. He joined the ACLU Southern California staff as a staff attorney in 2006. Peter works on a wide range of police related issues, including race and bias in policing, gang injunctions, excessive force, search and seizure, police interference with the First Amendment rights, national security, civilian oversight, and surveillance.

Prior to joining the ACLU, Peter worked in private practice specializing in civil rights and worker's rights. Peter clerked on the United States Court of Appeals for the Second Circuit and the United States District Court for the Northern District of California. He graduated from New York University School of Law where he was an editor-in-chief of the NYU Review of Law and Social Change, and he also graduated from Harvard University.

Next to peter is Rashawn Ray. Dr. Rashawn Ray is the Associate Professor of Sociology and the Executive Director of The Lab for Applied Social Science Research at the University of Maryland, College Park. He is also one of the co-editors of *Contexts* magazine, sociology for the public. And formerly Dr. Ray was a Robert Wood Johnson Foundation Health Policy Research Scholar at the University of California, Berkeley.

Dr. Ray's research addresses the mechanisms that manufacture and maintain racial and social inequality, with a particular focus on police civilian relations and men's treatment of women. His work also speaks to the ways that inequality may be attenuated through racial uplift, activism, and social policy. Dr. Ray has written for the *New York Times*, *Huffington Post*, *NBC News*, *The Conversation*, and *Public Radio International*, selected as 40 under 40, Prince George's County and awarded the 2016

University of Maryland Research Communicator Award. Dr. Ray has appeared on Headline News, Al Jazeera, NPR, Fox, and MSNBC. His research is cited in CNN, *Washington Post*, Associated Press, MSN, *The Root*, and the Chronicle.

Please join me in giving a very warm welcome to all of our distinguished panelists. (Applause)

MS. BUSETTE: So the way we're going to work this is we're going to -- as these panels are typically done -- I'm going to ask the panelists a range of questions, they're going to answer those, and then once we get through those questions we're going to open it up for audience questions, and we will take about two or three at a time and then answer them up here. So your opportunity to engage with our panelists will come in time and we're very much looking forward to that discussion.

So I'm going to start off by just sort of setting the scene. The Supreme Court in a 1985 ruling in Tennessee v. Garner set the constitutional floor for police use of deadly force. So I'd like it if, given that we're not all attorneys here, if, Ngozi, if you could just summarize that standard, the standard that was enshrined in that ruling.

MS. NDULUE: Sure. So in Tennessee v. Garner the Supreme Court was dealing with a situation where somebody was actually fleeing from the police and was shot in flight. And it was clear that the person was not a danger to the police officers or the public. It was someone who was being pursued for a burglary offense, so a felony offense. So at the time the law in Tennessee had been interpreted saying that if there was any felony that you were fleeing from the police could use deadly force against you. And the United States Supreme Court decided that you could not just use deadly force whenever. You could not just shoot a fleeing suspect if there was not a real threat to the life and a physical harm.

MS. BUSETTE: To the police officer?

MS. NDULUE: Yeah, to the police officers and the public. And that really set the stage. At that time there were kind of a variety of legal standards in the different states, different police departments had different standards around the use of force. But I think one thing that definitely changed that game -- so Tennessee v. Garner really said that just trying to use deadly force to apprehend somebody is not enough of a justification. But then in Graham v. Connor, there was again this question about what does this mean and actually what is the legal standard. So this was a Fourth Amendment seizure. And the Graham v. Connor was stating that the Fourth Amendment, is a reasonableness standard, is the actual standard that should be applied, this objective reasonableness. And Graham v. Connor has really shaped the way that police departments have framed the way that they -- their use of force policies read, having framed the way that people are trained around use of force.

So some of the things that Graham v. Connor emphasized was this is not about looking at 20/20 hindsight at the situation, this is about what an objectively reasonable officer would have done in the circumstance. And since that Graham v. Connor decision interpreting Tennessee v. Garner, the ideas about Graham v. Connor -- if you think about when the awareness of just (inaudible) law enforcement officers about Supreme Court precedent. You could think about, you know, the Miranda decision, right, people have to give the Miranda Rights, everybody is aware of that. But I would say as a close second, even if they're not thinking this is about Graham v. Connor in the way that police reports are written, in the way that people are being trained in police academies, the kind of framing of the use of force and when that use of force is justified is really heavily shaped by the way that Graham v. Connor -- really with an eye towards saying that much use of force and use of deadly force is reasonable --- the way that Graham v. Connor really framed that discussion.

MS. BUSETTE: Great. Thank you very much for that.

Peter, I wanted to chat a little bit about these two standards. You know, definitely the Tennessee v. Garner set the constitutional standard, the Graham v. Connor sets other standards that a lot of police departments have followed. But have the states sought to set higher standards than these two standards or different standards than these two standards that we have just discussed?

MR. BIBRING: So in a word, no. Most states -- I mean there are some exceptions, so Tennessee, for example, whose statute was at issue in Tennessee v. Garner, has modified their statute. But most states have statutes that actually predate Tennessee v. Garner and basically codify the common law of rules about shooting police. So, for example, in California, where I'm from, our statute on basically the criminal affirmative defense for law enforcement officers was written in 1872 when the State was literally the wild, wild west, and hasn't been updated since. And so most state standards -- California actually codifies the old fleeing felon rule that officers can shoot any fleeing suspect. So it does not meet constitutional standards and certainly doesn't meet modern policing practice.

And so I think what I will say is that if you want to look for standards that are above the constitutional floor, the place you have to look is actually police agencies, especially in recent years. A number of police agencies have brought on more progressive policies through -- some on their own, more through oversight by the federal Department of Justice. If you look at the consent decrees that have been put in place by the Department of Justice, almost all of them have a use of force component that has higher standards -- includes a component that requires higher standards than Graham. And, in fact, the Police Executive Research Forum, a kind of research group of police management, issued a set of recommendations around use of force policies, the second

of which was that departments should enact policies that have higher standards than Graham v. Connor, higher than the constitutional floor.

MS. BUSETTE: Great. Thank you very much. It was very helpful.

So, Rashawn, I want to get your thoughts as part of this discussion, and I wanted to know, given the sort of changing landscape of standards, have we seen any relationship of those changes which initially are decided in the Courts and then later implemented in individual police departments, has that changed the volume or the nature of fatal police shootings around the nation?

Mr. RAY: Yes. So kind of since the mid-1980s what we've seen actually was a decrease in officer involved shootings and killings. And then all of the sudden, in the mid '90s, in the late '90s, we started to see a huge increase. And that's kind of what we've seen over the past say 20 years or so. And part of that is making sense of a conundrum that people try to focus on, which is the fact that in the '90s we started to see record lows in terms of violent crime. And for the most part that's kind of continued up until relatively recently. So that's hasn't necessarily corresponded.

And I think what the other panelists are really highlighting is that since that Tennessee v. Garner decision -- I'm actually from Tennessee, so I think about kind of living during that particular time and what that meant from being in Tennessee compared to being in other states. And so part of that we started to see a series of other cases that set a precedent. So I think instead of necessarily naming these cases we can think about the outcomes of these cases. So stop and frisk, Terry stops, jump outs -- which is where you kind of have an undercover group of officers who are in plain clothes who are jumping out on individuals standing on the street. And of course the precedence here is it's about whether or not someone is suspected of engaging in a felony. And I think part of recognizing what that means is that it gives officers a lot of discretion to make a

justification for who they perceive to be engaging in felony and what type of felony they perceive them to be engaging in.

And so in many respect they're actually able to at times make decisions as they're going along. And even though we're focusing on these set of cases as it relates to this particular stat -- and I don't want people to forget this stat -- that African American men compared to white men are about four times more likely to be killed by the police when they're not attacking, nor when they have a weapon. In many respects that's the group we're talking about. These are individuals who the police have said no, they weren't engaging in a crime and no, they didn't have a weapon, and yet we still see this outcome. But besides that group we have to look at what led up to that particular encounter. That's when the fact that minorities are more likely to be pulled over than whites, they're more likely to be searched than whites, they're more likely to have violent force used upon them. And all of these different cases over the past 30 years or so have established a precedence that that's okay based on what a reasonable officer would do. And I think it's difficult for people to really understand that. But what that precedent essentially means is that you ask other officers would they have engaged in the same type of behavior given the circumstances and given what they know about the situation.

Now, of course, you have specific police departments, police unions, who have decided to kind of double down on that and aim to rectify that and make it what they perceive to be more objective. But at the end of the day in many respects it's still police officers policing the other police officers about these alleged behaviors. And at the end of the day what we see is an outcome and a huge disparity that I think in the United States of America none of us should be comfortable with.

MS. BUSETTE: Great.

MS. NDULUE: And if I could just pick up from that. And the question

about objective reasonableness and what that means. It sounds very scientific, and of course you would like to see what would an objectively reasonable officer do in this situation. But I think we have to definitely put layers on top of this. So it's interesting in, you know, Tennessee v. Garner and a lot of the kind of seminal police use of force cases, there is no mention of race. It's just some suspect, some person by name. And we are not necessarily taking into account the effect that that had on the way that the interaction progressed.

So I want to bring in some of what we know more now about the way that bias, both explicit and implicit, is at play in so many of our discretionary decisions in the criminal legal system, including those decisions about who to arrest, who to stop and frisk, who to search. And so when we think about the science around implicit bias -- and implicit bias is often the unconscious snap judgment reaction that we all have around a variety of issues and traits -- but we think about what we know about implicit bias against African Americans and we know that a number of studies have shown that a vast majority of white people have implicit bias against -- that's negative towards African Americans and that in some studies there's kind of about half to a majority of black people. So this is not just something that is only white people need to address. These kind of implicit under the surface biases that help to change the way that we are perceiving a situation can have really negative effects in these interactions where we are having ambiguous situations where you have to make a snap judgment. Well, we have studies showing that if you have an ambiguous situation and the person has dark skin as opposed to a person with light skin, that we're seeing people making more negative assumptions about that and we're seeing people that make assumptions that add to culpability. I think we have really scary information about what that means when we're talking about children. And we can all think to the Tamir Rice and his death as potential example of this where when

we think about black boys and girls are seen as older, more culpable, and less human. And when I say, "less human" I'm actually saying that in a literal way. It's easier for people's brains to associate black boys with animal type, ape type figures as opposed to human beings. So there's this dehumanization kind of bias.

And so what does that mean when we're talking about these very charged and very life and death interactions that could happen between black people and the police? So when we're talking about this legal structure, we're talking about these cases that don't necessarily take that into account. So when you think about the prevalence of this explicit and implicit bias in general society and we bring that into law enforcement interactions we have to think about what does that mean about the way that juries are willing to accept the "I was afraid for my life". Like when the idea of a scary big black man is something that is kind of hard coded into a lot of our subconscious, what does that mean for whether a jury is willing to accept that an officer had a fear and that this fear was objectively reasonable?

MS. BUSETTE: So let me kind of expand that a little bit. So when we're talking about a standard around a reasonable officer standard, right, you're saying that the circumstances under which those decisions and actions are made vary when you're talking about encounters with African Americans, in particular African American males, and that the case law does not speak to that.

So my question is, is there -- and this is going to be -- you know, you give me your best answer, there's obviously no right answer to this -- but is there a uniquely objective reasonable officer standard when we're talking about the use of lethal force?

MR. BIBRING: I'm going to say no. (Laughter)

MS. BUSETTE: Okay.

MR. BIBRING: Look, I think the concept of reasonableness comes into the legal standards in a couple of different ways. There's the reasonable officer standard, but there is also that Graham at bottom is just asking the question would a reasonable officer think that the use of force was reasonable under the circumstances.

MS. BUSETTE: Right. Okay.

MR. BIBRING: And from my perspective, it's actually been the second reasonable that is also problematic. I mean, for all the reasons Ngozi says, that's essentially no standard at all. Does it seem reasonable, does that seem like something that you would do. That standard in and of itself provides very little guidance or framework for somebody to evaluate whether force is reasonable. And so the evaluation is then loaded with all the implicit and explicit bias.

MS. BUSETTE: So I guess my question is, does the definition of what's reasonable change depending on who it is you're interacting with?

MR. BIBRING: Yes. That is certainly true. And actually to go into Graham a little bit more, the Court in Graham outlined three factors, the severity of the crime at issue, the immediacy of a threat, and the amount of active resistance that the subject was engaging in to kind of evaluate what force is reasonable. And it's unquestionable that the threat and even the amount of active resistance is going to be -- that's a subjective judgment that is going to be evaluated in part based on race. That's just what research and daily experience shows us. And so -- I may be jumping the gun a bit -- but one of the things that we have been working on at the ACLU in California is ways to change that standard so that it is a little more guided and constrained in ways that we think that are -- kind of represent a moral consensus.

MS. BUSETTE: Okay, we'll come back to that. But I want to ask you, Rashawn, so given that this reasonable standard, both in terms of reasonable officer, you

know, view of what he or she might do in a similar situation and the idea of a reasonable threat, so those two areas, is this standard of evidence around what constitutes a reasonable threat different in cases involving black males than it is for white males?

MR. RAY: Yes. So part of what happens with a reasonable threat is fear. So fear plays a role in the decision making process. Did the officer fear for his or her life or the lives of other people around. And if that fear reaches a particular threshold that justifies the action, then we see the outcome and it's justified because they were acting reasonably. And part of what people have to realize about what race and skin tone does in America, unfortunately, is that blackness become weaponized. So even when people don't have a weapon, even when they are not engaging in any type of physical force, their physical body becomes a weapon. It becomes criminalized in a way that justifies the actions of individuals engaging in certain things against their bodies. And we see that in a host of studies that we just heard about. It's not just about being perceived as older. It was another study that showed that when you take white and black men who basically look exactly the same, their bodies were tested, that individuals still perceived the black men as being larger and stronger than the white men.

I think when we look at the Mike Brown situation, I think regardless of what people kind of think what led up to that, one key thing I remember reading from Officer Darren Wilson -- or former Officer Darren Wilson -- is that he said Michael Brown looked like a demon. Like Halloween is coming up, what do you do when you see a demon? Like there aren't enough bullets that will stop a demon. If you literally think a human looks like that, or is the actual demon, what do you have to do to actually stop it? He then went on to say he looked like Hulk Hogan and I felt like a four-year-old. Both of these men are 6'4". They're both 6'4", they're both large, tall men. So when we think about these particular actions, if that is the reasonable standard, then what we start to

see is that it ends up justifying in many regards some of the outcomes that we actually see as it relates to implicit bias in particular.

And part of your original question was about do we see a difference.

Yes, we see a difference --

MS. BUSETTE: In the standard of evidence.

MR. RAY: Yeah, in the standard of evidence. And police officers actually say that there's this difference. But I think the part that people don't get is that all they have to do -- and especially say when the Fraternal Order of Police gets involved -- all you have to do is convince a few groups of people, the prosecutor's office, that you were justified -- that's kind of the first step -- a grand jury if it gets past that, and then an actual jury of people who unfortunately hold the same biases that the officers actually do.

And I can speak directly to this. Some of the work we've been doing with police officers over the past few years, we have them take what are called implicit association tests. So I specialize in social psychology and kind of frame things in that particular way. These implicit association tests -- everyone should go take them. They're based out of Harvard. You can type "IAT" and "Harvard" in the search engine -- show you your host of biases about all sorts of outcomes. We did these with police officers. One of these exercises we did was about race and weapons. The test was whether or not people exhibit more preferences or bias toward black with weapons or whites with weapons. What we found even shocked me, which is that overwhelmingly the police officers reported a bias towards black with weapons and none of the officers reported bias towards whites in a strong or moderate way toward weapons. Like it was simply nonexistent.

What's key here, this was not white officer, this was just not male officers, this was just officers and it's not just officers, it's humans, it's people. So part of

it, we have to realize, that officers when they're off duty or even before they became police officers, they are people who are socialized just like us. And unless we take officers through a particular training when they're becoming officers to disrupt kind of the racialized way we're socialized and the gender way we're socialized, then we're going to keep seeing these outcomes, these reasonable outcomes that justify and aim to objectively talk about an outcome that really wasn't objective at all.

And if we really want to look at it, we should actually take social science research and actually investigate it and figure out what's going on. But, unfortunately, with police killings for the most part, we only have evidence from about 16 states around the country. We know how many people get the flu every year, we don't know how many people are shot and hurt by the police. To me as a tax payer, that's a problem.

MS. BUSETTE: So I wanted to ask, Peter, in this question about standard of evidence and whether it changes depending on the race of the victim, do you have any thoughts on that?

MR. BIBRING: well, yeah, I mean more or less along the lines of what I said before. I think that's absolutely right. And the problem is compounded when you have vague standards. The more you have a vague standard the more likely it is to be informed by bias. And I absolutely agree that one of the things we need to do is follow social science research, investigate ways to address and eliminate bias culturally, not just in law enforce but at large.

But I think there's also work we can do toward refining those standards to try to cabin bias, to try and focus on facts, focus officers, focus prosecutors and juries on more objective facts. So one of the things that we've done in California, the ACLU and a number of organizations sponsored legislation that would have changed the state authorization for police officers to use deadly force, and changed it from a

reasonableness standard to a necessity standard. And in some ways, that echoes the standard that the Supreme Court forth in Tennessee v. Garner, although the Court has retreated from that kind of first in Graham, and then later basically said that thing we said in Tennessee v. Garner, it was really just Graham. And so even the necessity standard in the Supreme Court jurisprudence has really faded to some extent. And so we try to basically bring it back under state law.

And that does a few things, right, requiring necessity. I mean, first of all, I think most people, most members of the public, communities of color, white communities, and most officers think that police should not be using deadly force unless they have to. I mean that's a pretty straight forward kind of moral place that we can agree. But that also focuses officers on alternative tactics that they can use. I think one of the problems with the Graham standard and much of the jurisprudence is it kind of -- and there has actually been writing about this -- Seth Stoughton, a professor at the University of North Carolina, who is a former police officer, and Brandon Garrett have written on how the jurisprudence around the use of force ignores and doesn't leave room for police tactics. So there's no element in the Graham analysis about what police could do other than using force. And that's what we sought to bring back by emphasizing necessity, because necessity by its nature asks what else might you be able to do. And the bill that we ran actually explicitly also had a provision that required de-escalation tactics whenever it was safe and reasonable to do so. And that's something that police departments have been enacting on a policy level, requiring officers to de-escalate where it's safe and reasonable to do so. Departments that have done that have seen reductions in serious uses of force.

There are a number of departments, including big city departments that are dealing with urban areas, lots of crime. The best studied one is Seattle that that

policy has been in place pursuant to a consent decree and was studied by a court appointed monitor, and a policy that required de-escalation and essentially put in place a necessity standard reduced mid-level and serious uses of force by 60 percent over a 3-year period, which is a really striking reduction.

MS. BUSETTE: Great.

MS. NDULUE: Can I just?

MS. BUSETTE: Yes.

MS. NDULUE: So just wrapping up your evidentiary standard. I think as a summary it's saying yes, you can have an evidentiary standard that on the surface is the same for everybody, but there is a lot going on underneath the surface, as everybody has been saying. So you can have something that's facially neutral, but in practice we see how we're getting different results. And I think that what Peter just said about taking the actual reality of police tactics is actually very much at the heart of Tennessee v. Garner and not some of the later Supreme Court jurisprudence that really backs away from that. Because in Tennessee v. Garner they recognized that at the time of the founding and common law and things that there were less tools, that people weren't -- police didn't have guns. And because of that this whole -- well, a while ago we could actually pursue fleeing felons and use deadly force, was the argument that was raised in Tennessee v. Garner and they said, well, you know, back then you didn't have guns, you didn't have ways that actually allowed you to actually control situations in a different way from afar, not in like a hand to hand tussle where there might be more chance of deadly force.

So I think recognizing that the reality of policing changes, the issues that are surrounding our understanding of what is necessary to actually ensure that the public is safe, that police officers are safe, and that they were not actually using more force than

is necessary in a situation, that actually goes back to kind of that fundamental idea of this is what the Fourth Amendment should be requiring as far as this seizure of a person.

So I think that some of that -- looking at the actual possibilities for police tactics, looking at the realities of the social science research that we have, is actually very much in line with kind of what that kind of original limit on the use of deadly force was.

MS. BUSETTE: Okay, great. That's helpful. So there are several strands here and I'm going to pursue each of them individually, just to that our audience can follow.

So now I really want to talk about what is happening in police departments across the country. So we are clearly not the first ones to identify implicit bias, and there's certainly a lot of case law and social science research, et cetera. So tell me, what's happening in police departments and police fraternal associations that is used to both acknowledge that kind of implicit bias and also help police officers recognize it and utilize tools to overcome it when they are in these kinds of situations?

MR. BIBRING: Well, I think there has been a significant change in departments' and officers' in general approach to the issue of bias. And just by way of reference, in 2008 we in LA released a report on racial profiling at LAPD that was met -- that was basically about implicit bias. I mean we didn't use the terminology, but it just looked at outcomes and how much more likely African Americans in particular were to be stopped, pulled out of their cars, subjected to searches. And there was a tremendous reaction against that. The then-Chief, Bill Bratton, said LAPD is not racist, this report is boloney. And what's happened in the decade since then though is that this idea of implicit bias, the idea that everybody is subject to bias, because it's in the water in American culture, has enabled I think police to recognize that that's a problem, a problem that everybody has, but that they have to deal with more seriously because they carry

guns and they arrest people. So departments have started addressing the issue of implicit bias through stronger policies, through trainings that at least make officers aware of some of the issues that Dr. Ray has talked about.

But I mean one of the problems -- and you're more better situated to talk about this than I am -- is that there's not a lot of evidence based training that's out there that can say, okay, you take this eight-hour course and no more bias, right. We're not there.

MS. NDULUE: I don't think we can ever be there, really.

MR. BIBRING: Right.

MS. NDULUE: Because we're always -- I think the work on implicit bias has to be continuing because all of the kind of social conditional that helps create the bias is continuing. It's never going to be let's figure it out and fix it and we're done.

MS. BUSETTE: Rashawn, did you want to jump in?

MR. RAY: Yeah, sure. I mean, of course. I mean research shows that a one off only does so much. Part of it is what you want to do is plant a seed and then allow for that seed to grow over time. So part of what all of us have to do, everyone in this room, is we essentially have to be re-socialized with how we've been trained to kind of think about difference in America. And one of the things we've been doing at the University of Maryland in the Lab for Applied Social Science Research is we've developed with computer scientists a virtual reality simulation program that gives that police officer decision making so that we can better objectify what's going on and also keep officers safe to be able to train in a safe environment where they're not necessarily exposed.

And part of this is not just about people's conscious or unconscious attitudes, it's also about what's beneath the skin. So being able to examine people's

physiological outcomes, their heart rate, their stress level, their reaction time. This is what happens to officers in a second. It should be noted that regular civilians, like most of us in this room, go through police simulations, we fail miserably. So police officers are much better than we are. And we have to put that in context, which is very, very important to do. But I also think part of this is highlighting some of these broader patterns we see. So one of the studies that I always note is what happens when people are in close proximity to certain people. Well, unfortunately people have a certain physiological reaction. So, for example, if I came in here with a snake and a spider -- look, some people already jumped. (Laughter) Just the mention of the word. That is a physiological response. Now, all of the sudden, give you a gun and you're shooting at that snake like crazy. So some people have the same physiological reaction to black men as they do to snakes and spiders, and then we wonder why we see the outcomes that we do.

Now, part of what's happening -- so I think that's part of it, is we can objectify what's happening, we can take it out of a computer based simulation, which is helpful, and put people in a real-world example. That's what we've been doing.

I think the second part is what's happening in police departments. I do think we have to definitely mention that police officers get sanctioned internally a lot. These are things that we never even see. I mean they run into something. Like how many people run into something on a regular basis? Like they get highly sanctioned for that. Certain types of language they use, they get sanctioned for that. And yes, these training are happening. I tend to think that they're very much watered down. And instead of who really wants to deal with this, yes, policy is one way, but I think with Fraternal Order of Police associations, with police departments, is another way.

And part of that is -- studying police for the past few years, it's about police accountability. Some of the ways to do this is -- like with these Court cases that

were put up, in pretty much all of them there were large civil settlements, millions of dollars of tax payer money going out. So if we take Freddie Gray in Baltimore -- I don't even -- we're just focusing on unarmed black men, but say Korryn Gains, which was like \$32-36 million, that's in the City of Baltimore that already doesn't have any money. And that money is coming from tax payer money. Imagine though if the payment shifted from tax payer money to police pensions, to Fraternal Order of Police dues, to police department insurances. Now, all of the sudden, when Peter gets ready to do something - - hold up, Peter. That's my pension that's on the line. And so part of it is making people accountable for themselves. And the way we have it set up now, when police officers engage in decision making rarely are they held accountable to each other. And we have to change that.

MS. BUSETTE: So let me ask a question around police officer training more generally. And the basis of the question is that a lot of police officers can be very overwhelmed when they are constantly put in these stressful situations. And I'm wondering when we talk about utilizing tactics around de-escalation, whether or not that is a kind of perspective that's sort of instituting training around de-escalation, is it something that is gaining momentum or is it something we're seeing sort of spot trials and spot solutions around that piece?

MS. NDULUE: I think that all officers are trained in de-escalation to some extent. I think there's a question about where that's put in the priority given other options. Or if de-escalation is seen as in some way dangerous, right. While you're trying to de-escalate you might be harmed in some way. So I think I've seen a number of policies when I was at the NAACP. I'd work with local branches that were trying to get policy changes around use of force. And there were some policies where it was pretty clear that de-escalation was the last option. It's like, yeah, if you have to, you know, try,

but really here's the legal standard about why you can use force, the most force possible. And I think that the ways that de-escalation is framed can make a big impact on the way that people are actually acting on the streets every day.

So I think there are a number of issues that can come up with that, but we can think about the way it's framed in the training the way that your policy is written, the way that your state legal standards are going to impact the norms that are officer -- and whether you feel like you are actually accountable. Are you going to actually get in real trouble if you don't first try to de-escalate the situation? And I would also say that in many of the situations that if you look at with a use of deadly force or just the use of extreme force, if you look at the last second before the person used deadly force, there are a lot of times where you're like well, at that stage maybe they didn't have many options, but if you actually backed up a little bit, right, saying did you have some choices to make that might not have put you in that situation where there was this conflict. There are a lot of times where you can back up, like, okay, maybe if we had done something differently a couple of minutes before, this wouldn't have felt like the life or death situation that it was. So I think that's very important.

MS. BUSETTE: That's helpful. Rashawn?

MR. RAY: Yeah, I was just going to say we have observed and kind of studied police trainings and what they go through when they go through cadet school, if you will. And they put in a lot of hours. I mean it's a lot of work. I think part of it is acknowledging that it's really hard work and most of us would never do it. But if you want to know what your department, your local departments are doing, you can look at how many hours are spent on different things. There are a lot of hours spent on tactics, but there's very little hours spent on social interactions. And what we think about as social interactions between two people is what police officers do all the time. And it's something

that I've heard them say, that that's always bothered me, which is they're like, well, some people are good at it, some people aren't. It's like no, that's not true. You can train people to be better at social interactions. And so the first step in de-escalation is often times a conversation.

The other part that you're getting is what people don't realize, they have a string of things that they're supposed to de-escalate with. Before they actually use a weapon, it's the taser. What people don't realize about the taser is you have to be in a certain close proximity to actually use the taser. And if that taser doesn't work you instantly have to go to your next lethal option, which is your gun. So at times officers are actually sanctioned internally for the speed at which they engage -- example, Tamir Rice. They rode up on that 12-year-old so fast. But by rolling up on him so fast they couldn't even use another option. And, of course, it was so loaded in all the stuff we're talking about -- they thought he was older. You know, people could talk about the police officer and how he had been let go from other jobs, he had resigned and probably shouldn't have even been a police officer.

And Laquan McDonald, that was another grey situation. Part of the conviction with Laquan McDonald had to do with not only was there a video -- which I know we'll talk about some of that in a second -- but it was also the fact there were so many officers not engaging that it suggested that Van Dyke's behavior was so unreasonable that the evidence was overwhelming. Now, part of the reason why they hadn't engaged is because all of them didn't even have a taser. So Laquan McDonald might still be alive if one of those officers had a taser to actually use on him before Van Dyke got there. That has to do with funding and the fact that these police departments are growing.

And I'll just say one other quick thing, because I think it's important for

people to kind of recognize this. Two things I want to add. First thing is that police officers don't have really good opportunities to deal with their mental health. They're overworked, they're over stressed, they're underpaid. And if you go in and say something is wrong in my head, you're going to be put on desk duty, they're going to view you as a liability, you're going to be let go. I don't know about you, but if I have 17 years on the Force and I got 3 years to retire to send my kids to school, I'm being quite. We need to set up a better mechanism, possibly external opportunities for police officers to go outside of departments and get help.

The second thing I'll say is that when we were observing what they were doing, they would at times do things like this -- they would put them through a simulation, and say you didn't engage in the correct behavior or the correct statement, you would essentially get shot in the simulation. But sometimes the training officers would sit in the dark with a pellet gun -- and some people are nodding because they know this or they went through this -- with a pellet gun and they will shoot the cadet going through the simulation. And it will hurt, because pellet guns hurt, and often times it will be with red paint. And they'll make you wear that for days. So you're walking around everybody else with red paint on your shirt like you just got shot and killed. What do you think you're going to think and do when you get on the street?

But that's the current scenario. So all the trainings we have that are supposed to deal with this stuff is counteracted by what's already in place, which is part of -- also we can talk about the hegemonic masculinity that's entrenched in police departments that lead to some of the outcomes we see. So fear becomes something that the only way police officers are trained to deal with fear is with force. We don't train them to deal with fear with retreat, we train them to deal with fear with force. And so the outcomes we see are exactly the recipe that's been brewed up. It shouldn't be surprising.

So I'll stop there.

MS. BUSETTE: Okay. So that has been excellent. I'm now going to shift to this question about the necessary standard versus other standards. And so most of us don't know what the difference is. You started talking a little bit about that, Peter. Can you sort of tell us what the difference is between the necessary standard and some of the other standards that exist?

MR. BIBRING: Well, I mean as I said before, I mean I don't think on some level it's not actually all that different from the doctrine. The Supreme Court in Garner talks about necessity, there in the context of is it necessary to prevent escape, is deadly force necessary to prevent escape, along with probable cause to believe that there's a serious threat. So I think it's in some ways not all that different, but it's clearer in that it focuses on alternatives, as I said before. And I think that there are -- one of those is de-escalation, and not just less lethal options like tasers. I mean, Ngozi, you're right, that officers have been trained on de-escalation even, you know, for decades and officers, particularly older officers who may not want to get into fights talk about talking people in instead of using force. And officers know how to do that and they know things like using distance, time, and cover to reduce the threat to themselves which allows them to employ more options, to communicate.

The Tamir Rice example is a great one, right. This one, if you talk to officers about that, one of the big things they say is by jumping out of the car 10 feet away from Tamir Rice they were confronted with this threat. They had no other options. If they had just come in more slowly, gotten out on the other side of the car, used the engine block as cover, they could have communicated once and then how quickly would they have seen that that was just a 12-year-old boy with a toy. So the necessity standard can focus on those other options.

And then the last point I wanted to make was Ngozi's point about thinking about the officers' actions leading up to the use of force. That is also a doctrinal problem. It's not clear but there are a number of Courts that have said that when you evaluate officers' use of force under the constitutional standard you only look at the moment that they pull the trigger. So in the Tamir Rice situation, obviously that falls far short of what's necessary to understand whether that shooting -- to kind of a common understanding, whether that was necessary. It wasn't.

There was actually a case at the Supreme Court just last year where -- that came out of LA -- where deputies were looking for a suspect and they kicked the door of a shack in without announcing that they were police and there happened to be a guy who was not the guy they were looking for sitting with a BB gun and they shot him many, many times. And if you look at the fact that they were confronted in close quarters with a guy with a gun, that might look necessary. But if you think back a few moments to the fact that they were going around kicking in doors and going into houses without announcing themselves, it seems less necessary. So another aspect I think of the necessity standard, which actually was part of the legislation that we worked on. It was explicitly considering a wider temporal frame considering that officers' actions that led up to the use of force and think, you know, was there -- you know, not did they zig when they could have zagged and 10 minutes later that resulted in the use of force, but were there things that the officer did that were not consistent with good tactics that foreseeably led to a shooting when there didn't have to be one.

MS. BUSETTE: So let me ask you, given that sort of argument, whether or not body cameras, officer body cams, will change the discussion around evidentiary standards, around what is the timeframe that we look at when we're trying to evaluate whether or not force was necessary or reasonable in a particular case.

Rashawn, do you have any thoughts about that?

MR. RAY: So we conducted a large study with civilians of a county and then a large study with police officers. So we interviewed about 100 residents and about 120 police officers about their thoughts about body worn cameras, transparency, privacy. Overwhelmingly everyone supported body worn cameras. So body worn cameras are interesting because on one hand, from an optic standpoint, they matter because they're perceived to provide more transparency. And people on both side of the aisle, whatever we want to consider that to be, are in favor of it because people who are really big supporters of police say people are going to see how police officers get treated and it's going to justify police officers' actions. On the other hand, people who are big proponents of kind of civilian opportunities to be freer, say the same thing, right, that these body worn cameras are going to show how badly people are being treated by the police. And so that's one part of it, that from an attitude standpoint, people support it.

When we actually look at the outcomes, it's a bit mixed and it's a bit mixed for a couple of reasons. On one hand one way to think about it is in like in a majority of the cases that were highlighted, those 17, we have some type of video that's not something that we can just throw to the side, like the video matters, the documentation matter, whether it's the body worn camera or someone with their phone. The key point is to from the legal precedent perspective is to expand the range by which the Courts make decisions on it, because the public is making a decision on a three to five-minute clip. The Court is not making that same decision on that three to five-minute clip. So there's a gap there.

The second thing that's happening is that with body worn cameras it varies on how they're implemented. There are some places that leave them on continuously, there are some places where they hit the button and it rolls back 30

seconds, there are some places where they manually turn them on as they make decisions to do so. We need more standardization there. But one thing we do know is when they stay on longer, of course we have more information there. And, honestly, from a police department standpoint, I think it's a resource issue. People don't realize that when you have a large police department it's a lot of money to outfit them with new equipment. And it's another thing that police officers have to deal with and that they have to write reports on.

MS. BUSETTE: And training, I would imagine.

MR. RAY: Complete their training. So I mean we're talking about a lot of money to put into that. And at times what happens is the technology is moving so fast on this side of things that by the time a police department finally gets a body worn camera, they're already outdated. So then we wonder why they're not really mattering that much.

So I think there are certain brands that allow you -- I mean some of the new stuff literally a sergeant or a captain can literally pull up on their phone and look at the body worn camera footage of their officers. I think that's where things need to go. And then in many respects I think a lot of that needs to be public record, but police officers do fear walking into someone's home and someone might not be completely clothed or someone might literally be dealing with a serious incident, and those are the types of things they don't need to show. You go into a hospital or into a place of worship. So police officers have real concerns. But overall people support them and I do think they matter because they provide more transparency. And any way we can get that, we need it, but we need more consistency and we need for the legal precedents to match the data that we're able to collect now.

MS. NDULUE: I would just like to mention a couple of things about -- body worn cameras remind me -- and that resource issue -- just to mention the

importance of the federal government in actually helping to set and support police standards. So we started out with -- so we have about 18,000 law enforcement organizations across the country. There's no central management, there's no central oversight of that. But the Department of Justice in the way that it actually deals with these issues can really help set tones and really support change. So we know -- and this wasn't the Department of Justice, this was the President's Task Force on 21st Century Policing that brought together experts to really talk about what are some of these issues. And they brought up and talked about some of the issues that we've talked about today, public trust and accountability, implicit bias, the need for mental health care for police officers. Body worn cameras -- one of the ways that many jurisdictions have been able to at least start pilot programs was through the support of the Department of Justice in making sure that's happening. And we also know the Department of Justice in those systematic investigations of police departments, the pursuit of consent decrees has really helped to shape, one, our knowledge of some of what's going on in police departments, and, two, that search for best practices and figuring out where we can change the way that force is being used through a collaborative process.

I'm from Cincinnati, Ohio where there was a very community engaged collaborative process around changing police practices. So I don't think that even though we are talking about law enforcement across the country, we're talking about the work that needs to be done on the state level. We cannot underestimate the power of federal government and federal resources in helping to kind of establish and support best practices around use of force, and one of them is supporting body worn cameras.

And there is a lot to talk about with body worn cameras and the way that they're implemented. Are they protecting privacy, are police officers able to watch the cams before they write a police report, because that can be problematic. We have also

seen where sometimes where the camera can look back 30 seconds where we've seen examples of people planting drugs in that 30 seconds, you know, actually doing things that you would otherwise not have evidence of. So I think that they're a really important tool in so many areas of use of force. But there are complexities that communities will be dealing with and hopefully that we'll have some support federally around.

MS. BUSETTE: Great. So I want to ask one more question and then open it up to the audience. And that question is you talked about a potential agenda for the federal government in this area. You certainly work at the state level, you work with police and communities. So let me ask you all, communities and families are the ones who are most impacted when we have a case of lethal force a young man dies as a result of that. So what is the role for communities in this conversation and how can those communities best add their voices as we think about different kinds of standards around the use of lethal force?

MS. NDULUE: I love this question. As a person who has really been engaged with communities that have been struggling with these issues, I think that when we look at the way that communities are dealing with state use of lethal force -- and we can talk about the death penalty if anyone wanted to, because we can bring out state sanctioned violence in many ways. But I think that they lived experience of communities has to be essential to this conversation. And we also know about the trauma and anxiety that communities are dealing with when there's that threat of lethal force that is kind of hovering over everybody's head. And that's something that we have recognized and that is not something new, but I think that we're having a deeper conversation about what that means. We're also seeing studies of the kind of trauma and anxiety. There's SOS on the streets, so that was done in Ohio. That was a study about how people's daily lives and the way that they operate their daily lives are affected by the way that -- their fears of

potential police violence.

But given that information, given that lived experience, I think that the ability of communities to help shape the standards that are governing the use of force in police departments is crucial. Helping to shape their police departments generally is crucial. Having community oversight such as civilian oversight boards, participating in making policies, participating in hiring, and disciplinary decisions often. When we have the police department as actually seen a part of our community and a part of the work that we're doing to keep each other safe I think is really important. I think we're seeing things like the work being done in California to pass a law, we see there's a ballot measure in Washington State right now about changing the use of force standards. I think the voice of communities and that kind of being able to build power and investment in keeping our communities safe and recognizing what does that mean. Because many times that doesn't necessarily mean more police on the streets, it can mean more mental health workers on the streets. One of the figures that we haven't talked about is how about a fourth of those police shootings are for somebody who has exhibited symptoms of some type of mental illness or mental disturbance. So I think that community involvement in all of these pieces is crucial to actually finding a step forward.

MS. BUSETTE: Peter?

MR. BIBRING: I agree completely with all of that. I want to add one piece, which is I think Rashawn mentioned earlier that the component of administrative discipline, you know, that accountability. I mean we've been talking about accountability or a lack thereof through the criminal process, that's another component, officers getting disciplined or fired. But in many states that information is completely confidential. That was actually the case in California until a bill passed this year, which creates narrow exceptions for shootings and other serious uses of force and some other categories. But

under the previous rule not only did -- you know, communities would see like the Stephon Clark shooting that happened. If this bill hadn't passed communities wouldn't know whether the officer was fired as a result of that shooting. And in most departments in California they wouldn't even say whether the shooting was in or out of policy. And there's no way for a community to engage with the system that's most likely to hold an officer accountable in some measure, the disciplinary system, if they don't know what's going on. And that's really at odds with I think our basic principles of democracy, that people need to hold the government accountable for what they're doing if these important decisions about how departments address police shootings are kept completely closed off.

And just a follow up, one way to address transparency is not just releasing the investigations and the disciplinary results, it's collecting that data. Again, as Rashawn said, you know, we don't collect that data nationally. We do in California. There's a pretty straight forward requirement, departments have to provide information, a fairly detailed report to the State Department of Justice every time there is a use of deadly force, whether that results in a fatality or not. There's no requirement for that. We collect all sorts of statistics on crime, but none on homicide by police officers. And that should change.

MS. BUSETTE: Thank you. And, Rashawn?

MR. RAY: Yes and yes. I mean I think part of pushing these sort of things through -- like there's no reason why as tax payers we shouldn't know when an incident happened what the outcome is. I mean I think it's our right to know that. And part of that starts with us voting locally, and particularly voting for local officials who would be willing to push some of these policies further. So, in other words, I mean like with the civilian oversight committees, the ones that I've been involved with and that I know about,

it's nice to have them, but in terms of their influence in influencing what happens in a police department is limited. But all of the sudden you elect a mayor who pushes for that change, and now that establishes a precedent that can be implemented in other places. So that's a big one.

I mean in terms of the transparency, it is also another big one. I would also encourage people to go through their local police civilian organizations to actually go through and see what police officers actually encounter, because you can have a better understanding of why they make the decisions they make. You don't necessarily have to agree all the time, but it is important to understand why they're making those decisions.

So I mean I think voting locally becomes very, very important. And then volunteer. Volunteer to get involved in these organizations and figure out how you can actually make a difference in what's happening in your own backyard.

MS. BUSETTE: Well, on that note I'm going to open it up for audience questions. So what we're going to do is we're going to take like two or three at a time and then answer.

So we have a number of hands here, so whoever is running the mic, let's start on this side and the move over there.

QUESTIONER: Good afternoon, everyone. So my name is Kenneth Otto; I'm a bachelor student getting my master's in intelligence at David Morgan Graduate School of National Security. Last year October I think seventh I got wrongfully detained in New York City. It was like a jump out and a group of people like in the East Village. It was like 22 dark skinned gentlemen, myself, and someone I didn't know. That was like an interesting experience.

And then recently a friend of mine in Brooklyn, he sent me a video on YouTube. It was a video in Pennsylvania with State Troopers. They and stopped a black

man for speeding and then proceeded to drive off and he flagged them down and they came back and then it escalated further where they tased him multiple times, fought him. He fought tases, fought them, ran around the car, ran to his car, pulled out his gun, and popped them. Shot the cops several times, like cops.

What happened as a result of that was that guy who got -- the black man who committed those crimes, he got like 55 to like 100 years in prison. So what stands out to me is like also like my bias as a black man towards police. The implicit bias that you spoke of, it goes both ways.

To what goes on in a cop's mind in terms of de-escalation, in the second example I show, it could have de-escalated. They came back and they escalated it further and it resulted in them being injured. One of the cops fell into a coma. He was clinically dead when he got to the hospital, in a coma, came out of the coma, and then he remembered the incident. But then it goes further in terms of the way that black men are sentenced disproportionately towards their white counterparts.

So in situations where maybe police are justified, then they throw the book at my brothers. So I just wanted to see if you had any opinions on that. And then I also thought about like entertainment and media in terms of like 1991 to now, like how music, particularly hip-hop kind of moves that forward to.

That's my question.

MS. BUSETTE: Okay. So we're going to take several questions. Thank you. There's a gentleman right behind him. Right there. Thank you.

MR. DAVIS: Hello. I'm Alan Davis. I'm a retired New York City police officer, former federal corrections officer with the Bureau of Prisons, and International Police Advisor for the State Department for many years. That's my pedigree.

My question points to this objective reasonableness that Graham offers

us as law and how it seems that it's really dependent on how that's interpreted by every different officer and every different jurisdiction, and how they seek to apply it. So my question really is focused on what the (inaudible) in terms of how can communities get a standard that's acceptable to you, that you approve of. And I wonder if the panel -- if folks let their elected leaders know what those standards were and voted them in or out depending on whether they adhered to those community's standards. Because I remember in New York we had back in the day a lot of corruption, and they gave all the classes and be nice to blacks and Hispanics and be nice to people. And none of that worked. And then one day they started locking up people in uniform on the street. I was there. And the corruption slowed down because it had a direct impact on people's lives and livelihoods.

So my question is, do you think direct involvement by citizens in terms of holding their police chiefs and their mayors to this standard that the community decides is appropriate would have an effect on who was disciplined, who was fired, regardless of whether they were convicted in a Court, but who got to keep their job and who didn't?

MS. BUSETTE: Okay. Great. Thanks very much. So there's the gentleman with the red right here, right next to you there. And then we're going to answer these questions after this gentleman asks and then we'll come back for some more.

MR. ENVELA: My name is Gus Envela with the Voice of Democracy for the United States and Equatorial Guinea. So just as a friendly suggestion, perhaps in the future, you know, the 10-minute question thing is a little bit imbalanced. Just a point of reference.

You know, I ran in four Olympics, went to Stanford, did all the stuff, did live a life that was honorable. And you find in all that you're talking about that there's still

that system is who is this person, why is this person driving this kind of car, why is this person in this kind of neighborhood. And it gets to the point where it's so exhausting because you get it from white police officers and you also get it from black police officers.

So my question is with regard to Chicago and the tragedy going on in Chicago. Who's going to hold that black on black crime statistic, who's going to hold those folks accountable. You have the Jesse Jacksons, you have President Obama, you have -- that City is a killing zone and I find the black community is ignoring that reality.

MS. BUSETTE: Okay. Thank you. So we've got a question on Chicago violence and accountability there, we have a question about the direct involvement of citizens in creating and enforcing community standards around the use of lethal force, and then we also have a question around sentencing and escalation/de-escalation.

And one thing I'm going to say to our panelists, so we can get more questions in, is try to be brief. And you don't have to answer every single one, just pick one and then we can go from there.

So I'm actually going to start with Rashawn.

MR. RAY: Quickly -- I'll be real quick. Thank you all for your questions. In regards to Chicago, you know, people always highlight black on black crime, but for some reason we don't frame crime as being white on white crime. Crime is crime.

QUESTIONER: (Off microphone).

MR. RAY: Let me finish. Let me finish. Let me finish.

QUESTIONER: (Off microphone). You're giving them an out. You're giving them an out now.

MR. RAY: Are you going to let me finish?

QUESTIONER: You're giving them an out though. You know that.

QUESTIONER: That's not an out.

QUESTIONER: Come on.

MS. BUSETTE: So I'm going to ask us to respectfully listen to the panelists as they complete their answers. Go ahead, Rashawn.

MR. RAY: Thank you. So here's the stat for everybody who wants to know. 94 percent of crime that black people commit, violent crime, homicides, is committed by the blacks. 86 percent of crime committed against whites is committed by other whites. We don't frame it the same way. So when we talk about the media, which was part of I think the first gentleman's question, part of the way the media frames things is it also skews things for us. And one thing I know being from these types of communities, whether it be St. Louis, Memphis, Chicago, or Baltimore, is that people aren't vested in their communities and they are actively doing something to deal with the crime that's happening in their communities.

But if we really want to deal with crime, we have to deal with a lack of education and job opportunities. And that is part of what people don't really want to talk about. So statistically, when we run analyses on what causes crime, those are the things that cause crime. Now, of course, people are engaging in certain types of actions and they should be sanctioned for that. Hopefully we could talk more about that.

Onto the next points real quick. I think preemptory strikes matter a lot. So the fact that lawyers are able to preemptively strike people is kind of part of the problem.

And then I think that for African American men in particular, there is a legit fear of police officers that really needs to be dealt with. And part of that "legitness" is unfortunately that a lot of African American males have had bad interactions with police officers. That doesn't justify anyone doing something else to police officers at all. And so some of the incidents that we've seen over the past years definitely need to be corrected.

But I think there's something that also needs to be done, and we've started to do some of this at the University of Maryland, is actually to examine what happens when people interact with trustees of the institution. So police officers are kind of the trustees of the criminal justice system. How do people respond physiologically to them, and does that lead to say a Freddie Gray running? That becomes a reasonable response when you're scared, you run. And for some reason all of a sudden that running could unfortunately lead to a negative outcome.

MS. BUSETTE: Okay. I'm just going to go down the line. Peter?

MR. BIBRING: I'll address the second question about accountability in Graham. I mean first of all, I want to thank you. I think it's a very important point. You know, we talked about transparency, we've talked about training, if there's not accountability to the training and there's not accountability after things are out in public, we're not going to see change. And I think too often we see these kind of frightening examples where this transparency, there's a video of exactly what happened and an officer is not held accountable, they're not fired, not charged. And if that happens nothing will change. And so thank you for sharing that.

And in terms of communities holding officers accountable for -- or departments accountable for setting standards. I think that's hugely important. And there's actually a kind of a cliché in law enforcement of shootings that were uses of force that were lawful but awful. I don't know if you've heard this. And that reflects a use of force that officers can agree should not have happened, but it is not against the rules. And the fact that that's a cliché to me is very striking. We set these rules, the community sets the rules. And we're supposed to set them in keeping with our moral standards. And if there is such thing as a lawful but awful, there is a whole category of uses of force where we all agree that they're awful but they're not against the rules, then we need to

change the rules.

MS. BUSETTE: And, Ngozi?

MS. NDULUE: Just to follow up on that. So, for example, the example that many use is Seattle about having better use of force policies. So you can have a better use of force policies than the constitutional floor. You can push your community's police officers to have better.

And the sentencing disparities question, which was the first one, that actually ties into this issue of black on black crime and implicit bias. I think we really need to address the racial legacy of the criminal justice system that is being played out in all of these pieces, that there is state sanctioned kind of violence against black people, which has been about the justifications of police shootings throughout, from slavery starting, which does tie into the way that we decide who is worthy of -- who we can lock up and throw away or kill and throw away. So the value of black lives -- and I know that we have been talking about that a little bit -- plays itself out in many ways, and thinking about black victims of crime and how they're treated compared to others. So we really have as a society a lot of work to do to actually have a holistic job. So the work that we're doing around law enforcement accountability is work that happens in the Courts, that happens in the ballot box, that is happening in our communities in the day to day interactions. We need to be creating and influencing the structures that are helping to continue the reinforced legacy of race and racism that is part of what was at the founding of the nation, but can be different in the future.

MS. BUSETTE: Great. Thank you. We're going to take another three questions. So let's start over here please and then we'll kind of work our way around.

MR. SHAFI: How are you doing? My name is Sharif Shafi. I'm the host of Freedom Fighters of the DMV for WBGR networks. One of the things that I've been

working on for a long time is that police officers -- we don't have a national data base, and that our society is basically governed by licenses. And my colleague and my other colleague, they are mandatory licensed persons, including myself, and for the nation, why is it that police officers can make decisions to be lawyers, doctors, killers, everything else, but without a license? And why is it that the national, such as the FBI, has no documentation as far as holding records on police behavior and conduct? Why is it that we don't have a national data base and why are those persons not licensed? And why are we not talking about that?

MS. BUSETTE: Okay. Thank you. Let's go directly behind him. There's a young lady back there. Right -- can you raise your hand again? You have the coat on.

QUESTIONER: My question was basically the same. We are licensed. There's probably many people in this room who have occupational licenses. And wherever I go as a licensed person throughout this country they can pull it up and find out what I did. And a police officer -- that crazy person who killed Tamir Rice in Cleveland, had the community not been outraged and spoken up he would have been on his way to try to kill somebody else in another department.

Would you recommend that people in communities start a petition demanding from their city councils or county governments that police -- they need to start having licenses in say PG county? They're criminals.

MS. BUSETTE: Okay. Thank you. Let's get two more questions since I think we can probably cover those two. So let's just work this side of the room here. So we've got a young lady in a red jacket there. Yes, you. Yes.

MS. GARCIA: Hi there. This is not so much a question as much a comment to the Chicago and always the argument that's made about the black on black crime and violent crime. My name is Linda Garcia. I'm the Policing Campaign Director at

the Leadership Conference for Civil and Human Rights. Before that I was at the Department of Justice where I did work on the investigation of the Chicago Police Department. And one thing that I can say is that the communities, they want good policing. So what they don't want is for police to over saturate areas and shake people down wrongly and to use excessive force. And those are two different things. And just in changing the way that policing is done you can answer the issues of violence but that's not done through unconstitutional and biased policing.

Thank you.

MS. BUSETTE: Okay. Thank you. And then we have this young lady here in the gray jacket, and then we're going to take the questions and answer those.

QUESTIONER: My name is Claudia Farris. I am just a neighborhood person in this context. I live in an area which is over saturated by police coverage and I don't trust the police. I am a very privileged person in terms of my access to society, my knowledge about how things function. But those people are my neighbors, I live with them. And it bothers me when they are harassed by the police. And I don't know what to do about it. I walk around with an attitude and it's -- nothing that I do, think about, react to is helpful in that regard because I don't feel that I have access to true levers of effectiveness. And I just put that out there.

MS. BUSETTE: Okay. Great. Thank you very much. So we have question on community trust, right, and community leverage, licensing of police, and then the openness of the administrative data bases that deal with the disposition of a police officer's case. So feel free.

MS. NDULUE: So I'll just start with the trust piece and connecting that to violence in communities. I think that's really important. Also Leadership Conference has a great body conference tool if folks want to use it look at body camera policies. But I

think that's the point about the tie in, right, because if you're actually going to close cases you actually need to talk to people who are willing to talk to you. So recognizing that creating police departments that are actually able to build trust with individuals is actually important. Police departments recognize this. The Task Force on 21st Century Policing report raises this. A lot of police leaders have said building trust is fundamental. We're not going to build the trust that we need unless there's true accountability when someone has done something wrong. So that piece is crucial and is a part of addressing high rates of violence. I don't think it's a coincidence that many of the cities that we're seeing some serious violence issues, that we are also seeing some serious police corruption issues and police violence as well.

MS. BUSETTE: Peter?

MR. BIBRING: On that point, I just completely agree and I agree with Linda's point about the over saturation is not the same as good policing and there are ways that many communities are kind of harmed twice by the police, once through the failure to police properly and to provide safety, and again through the actually harmful policing techniques. And, you know, we say this all the time, that good policing, a lot of the stuff that we are advocating for, will build trust that will make police able to do their jobs more easily and more effectively. And it's I think not just a cliché.

I also wanted to address the point about the licensing. So there's a term for this in the kind of police reform movement, which is decertification. And there are states that do this, that require just like a contractor or lawyer, even a barber has to maintain licenses. In California I know, you know, barbershops are inspected. There are state inspectors that come around to make sure that the combs are really in the blue liquid and stuff like that, but there's no licensing --

QUESTIONER: Barbicide.

MR. BIBRING: Yeah. Barbicide. So there's no state licensing for police officers, which allows officers to quit from a department while they are under the cloud of investigation and misconduct and move to another department. That problem is exacerbated when records are not public. So it can actually, you know, be administratively difficult for -- I mean certainly in California -- up until this point in states where there is a confidentiality for disciplinary records, a department that is hiring a lateral officer can't just go and look up their discipline. They have to get a waiver signed by applicants, they have to make sure that it's all -- and it doesn't always happen. And so a scheme where there is state certifying entity, a licensing entity, is something that there has been a move toward. There are recommendations around it in at least the interim report of the 21st Century Task Force on Policing. And that would be an important piece of accountability long-term.

MS. BUSETTE: Rashawn?

MR. RAY: Yes, agreed. I mean I think in the Tamir Rice situation, as well as in the situation that recently happened in Pittsburg, both of those officers did this method, which is the Fraternal Order of Police will tell police officers to resign. A police department will want to get rid of them, so they might actually write them a recommendation to go somewhere else. And that's the way that bad apples spew. I don't necessarily think there are more bad apples in policing as in other professions, but at the same time that process allows it to continue.

As relates to kind of community trust, I think we have to push for policies that actually allow police officers to live near us. So what I mean by that is there's a recent study that shows police officers, as well as teachers, actually can't live in 60 of the major metropolitan areas in the United States. They simply don't know the people. They have no empathy. Of course, there are these other issues we're talking about too, but if

you have a level of empathy and you're living by certain people who you're policing, it's shown that if we go back in time that those sort of relationships start to build. And then what that leads to is police officers starting to view everyone as a person who their kids could go to school with, a person who they might go to church with, a person who they see mowing their grass. But instead what happens, they might simply see them as a suspicious person. And when they see them as such, it leads to the host of outcomes that we're talking about today.

MS. BUSETTE: So I want to extend a very, very deep and sincere thank you to our event staff (Applause), my two interns, our fabulous communications folks, our facilities colleagues, our security colleagues, of course Kwajo, and to our fabulous panelists as well.

Thank you all. (Applause)

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