Shiek Pal: This meeting of the Virginia Advisory Committee to the US Commission on Civil Rights shall come to order. For the benefit of those in the audience, I shall introduce my colleagues and myself. My name is Shiek Pal, and I'm the Chairman of this committee. The other members of the committee that are present on this call are Maria Almond, Arthur Rizer, Ilya Shapiro, Danny Vargas, and Andrew Wright. Also present are Melissa Wojnaroski, civil rights analyst, and Corrine Sanders, support specialist. The US Commission on Civil Rights is an independent bipartisan agency of the federal government charged with studying discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.

In each of the 50 states and the District of Columbia, an advisory committee to the commission has been established and they are made up of responsible persons who serve without compensation to advise the commission on relevant information concerning their respective state. Today, our purpose is to hear testimony regarding police accountability measures and practices in the Commonwealth of Virginia and the civil rights implications thereof. If any of our speakers begin to veer away from the civil rights questions at hand to discuss other important, but possibly unrelated topics, I will interrupt and ask them to refrain from doing so.

At the outset, I want to remind everyone that this meeting is being recorded and will be transcribed for the public record. I also wish to remind everyone that today's meeting is the first in a series of meetings that this committee will host on this particular topic. A second discussion is scheduled for August 18th, 2021. Future meetings will be announced as they're scheduled over the next several months. I'd also like to present the ground rules for today's meeting. This is a public meeting open to the media and the general public. We have a very full schedule of people who will be making presentations within the limited time available. The time allotted for each presentation must therefore strictly adhere to. This will include a presentation by each panelist of approximately 15 minutes and after all the panelists have concluded their statements, the committee members will have an opportunity to engage them in questions.

To accommodate any persons who are not on the agenda today, but wish to make statements, we have scheduled one open session that will begin at about 3:30 PM Eastern. At the time appropriate time, when indicated to do so, anyone wishing to make a statement for the record should press star three on their phone, or use the raise hand feature of their web browser to request that their line be unmuted. In addition, written statements may also be submitted by email to the US Commission on Civil Rights at mwojnaroski@usccr.gov, or you may call (202) 618-4158 for more information.

Though some of the statements made today may be controversial. We want to ensure that none of our invited guests defame or degrade any person or organization. As the Chair, I reserve the privilege to cut short any statements that defame, degrade, or do not pertain to the issue at hand. To ensure representation of all aspects of this issue, we have invited knowledgeable persons with a wide variety of experience and backgrounds to share information with us. Any person or organization that feels defamed or degraded by statements made in these proceedings today, may provide a public response during the open comment period, or they may file written statements for inclusion in the record of these proceedings. I urge all persons making presentations today to be judicious in your remarks.

Finally, the rules of the committee dialogue portion of the panel discussions are as follows; the committee may ask questions of the entire panel or of any individual member of the panel after all of the panelists have had the opportunity to share their prepared remarks. Advisory committee members must be recognized by the Chair before asking any question of the participants. I will call on the members of the committee in the same order in which they were introduced at the beginning with the exception that I will reserve my question to the end. If any member does not intend to ask a question simply indicate so when I call your name.

Each member will be limited to one question plus one follow-up if time permits. If at the end of the public comment section we have time left over, I will reopen the opportunity for committee members to ask any additional questions if they so choose. At this time, I would like to turn the meeting over to our first panelist. Dr. Rashawn Ray is the David M. Rubenstein fellow at the Brookings Institution. Dr. Ray, please remember that you have 15 minutes for your remarks and I'll prompt you and you have five minutes left, one minute, and when your time has expired. With that said, Dr. Ray.

Dr. Rashawn Ray: Chair, thank you. I also want to thank ~~the Vice Chair of the Committee~~, (*corrected: Commission staff)* Melissa, as well for her hard work. As you mentioned, I'm a David Rubenstein fellow at the Brookings Institution and also a professor of sociology at the University of Maryland in College Park, where I direct the lab for applied social science research. For years, we've been conducting research with police officers and doing data-driven analyses on various outcomes. What I'm going to talk about are policy steps for racially equitable policing society.

I think first out, it's important to lay out some of the disparities that we know exist. Obviously, we know a lot of the recent reaction to what's happening around policing deals with George Floyd, but unfortunately these particular incidents happen nationwide. And we know for roughly a

decade or more, roughly a thousand people have been killed by police officers every single year. That's about one person every eight hours. We also know that there are huge racial disparities in the likelihood of being killed by police. And we see that here, particularly for Black Americans. And I think what's important to note, and this is the key stat that always highlight, is that Black people are 3.5 times more likely than Whites to be killed by the police when they're not attacking or have a weapon.

I think this particular group is important. And if we address this disparity, I think then we start to address other racial disparities that exist in policing. This is important because even though we know there has been a slight uptick in violent crime over the past couple of years, particularly with the pandemic, overall violent crime is still significantly lower than it was a few decades ago. We also know importantly that police killings and the police killing rate in cities is actually unrelated to the violent crime rates. We might make assumptions that the violent crime rate is then linked to the police killing rate. In theory, that would make sense. That's not actually what's happening.

Instead, there are two different processes at play. The police killing rate, which is largely driven by bias, by use of force, by other things you'll hear from the other panelists as well. And then you have the violent crime rate, which is different and driven oftentimes by different processes. And it's important to note that. As we see here in this graphic, the blue Xs represent the violent crime rate for cities, for the major cities in the United States, and then the orangeish red squares represent the police killing rate. They are completely unrelated, and it's important that we put that in a proper context to advance policy that actually addresses both of these paths.

We also know that when it comes to police killings, that is costing taxpayers billions of dollars every single year. If we only look at the major 20 Metro areas in the United States, the top 20, over the past five years has cost taxpayers over $2 billion. And as we'll hear, I'll make a point at the end or about qualified immunity, we'll also hear this from other panelists as well about the importance of thinking about restructuring civilian payouts for police misconduct, even beyond police budgets. These civilian payouts actually do not come from the police budget. Instead, they come from general funds. Funds that could be used toward work infrastructure, towards education, social services, healthcare, various sorts of disparities that we know that exist and happen in our society.

Part of what we also know is that when we look at various States like Virginia for example, and we look at no-knock warrants, there are huge disparities across the country. Yes, there has been a recent wave to address no-knock warrants, but it's important to say why. Of course, Breonna

Taylor and the hashtag Say Her Name has become very popularized since her death. And it's important to note why people are highlighting this. So if we look nationwide and we see places where no-knock warrants are routinely granted across States, of course we know local municipalities are aiming to oftentimes take different measures than what's happening in specific States.

But we still know nationwide that no-knock warrants are routinely granted. In Virginia, that's a different story and that's been a change. And in particular, a recent change that some of us played a role to plan. It's important to know why. If we look at some of the best data over the past decade, we know that SWAT is normally deployed for drug searches. We know that, people know that, but it doesn't always mean that that drugs might be present. It's the perception that that's the case. And that's important to note because oftentimes these SWAT deployments and no-knock warrants often vary by the racial composition of the neighborhood. And we can see that here, that in racially integrated or predominantly minority black and Latino neighborhoods, this is where we see SWAT deployments and no-knock warrants more likely to be given.

And we see that here, particularly for Black Americans. And one key statistic is that Black women are significantly more likely than other groups to be killed in their homes. And so when we talk about no-knock warrants, it's something that we need to pay attention to, because oftentimes, there are issues as it relates to what's happening. And this is important to note because when we look at drugs, for example, who's using drugs, and how you look at drug sales, there are huge differentials in who is actually using drugs, which we see on the left with the bars, versus who is arrested for drugs. And so we see, even though Blacks and Whites use drugs at a similar rate, with Whites actually slightly higher, makes sense in a lot of ways, drugs cost money and oftentimes are expensive, so there is a social class element to it. But when we look at who is arrested and who is incarcerated, that's where we see huge disparities. So, no-knock warrants along with drugs, SWAT deployment, and then also data we have on who is actually using drugs are some of the things that we need to focus on.

Another very important point is that the violent crime clearance rate is simply unacceptable. And what I mean by that is police officers arresting people for violent crime. About 40% of murders, nearly 70% of rape, 70% of robberies, and nearly 50% of aggravated assaults go uncleared every year, more or less unsolved. I think this speaks to a couple of things. First, a breach in trust between law enforcement and local communities. But secondly, it also speaks to the fact that police officers are oftentimes engaging in various tasks that might be unrelated to solving violent crime. Over the years, we have expanded the alleged repertoire that law

enforcement is supposed to go out and do and even though I think they have pretty much the hardest job in the United States, part of the issue there is they're responding to a series of calls that even they have admitted they don't necessarily think they should be responding to nor do they want to respond to. Why is that important?

Because roughly 9 out of every 10 calls for service are for nonviolent calls. It doesn't mean that a situation might not turn violent, but what it does mean is that we might think about reallocating certain calls for service, particularly around mental health. That can be useful. Denver has an amazing model here. By doing that, it then allows for law enforcement to focus more on solving the violent crimes that no one wants to see in their particular communities. Why is this important?

This is important because even though we see the homicide rate go down over the past 30 years, the homicide clearance rate has pretty much stayed the same, suggesting we have not made a lot of progress there. And that's important to note because when we start throwing out reasons as to why crime has decreased, it's not really because homicides are being solved at a higher rate. So, again, this is an example where we have a theory potentially, but it doesn't really match the data about what's going on. And instead, what we want to see is that homicide clearance rate, that blue line, being much higher than what it is now. And of course, continuing to see the red line continue to plummet even beyond the recent uptick.

The other thing that people in local communities are highlighting are response times. Oftentimes we'll hear people make statements like it's not necessarily as if they want less policing, what they want is higher quality policing. We have to be very clear about that. Part of what policy oftentimes does is simply throw more funding and oftentimes their more funding means supposedly more hires for law enforcement. Part of what people are saying is it's not necessarily about the quantity, but the quality. So not only are oftentimes Black, Latino, particularly low-income neighborhoods over policed when various things are going on. We also know that they are highly under policing underserved when it comes to 911 dispatchers, when it comes to 911 showing up when they called them.

And what these minutes lead to when they are waiting several minutes longer for police to show up, this means you have a higher likelihood of a person dying from a stroke, from a heart attack, a person having a mental health incident escalate. And then of course, having people who might actually be committing violent crime, getting away because of lack of a response. This is particularly important because if we look right down the road from Virginia, in Washington DC, a recent report came out. Noting that, again, similar to what I highlighted earlier about the mismatch between the police killing rate and the violent crime rate that also relates

to use of force. And what that report found is that in Washington DC, people who are stopped frisked, where force is used, over 80% of the people where there is no charge, no citation, a person is just let go, 80% of the people where that use of force happens to, are Black people.

So again, some of the people were being stopped, who are being questioned, who are being profiled aren't the same people who are committing crime. And so, we have to be very clear to address that particular gap because I think if we deal with that, we can go quite far. At the Lab for Applied Social Science Research. One of the ways we aim to address biases in policing is we've developed an innovative virtual reality decisions making program. Part of what we do is we start police officers off to gauge their implicit biases.

This is some results from a very diverse group of police officers across race and gender. And what you see is that police officers are much more likely to have biases against Black people with weapons and very little biases against White people with weapons. This graph is not a mistake. Those zeros at the bottom is simply suggesting that officers oftentimes go into situations, go into interactions, perceiving that a Black person might be more likely to have a weapon. And oftentimes it's what we call as when Blackness becomes weaponized. They even when a person doesn't have a weapon, it's perceived that they pose an actual, physical bodily threat to police officers and others. And that is out of alignment with what the data and the research actually finds.

So our virtual reality decision making program, we put officers in the type of situations that they go through every single day; traffic stops, domestic house [inaudible 00:15:51], suspicious person calls. And part of going through this research document is that it leads to a 15% reduction in use of force. We can also measure their physiological responses, their heart rate, their stress level, their reaction time, and we provide this information back to law enforcement to improve some of the outcomes. As you see on the right, we can track their eyes with that circle on the left, that's showing heart rate, that's showing stress level reactions. And this is the type of advancements in technology that law enforcement needs to be able to train in situations that are realistic while also-

Shiek Pal: Five minutes.

Dr. Rashawn Ray: All right, thank you, Chair. And also in safe environments that helps them to be able to do their jobs well in an objective way in the field. So, look, all of this together, what are some of the policy implications? I simply want to highlight six. The first one is about restructuring civilian payouts for police misconduct. A lot of that deals with qualified immunity, but the biggest part here is making a shift from taxpayer money in local budgets,

or even State budgets, and making that shift to police department insurance policies and individual officer liability insurance.

This is already a movement that is happening in other parts of the country to address this. I think this is a way that will increase accountability. It will also be a way to reduce the strain that civil settlements have on law municipalities. Like we see, for example, in Chicago, where they've started taking out police brutality bonds that are sold on the open market because they simply don't have enough money in their budget to pay for it. Or in small municipalities like Inkster, Michigan, where they essentially went bankrupt and had to end up closing their school district because they had to pay out a large civil settlement. Police department insurance policies and officer liability insurance is a pathway to restructuring these civilians payouts and also being able to hold bad apples accountable.

Second, we need civilian representation on police misconduct trial boards, or the oversight board. What is called within the police department, depending on where you are, varies. But it's very clear that civilian oversight boards are simply symbolic if they don't have that representation. There are also places like Nashville, Tennessee, where they actually get funding to actually run their community oversight board and that ends up having a huge impact. I've talked about advanced deescalation training and the innovations there.

Part of what also needs to happen to address these so-called bad apples. What we need is what I call a gap program, good apple protections. I know tons of officers who are going out, trying to do their jobs, and who are reluctant to run up against the blue wall of silence because they become pushed down or pushed out for speaking up and speaking out. They're less likely to be backed up by other officers if they report bad behavior. So, we need oversight at the state level and the federal level for them to be able to report independently to protect themselves, but also be able to help get bad apples out of their departments. I think reallocating funding in regards to shifting calls for services, I mentioned earlier, particularly around mental health and search and traffic calls are important.

And finally, officers need housing subsidies and they also need mental health training themselves to improve the jobs and deal with what they see on the streets. So, thank you for your time. And I look forward to the questions.

Shiek Pal: Thank you, Dr. Ray. We will next move to Mr. Neily. Mr. Neily, you have 15 minutes.

Clark Neily: Thanks very much, Mr. Chair. Pleasure to be here with you. Appreciate the opportunity to speak to the committee. And I want to pick up where my friend Dr. Ray left off and start by saying, we all understand that police have a difficult and sometimes dangerous job. They cannot do that job effectively without the support and trust and confidence of their community. We often set police up for failure, unfortunately, by putting them in a position where the public does not feel trust towards police, they do not feel confident in the police, and there are a number of reasons for that. And one of the leading reasons is because of a lack of proper accountability, which I will get to.

We know from a Gallup poll last summer, that public confidence in police has fallen to a record low from 64% in 2004, 48% today. This lack of confidence is even more pronounced among Black people. 56% of White people express confidence in police, but only 19% of Black people and this is no accident. As Dr. Ray pointed out, clearance rates for crimes are low and this is almost certainly related to the lack of confidence in police. Simply put, police have to depend on the communities that they police in order to solve crimes. People will not talk to police if people do not trust police, if they will not interact with police, it becomes very difficult for police to be effective and to solve crimes without the cooperation of individuals in the communities that they're policing.

As Dr. Ray alluded to, we know that police spend a disproportionate amount of their time engaged in activities that do not really make the community a better place. We're talking about low level traffic enforcement, things like drug possession, et cetera, as recently as 2019, marijuana arrests for simple possession in Virginia were the highest that they had been in 20 years. I think it's increasingly clear to most people that this is really not an effective use of law enforcement resources, particularly in an environment where we see fewer than 50% of violent crimes getting solved by police and fewer than 20% of property crimes. And it's a thing it's something that we need to rethink.

And of course, it's well-known, particularly by members of communities of color that these enforcement efforts have not been even handed. As Dr. Ray pointed out, there's a disproportionate amount of arrests for Black people for things like marijuana possession and this breeds significant resentment on the part of many members of those communities and for very good reason, they know they're being singled out and it exacerbates the lack of trust that some of them feel in police.

Another real problem, and I mentioned earlier that to some extent, we set police up for failure in the sense of the positions that we put them in. Many communities depend upon police to raise revenue while they go about their policing duties. This includes things like civil forfeiture and

raising money through fines and fees and traffic citations. This is an example of a man who owned a Virginia restaurant called Smoking Roosters. He was driving through Virginia with $17,000 in cash to Tennessee in order to acquire some restaurant equipment that was being sold at auction down there. He was pulled over by a Fairfax County police officer who refused to believe that the $17,000 in cash that he had was obtained from legitimate sources and simply took it from him. And the process, as you can see, is so informal that that is what passes for a receipt when the police take nearly $20,000 of your money.

Unlike most people, he decided to fight that forfeiture and was able to recover the money and recently managed to get his business back into business. But it's a huge problem when police are charged with raising revenue and spend a significant amount of their time engaged in things like civil forfeiture and issuing traffic citations. And, again, focusing on activities that aren't really making the community any better. There is some evidence including this study from the Fines and Fees Justice Center that indicates that there is a negative association between the amount of time and effort that police put into revenue raising and their ability to solve crimes. The study found a 1% increase in revenues from fines and fees was associated with the 6.1% decrease in the violent crime clearance rate. So, this is some evidence that it really matters what we have police doing when they're out in the field and what they're focusing on.

Now, I get to the heart of my talk here. And this is something, again, that Dr. Ray also alluded to. In 1871, Congress enacted a civil rights law that we now refer to as Section 1983, that provided that any State actor, meaning anyone employed by a State or municipal government, shall be liable to the person injured for the depravation of any right. This is a broad, and open-ended, remedial statute that was designed to ensure that people could seek redress for the violation of their civil rights in federal court. In 1983, the Supreme Court effectively amended, I'm sorry, 1981, the Supreme Court effectively amended the Section 1983, by creating something called the qualified immunity defense. And what it does is it effectively inserts two words into the statutes so that now you cannot seek redress for the deprivation of any right, which is the policy that correct chose.

But instead you may only see redress the deprivation of any clearly established right. And effectively what this means is that in order to maintain civil rights lawsuit against a police officer or other government official, you have to be able to identify a pre-existing case in your jurisdiction where a police officer has done essentially the exact same thing that was done to you and the courts have already ruled that that is a civil rights violation. If that case happens not to exist, then it won't matter whether or not your rights were violated. And even if every judge believes

and agrees that your rights were violated, your case will still be thrown out simply by the mere happenstance that there was not a pre-existing case on point. And that's the way the qualified immunity doctrine works.

This came up in the context of a very unfortunate event that happened a few months ago, where a US Army Lieutenant Caron Nazario was pulled over for a traffic stop. He felt uncomfortable with the circumstances of that stop, so he did what police departments actually recommend, which is that he proceeded to a well-lit gas station where upon he was accosted by police officers who drew their weapons and ordered him out of the car. He asked what was going on and one of the officers threatened him and said, "You're getting ready to ride the lightning." Lieutenant Nazario said, "I'm honestly afraid to get out of my car." And the officer said, "Yeah, you should be." There's absolutely no reason why this encounter had to go this way. And I believe that it's very clearly a product of a lack of proper accountability that a serving officer in the United States Army would be treated this way by police.

And of course, he's not the only one. It could go on forever, practically, with examples. Things have gotten so bad that qualified immunity has really become a household term and people are strongly opposed to it. I showed a slide earlier where there was a protester actually holding a sign that says, "End qualified immunity." When's the last time you saw such an obscure legal doctrine become a slogan that people would hold up at a protest?

Here we have Ben & Jerry's, noted social activists and manufacturers of ice cream, they've gotten into the fight against qualified immunity in a big way. Once they studied the lay of the land and realized the negative effect that qualified immunity was having on police accountability and people's trust in police, they jumped in with both feet and launched an entire campaign to eliminate qualified immunity. USA today announced last week that it was joining a group called Americans for Prosperity to also engage in police reform activities. And the lead article that they started with was an article arguing for the repeal of qualified immunity to restore proper accountability.

We've seen efforts both at the federal and state levels. Congress has been debating repealing qualified immunity for more than a year now. We don't know what the outcome of those negotiations is going to be, of course. We also know that this is being debated and discussed at the State level. Colorado and New Mexico repealed qualified immunity. Virginia came close earlier this year, but that ultimately... That effort ended in committee, but will doubtless be tried again.

As Dr. Ray pointed out, police are not always the best to a given problem, and we've come to use them as a social Swiss army knife. If we don't know what else to do, we just simply send the police. And that's very clearly not always the best response. The good news is the various communities, including Washington DC, are rethinking that knee jerk reaction and a number of cities have implemented programs where they'll at least to some problems that we would normally send police to they'll send social workers and mental health experts instead. We don't really have a lot of solid data about how those programs are going to work out because it's still early days, but the initial results seem encouraging.

The final point that I want to make is that in order to restore public health confidence in police, we need, in my judgment, four things. We need to ensure proper accountability so that we don't have this double standard in terms of the level of accountability to which members of law enforcement hold us ordinary citizens, which is a very high level of accountability. And a level of accountability to which members of law enforcement are held when they're plausibly accused of misconduct, which unfortunately, is a very level of countability. This creates a palpable double standard that is well understood by members of the community. As I suggested earlier, they resent this and they are, in my judgment, they are correct to resent it. This is not the way the system should work. We also need to ensure that police can be effective in doing their jobs. Dr. Ray and I both mentioned the-

PART 1 OF 4 ENDS [00:30:04]

Clark Neily: their jobs. Dr. Ray and I both mentioned the low clearance rates for serious crimes like homicide and other violent crimes.

Shiek Pal: Five minutes.

Clark Neily: Thank you. Police simply cannot earn the trust and support of the communities that they police unless people have confidence that police are out there making the community a better place. And the number one way, of course, that police can do that is by deterring violent and other serious crimes, and by catching the people who commit those crimes. Right now their efficacy of doing that is rather low, and almost certainly that is an outgrowth of the lack of accountability and corresponding lack of confidence and trust that people feel in many communities.

Police need to be respected by the communities that they police. That is not something that you can insist on receiving from somebody. As we all know, the only way to be respected is to earn that respect. And there are many communities, quite clearly, in our country today where people do not feel that police have earned their respect. And I think, quite clearly, the

path towards restoring respect in police requires at least two things; first, restoring a proper level of accountability and second, getting the police out of the business of being essentially badge-wearing tax collectors, who are out in those communities, issuing citations for things that don't make the community any worse, and everybody knows in effect that they're really just out there trying to police for profit, which is not something we should ask police to do. And then finally, of course, it's necessary for people to have trust in the police. They need to feel that it's safe for them to interact with police, that it's a good idea when you witness a crime or you know who did something that it's a good idea and a safe idea for you to go and tell police about it, and that you can be confident that if you work with the police that you can trust what they say and that you can trust them to follow through on the promises that they make and not to take advantage of you.

I think, very clearly, we are lacking across all four of these dynamics, and we've got to begin thinking about how we can restore accountability, efficacy, respect, and trust in terms of the way that communities see police. We've talked about a number of policy issues. The one I'd like to focus on, or the two that I'd like to focus our attention on, to repeat, are: first, to eliminate qualified immunity, so that people whose rights are violated by the police can get both redress and accountability in court and second, to get police out of the business of raising revenue for their communities so they can focus their attention and their effort on activities that actually make the community a better place. Thanks very much. And I look forward to our discussion.

Shiek Pal: Thank you. Dr. Pfaff, you have 15 minutes.

Dr. John Pfaff: I was muted there. Sorry about that. All right. So I think I want to... Thank you very much, first of all, for having me here. And I want to start by saying I think I want to sort of focus on taking something that both Mr. Neily and Dr. Ray raised as one of many options in saying we should perhaps put it at the forefront of thinking about sort of police accountability, which is the idea of removing police from all sorts of tasks from the start, right?

That is actually where we start, not sort of, perhaps, one of many options. And I think it's important to think about sort of why. And to be clear, I agree with everything they suggested for what we should do in sort of adjusting back-end punishments for bad behavior, getting rid of qualified immunity, getting have indemnification, a national and a state level list of cops who've been disciplined and fired. After all, the police officer, Tim Loehmann, who killed Tamir Rice, he'd been fired months before by another police department and was hired by the Cleveland PD because he lied on his application about prior employment, and there's no list to check

to see that this officer had been fired for being viewed as being completely unfit to be a police officer. Right? I think we should encourage if not require that prosecutors publish their no call lists, right? It's increasingly clear that DA's have lists of cops they don't put on the stand because they understand they put that officer on the stand it risks suborning perjury, and they don't call them.

There are lots of things we can do to go after bad behavior in an effort to deter police misconduct. But I think the challenge at that approach is that inescapably police tend to be young men operating group settings, who tend to be probably self-selected along some degree of aggression in incredibly high stress, emotionally-fraught situations. And there's one thing that's really clear in the criminology literature is that is a situation where deterrence is very hard to operate, right? That the idea of sort of our complex scheme of after-the-fact punishments can step into regular behavior isn't entirely a valid model when it is young men operating in groups in high-pressure situations that are defined almost by violence. And so I think it's important to think that from an accountability perspective, perhaps the best way to achieve sort of a kind of accountability is to never be in that situation in the first place. And to think much more about how we can create situations where you don't have to worry about accountability because the problems can't arise to start with, right?

And I think we increasingly have a lot of options available to us. And Dr. Ray touched on what they're doing in Colorado. There's a program called STAR. There's one called CAHOOTS in Washington, which is an effort to create sort of these unarmed social worker teams to intervene in mental health and homelessness kinds of crises, right? The evidence, again, is kind of mixed on these things, but violence interrupter programs... at least Cure Violence have some evidence behind them. Relying on trusted individuals in the community to try to stop violence, rather than relying on sort of the officers coming in with the gun and the badge to do it themselves. We know that investments in big public health programs like cognitive behavioral therapy has substantial evidence behind it in certain situations. There's evidence that drug treatment has a big return. There's evidence that Medicare expansion led to a fairly sharp drop in crime the year it was adopted, right?

There are other non-policing options to have, and I would add, for all these things, everyone always correctly makes the caveat the data is mixed and unclear and that's absolutely correct. Although, it it important to understand that that exact same criticism holds true when we talk about the police as well, right? That our policing research is not all that outstanding, and we also do all of our police cost-benefit analyses wrong, right?

When we talk about the effectiveness of policing and preventing crime, the benefit is... our efforts to sort of measure the... sort of convert reduced crime and reduced harm into a dollar amount, and we compare that cost to the money we spend on policing, the budget we spend on policing. That means we do a cost-benefit analysis of policing. George Floyd's death doesn't show up in that cost-benefit analysis, right? Because that's not the financial cost. Maybe the settlement costs from the lawsuit does, right? But the actual human cost of that doesn't, right? And so, yes, it's true that all these different interventions that remove the police in the first place and perhaps ensure sort of less fraught interactions to start with, their evidence is mixed at best, but policing's evidence is mixed at best too. And we tend to politically focus on it in a double standard kind of way, right? We demand precise randomized clinical trials to justify the minors of non-policing interventions. We're generally okay with much less rigorous studies that justify the use of policing. And so I think it's important to realize that there's a disconnect in how we go about analyzing policing versus the alternatives.

But more than focusing on sort of the specific policies, I think what I want to talk a bit more about is sort of what is politically possible. Because I feel like there's a conversation going on now that is misstating the public's tolerance, especially the tolerance amongst Black Americans, for non-policing interventions and a move away from sort of focus on police to other options that would minimize a lot of these harms off the jump. And I would add, as someone pointed out recently, that one... also a difference between policing and non-policing is that when a non-policing thing doesn't work very well, it doesn't have a lot of negative spillovers in terms of other costs, but when a policing intervention doesn't work very well, it has significant spillovers that are negative, right? And so, again, we're just misjudging what these costs are. And I think the key thing is that the political information we have out there glosses over how well that is understood by the people who are most effected by these decisions, which I think suggests we have much more room to be aggressive than the surveys initially seem to suggest.

I think this has become a huge point in the past two or three weeks because it seems like New York City's fairly parochial and somewhat idiosyncratic mayoral election is being used now as sort of a national referendum on police reform, right? The fact that a former police captain, Eric Adams, is going to be our next mayor, because there's only the democratic primary in New York city, right, is meant to be some sort of giant rejection of sort of more radical reforms. Interesting that Larry Krasner's winning Philadelphia has been forgotten now in the opposite side, I'll come back to that in a second. Also worth pointing out that political scientists regularly point out that ideology is the third or fourth on why people vote. They vote for people who they know and feel safe with.

And as somebody who once lived in Eric Adams district, when he was an assemblyman he came to every meeting, all the time. He's been running for this job for 15 years. We need to be very careful about how we interpret, at least 15 years, how we interpret what Eric Adam's race... victory means.

And so I want to emphasize how much more room we have to be aggressive and think big than, perhaps, our survey seemed to initially suggest, right? So what we have here is a survey from data for progress that got a lot of attention that argues that people generally want more policing, right? Do you think regular police patrols in your neighborhood would make you feel more or less safe? And you find that, if you look at the end of this little rectangle, 65% of Black Americans said, "Yes", right? This is immediately tweeted out and commented on by sort of centrist reformers saying, "No, it shows that Democrats, Republicans, young, old, white, black, brown would feel safer with more police." Obviously the NYPD's police unions quickly tweeted this out as well, pointing out that this shows a deep resigning support for policing, right? That we're okay with adjusting what the police do, but they said the survey shows that there's much less desire for significant move away from policing. And if you dig into the survey, that's not what it says.

And I think it's important to see why it's not what it says and what it tells us about how to think about the politics and political views more broadly. All right, so here's a question again, and now it's worth pointing out, this is actually kind of a bad question because it asks, "Do you think regular police patrols will make you less safe or more safe?" I don't know how to interpret that, right? It doesn't say does more policing make you feel more safe. It says does regular patrols, a rather static concept, make you feel more or less safe, right? Conceivably, if you think you're over-policed, then regular patrols might mean less policing, and that might make you feel more safe. It's not entirely clear to me how to interpret this, but I think most people interpret it to mean "Do more police make you feel more safe?" and most people said, yes. But this is question five.

What was question four? "Generally speaking, would you say that most police officers can be trusted or that you can't be too careful in dealing with police officers?" And 63% of Black Americans said, "You can't be too careful." 65% of Black Americans said they want more police. This is not a glowing recommendation for policing. What this suggests to me is that respondents in question five heard the question, "Policing or nothing else?" Sure. Given that choice, we'll take policing, but we don't really trust the cops at all, right? The exact same number who would want more policing also say that you don't trust the cops. That means that at least half of those saying, "More policing" also say, "Can't be too careful."

And tellingly, later on in that same survey they asked, "Would you support or oppose reallocating police budgets to create a new agency of first responders like emergency medical services or firefighters to deal with issues related to addiction or mental illness that need to be remedied, but do not need police?" Again, "Should we get rid of the police where we don't need police?" is a badly-phrased question also, right? Kind of drives the answer in a problematic kind of way. But we see that 70% of Black Americans say they want someone else, right? They want more cops, but they don't trust the cops, and given the opportunity, cops or non-cops, they come out strongly in favor of non-cops for a wide range of options, right? And so what sort of the NYPD unions tweeted out as evidence of a strong demand for more policing is actually something far more nuanced, right? It reflects the fact that questions that say, "Do you want more police, period?" generally, consistently produce much different answers than "Do you want policing, or this, or this, or this?" because faced with the question, "Policing; more or less?", people read that, I think, as meaning "That's your choice" because quite often that's been your choice, right? But when given more options, there's a deep support for more.

Shiek Pal: Five minutes.

Dr. John Pfaff: Pardon?

Shiek Pal: You have five minutes.

Dr. John Pfaff: All right. There's a Gallup poll that similarly said, "Black Americans want police to retain local presence", and their top line things show that only 20% of Black Americans wanted less time with policing, but Black Americans is a giant group of people. It's 37 million people. They don't all have same experiences. They don't have the same exposure to police. And to Gallup's credit, they then asked just Black Americans, by exposure to police, what would they want? And what you see is that amongst those who see the cops a lot, fully one-third want less policing, right? That measure "Black Americans want more policing" reflects an incredibly diverse array of people. And those who are most exposed to police have a much greater desire to see less of it than those who are not, which makes absolute sense. And I think it's really important to stress just how concentrated crime, and therefore just how concentrated policing, is, right?

So these are some studies showing the percent of crime in what percent of the city blocks. So there's light gray boxes say that in big cities and small cities, about 25% of all crime takes place in about 2% of all city blocks, and half of all crime takes place in about 6% of all city blocks, right? Most people, even in cities, even in higher crime cities, they are not actually exposed to crime, right? And as you get into those communities that are most exposed to crime, those that are most exposed to policing, their

views become much more open to much bigger changes, right? But general national polling does a very poor job of separating that out.

I think the results from Philadelphia's DA election are very telling. The map on the left, the red dots, that's where shootings took place in Philadelphia in 2020. The map on the right with the light blue boxes, those light blue boxes are the districts that Larry Krasner won over the much more tough-on-crime Kennedy he went up against in this primary. And what you see is that shootings and Krasner was overlapped almost perfectly, right? The areas most impacted by gun violence were the areas most likely to reject the Philadelphia police departments hand picked candidate, right, in favor of the candidate who was pushing strongly back against what the police generally do. Right? And again, I think that tells us that these impacted communities, which tend to be smaller, right, and relatively isolated and politically isolated, have a view that's much more open to alternatives to conventional policing than our national level surveys tend to suggest, right?

So just to wrap this up, right, this is their same results showing that only 19% of Black Americans want to see less time, but interestingly another survey... and all these surveys... I should be clear these are all post-George Floyd surveys. They all come in that period of time. This is not reflecting pre-George Floyd attitudes. Another parallel Gallup survey found that only 19% of Black Americans express any great confidence in the police, only 11% of Black Americans express any great confidence in criminal legal system overall, right? So the system is saying, we want more, perhaps, policing, or certainly not less policing, but has a deep-abiding fundamental distrust of that system, right? Which suggests that much of this support for policing reflects the limit of the options that we present them, right? It's very much just this sort of... the [inaudible 00:46:00] argument lock-in was owned, that what black communities want more than anything else is both, and, right? They understand that you might need policing today to get the guy with the gun off the street today, but they want that done in such a way that that officer doesn't have to be there tomorrow because we can invest in the other things that allow a community to support itself.

Because that is not a genuine embrace of policing... Or this is far more complicated than our data normally suggests and it suggests to me that we really should, perhaps, put at the front the idea that the way to achieve much greater sort of accountability is to prevent those accountability risky situations from arising in the first place, and that there's actually, I think, much more political support for that than a lot of the current conversation seems to suggest is the case. So I will stop there and thank you very much. And I look forward to the questions.

Shiek Pal: Thank you very much. We are now going to move to the portion of the program where the committee members get to ask questions. But before I do that, it occurs to me that I failed to properly introduce our last two speakers. I think I only introduced Dr. Ray. So what I want to do is give the full introduction and titles for our last two speakers, so everybody on the panel is aware of who we just heard from. So our third speaker who just concluded was Dr. John Pfaff, who is a professor of law at Fordham University School of Law. And prior to that, we heard from Mr. Clark Neily, who's a senior vice president for legal studies at the Cato Institute. I apologize to both of you for my oversight and failing to introduce you. Having said that, we will now begin questions from the committee members. By my count, we have seven members. I will go last. We have about, let's say, 35 minutes, so roughly 5 minutes per member. You get one question and if necessary one follow-up. Including the response time, please try to keep everything within five minutes so that everybody has a chance to ask their question. So we'll start with Maria Almond, please.

Maria Almond: Hi, this is Maria Almond. I'm a psychiatrist on the board. So very interested I, of course, the mental health aspects. But one of the things our committee had been really interested in looking at was not actually the social workers embedded in the committee, although I think that is absolutely important, but really civilian oversight boards. And I wanted to sort of hear a little bit from each of you about how to make those effective, thinking about the jurisdictional scope, their structural independence, the composition? So if you could each talk a little bit about that.

Dr. Rashawn Ray: I mean I guess we can go in the order that we presented. I think there are two important things. And I've served on community oversight boards. I have conducted research evaluating their effectiveness. And I think there are two things that make them effective. First is that the community oversight board that they have representation on the police misconduct board within police departments. One thing that people don't readily know, that some of you do, is that police officers are actually internally sanctioned quite a bit for various sorts of things. But the general public is not privy to that and does not play a role in that process. And embedded within that process, the research that we've conducted suggests that there are huge biases that happen in terms of discipline procedures within these misconduct boards within the police department. So the first thing is that people who are part of the community oversight board also needs to have voting power on the police misconduct board within the police department. That's the first thing.

The second thing is that the municipality should provide funding for the community oversight board to actually do their work. Nashville is a good example here. There are also other examples, but Nashville is one of the models that includes both of those. Where they have votes, so of course

it's a large community oversight board, and then they have a certain number of votes within the police misconduct board. And then secondly, they get funding directly from the city of Nashville to carry out their work.

Clark Neily: Well, I'll just add a couple of points to that. I think one of the most important things is to not allow the powers and prerogatives of a community oversight board be the subject of collective bargaining on the part of the police union. This is sort of a notorious problem where the police union, in many jurisdictions, has been able to render the citizen or community oversight boards largely toothless through collective bargaining. So this should be a subject matter that should be removed from that process. And to the extent that the oversight board has the ability to recommend or to prescribe disciplinary measures, including potentially termination, that should not be reviewable through an arbitration process. In other words, it's important to prevent that from being undone. And then the last thing I would say is that the board, in order to do its job effectively, it has to be equipped with the powers that it needs to obtain the information and question. It needs to be able to get disciplinary records from officers. It needs to be able to compel testimony and so forth. So an oversight board that lacks those kinds of powers is not going to be able to adequately inform itself and come to a clear decision or a well-informed decision about what to do in any given incident.

Dr. John Pfaff: I guess I would just add that I think for focusing on some place like Virginia, purpler to bluer states, I think everything that was just said are all great ideas. I don't really have anything to add there. But thinking more broadly, I think it's important to understand that we want to think about solutions that that might fail in red states, right? Because what we're seeing now, that we have not seen before but in the past five or six months, is a wave of preemption laws targeting any sort of reform. Arizona just passed the law. The initial version of the bill said that, I believe, two thirds of all civilian oversight boards had to be active duty police officers. The new version has it at 100%, right? So the state legislature has now dictated that every single local police oversight board that gets created must be entirely staffed only by police officers. Right?

And we're seeing this effort by red states to really gut what their bluer cities are trying to do in terms of reform. When it comes to policing, they've become incredibly aggressive, passing all sorts of laws about funding and oversight and review. And so I think in bluer and purpler states the idea of these commissions can be created in the way that both Mr. Neily and Dr. Ray said with these kinds of powers. In redder states, if cities try this, I think they're going to find the state legislators scooping in to gut that, which A, suggests maybe something weaker, that doesn't quite pop up on the state's legislature radar, becomes more viable. It's a sad compromise. Or we need to think about ways, and I don't know the answer

to this. I know state and local government who are struggling desperate to think about how to work around preemption because cities have no protection. But a way to embed these kinds of oversight boards in contracts or something in a way, I don't know, that can prevent the state from so easily preempting them. But I think in redder states, the idea of a civilian oversight board with teeth is almost a non-starter, and at a national [inaudible 00:53:32] most important to think about how you get around that really growing political problem for the past six months.

Shiek Pal: Thank you very much.

Dr. John Pfaff: Thank you.

Shiek Pal: Let's go next to Lisalyn Jacobs, please.

Lisalyn Jacobs: Thank you, chair. Thank you, all three of you gentlemen, for your very informative testimony. I think that, quite obviously, the answers we end up with are very tied to where we start this conversation or where we start the inquiry. So if you start at the question of qualified immunity or what you're doing with your civilian oversight board, you've already gotten to the question of your existing police department. So I want to call all of our attention to the events of January 6th, where we saw law enforcement rushing into our [inaudible 00:54:38] it. And that gets me to a question that I have been asking at both the federal and state level for a minimum of six years. And that is the question of screening. It is the question of how you actually constitute a police department. And with respect to January 6th, there's also the question of the impact or the infiltration of white supremacy in that space. Dr. Ray, particularly you were talking about the ability to use your technology to assess bias, presumably in an existing police force, but I would like to hear all of you gentlemen speak to the question of how you assemble or screen or determine adequacy in a force, as of right before you have employed people who may have some propensity to be disrespectful or problematic in the space of respecting civilians' civil rights. Thank you.

Dr. Rashawn Ray: I mean, that's a great question. And I think it's one of the pivotal questions. I'll answer it in two ways. First, as it relates to training and in oversight boards. So I currently serve on an advisory board for the state of California Commission on Peace Officer Standards and Training, and one of the things that we have been doing is layering up language for psychologists to be able to use, layering up with academic literature for psychologists to have a better idea of what might be triggers that suggest that potential people who want to be police officers are racially biased. And I think we've done that very well. I think that could be a really good example for the state of Virginia as well as the country, in terms of ensuring that psychologists have the tools and strategies they need to be

able to say, "That suggests that a person is racially biased and they are ill-equipped to be a police officer", or exhibiting any other type of bias.

And I think more broadly to what you note about January 6th, what you're highlighting is that we know that a large percentage of people who were there going about that insurrection were either current or former police officers and military, and we can not shy away from the fact that we know that white supremacy ideology and white nationalists groups continue to view law enforcement as a place that they should infiltrate. As it relates to our virtual reality training, we've had thousands of police officers, many departments go through this and officers who work in background and are over background have been pushing for our training to be used as part of their background screening process. So, in this regard, what I'm laying out are two ways why we should capture these individuals. The first way is when psychologists screen them for background or whether or not they can even join the police academy. And then second is what police departments can actually do.

And part of what we lay out, what we find is that, yes, there are definitely some officers that are at the extreme of racial bias, whether that be explicit bias or implicit racial bias, but there are a lot that have moderate levels of implicit bias that might come down to lack of familiarity, not to let that off the hook because we know it has implications, but it does suggest the ability to train, to help train and reduce down the bias that exists. So there are officers who work in background who want to use our training program to potentially put officers who score in ways that aren't ideal through various remedial courses to aim to try to reduce that bias down. Oftentimes people are just put into the place. They go through a similar training, whether or not they do well or not. They get different scores and they all become officers. We know that quite different. So getting back to the crux of your question, yes, the virtual reality training and the way that it's set up can be used to examine bias, and it can also be used to potentially weed out officers and provide more advanced training,

Clark Neily: This is such a challenging question. It's such an important question, and I appreciate the opportunity to address it. I don't have a lot to add other than to say that, at a bare minimum, we should expect police departments to do at least as much due diligence as a private employer would do. Many of you may be aware of the Plain View Project that examined the publicly available Facebook pages of police officers two years ago. They identified some 5,000 overtly racist posts from 3,500 different police officers. Most of those officers remain employed and it does not appear that very many of them were disciplined as a result. So when there's low hanging fruit to pick, you should pick the low hanging fruit. And so we should have on the front end some effort to conduct at least a minimal background check of people who are applying to enter a police academy to determine what's in

their social media history, and, if it's possible with the resources that are available, to go even further with that. But again, we know that there are many incidents where a particular police officer's racist beliefs and racist convictions have not been at all a secret or difficult to find. And I don't see any reason in principle why we couldn't apprise ourself with that information on the front end, before they're actually accepted for training in the police academy. And to the extent that's not happening, it needs to happen.

Dr. John Pfaff: Yeah. I guess... Yeah, the only thing that I would...

PART 2 OF 4 ENDS [01:00:04]

Dr. John Pfaff: And I guess the only thing that I would really add to that thing about it is, I feel like front end approaches are obviously great in the long run, but especially in departments that don't necessarily have high turnover. That you have here, what to do about the large number of officers that are already there, who might be very hard to get rid of at this point. Especially going through Mr. Neily's point about how they've retained their jobs. I think the two things to think about there. One is contracts, this was my least favorite class in law school. It's not the most exciting thing to talk about, but police contracts play a huge role in all of this. And think about ways to restructure these collective bargaining agreements in the contract and associate that also, I think targeting the secrecy laws that surround police.

New York State just got rid of 58, which was the thing that made it almost impossible to ever know what was in a police officer's file for misconduct. And again, If you think about transparency, I don't think people fully appreciate just how police, amongst all state employees, are almost impossible to know what they've done wrong. And yes, if you open up the disciplinary file, but keep the contracts in place, maybe you can't fire them, but if you can see enough in a department, you might be able to induce better behavior or buyouts or something to get that turnover so that then the front end thing can actually start changing the number of people who are flowing in.

It also suggests that if we're think about defunding, I don't know, reduce funding to avoid the politics of the defunding language. If you're cutting back on police funding, the first thing every department does when it starts cutting back on funding is they cancel incoming cadet classes because they're the lowest hanging fruit and also it's a cut that does nothing now. Your officer force stays exact same size. You do a cut now that doesn't have any impact for six months, things look better on the paper, but if our goal is to actually change who is in our police departments, the last thing we should cut are the incoming cohorts. The goal is we should push out

the people towards the top, who might be the more problematic people who came in at an earlier time. And so it suggest that when we think about how to change budgets, the very first thing we cut, maybe should be the last thing we cut because the in course are the ones that we can apply things like Dr. Ray's testing to that we can't do to the contractually protected senior people at the top.

Shiek Pal: Thank you. Thank you. Let's go to Art Rizer, next.

Arthur Rizer: Yeah. I actually don't have any questions. It was an amazing presentation and it's good to see some friendly faces.

Shiek Pal: Thank you, sir. Ilya Shapiro.

Ilya Shapiro: Great. Thanks for your presentations. Learned a lot. I want to focus my questions to all of you on a theme, I think from Dr. Ray, which is that we have both over policing and under policing and so there are asymmetric policy problems here. Dr. Ray, how is it possible to make reforms that fix, or at least start fixing the over policing abuse problem without having negative spill over into under policing because it seems like what we've seen in the last year or year and a half is that there's a chill on police, the reaction to George Floyd and otherwise, that has led to areas that there's a rise in crime that police just decide they don't want to go into, or don't want to stick their necks out for or something like that. And vice versa, if you start addressing the under policing by having more cops on the beat, more visible presence in vulnerable neighborhoods, doesn't that lead to either perception or reality of more abuse, even if it's just a net, not a per capita goal?

And Dr. Pfaff perhaps disagrees with that because showing the Philadelphia vote comparison and things like that, maybe Dr. Pfaff, you don't think that there's an under policing problem at all? So what can you say about that what I've just described? And for Mr. Neily, Clark my colleague at Cato, I want to ask you a different question. How much of what you've described is a policy versus a legal problem? That is, is just a matter of better training, state local procedures, et cetera, the policy side, or is it really the Court's failure with qualified immunity, with forfeiture although we've seen improvements in the latter at least. So, how much is this policy versus law?

Dr. Rashawn Ray: Yeah. Very important questions. I think what I'll say is one of the assumptions that we make, it's two of them that I want to go back to. The first big assumption we make is that places that are experiencing a higher level of police killings and a higher level of use of force are also the places where there's higher levels of violent crime and that's not the case at all. I think that the second misconception we have is that whenever there are

these large incidents, of course, George Floyd being one of the largest, but then these things happen locally all the time that supposedly there's this chilling effect of what some people try to say is a Ferguson effect, police killings actually have not decreased. If it was actually a chilling effect, police would stop killing people and actually haven't. And so I think part of what's happening is we try to make these links with the data that actually aren't there. And I think from a policy standpoint, what we oftentimes do is when crime increases the response, and the federal government just did this, I think not wisely. What we do is we try to put more boots on the ground.

So we try to respond to an increase in crime quantitatively. The quantitative response is more people. Part of what people are getting at, and I think Dr. Pfaff would probably agree with this as well, it's the difference between a quantitative response versus a qualitative response. Part of what black people and people in low-income neighborhoods are saying is, what we wanted is a qualitatively different relationship with law enforcement. We want the same qualitative relationship that we know exist across town that happens to be more fluent. That oftentimes is predominantly whites, but not always, particularly in the DMV region, but part of what is going on is we are responding in a quantitative way instead of a qualitative way. And I think what all of us are trying to lay out is whether that comes down to how we think about calls for service and reallocating those, whether we think about accountability when it comes to when it comes to civil settlements and dealing with qualified immunity, but we have to change the narrative that the solution to dealing with crime is a quantitative response.

Again, why is that? The reason why that is, is because there's not a relationship statistically between the police killing rate and the violent crime rate. If it was, I'm unsure if we'd be having the conversation in the same way. So we need a qualitatively different relationship. Part of what people want then is more control over what happens in their own communities. And part of what that looks like is having community oversight boards that are not simply symbolic, which is what a lot of them look like. Where after the police department has already made their decision about an officer who did something wrong, then the community oversight board weighs in with no power or where the violence interrupters are in local neighborhoods doing tons of important work to reduce violent crime, but they don't trust law enforcement and for good reason. Or when someone calls 911 because their loved one is having a heart attack or a stroke and police show up late and the person dies. These are qualitative responses that people want to see change and I think where we try to highlight some of these responses quantitatively, as we heard laid out by the other panelists, certain qualitative responses are missed. So

I'll stop there, but I'm hoping that that clears it up, that we need a qualitative response to a quantitative problem.

Shiek Pal: We're actually over five minutes on this question, but if Mr. Neily and Dr. Pfaff can just answer the question as quickly as possible, we can include that.

Clark Neily: Yeah. So, just really quickly. I think first that, I'm not sure that the under policing versus over policing is the most precise way to talk about it. I think what we need to talk about is effective policing versus ineffective policing. So for example, a department that prioritizes things like low-level traffic enforcement and marijuana possession and things like that, I would argue is engaged in ineffective policing. That's not necessarily under policing, they're just miss allocating the resources, at least in my judgment. The question whether this is a policy problem or a legal problem, my answer is that it's both and those are often indistinguishable. So for example, Virginia received a D as in dog, a D minus on its civil forfeiture report card from the Institute for Justice, where I used to work in their policing for profit study. That's an unforced error. That's a policy choice.

The State of Maine just repealed civil forfeiture a few days ago, Virginia could do that, they failed to do so, same thing with qualified immunity. Unfortunately, the Courts have helped create a very significant problem by exacerbating the double standard that people perceive where they're held to a very high standard and police are held to a very low standard. That's largely a legal problem, but not exclusively. So there's a lot of blame to spread around and a lot of opportunities for improvement, but I will, again, emphasize, I think the real dichotomy here is effective versus ineffective policing.

Dr. John Pfaff: And just two things quickly. One, I would say that I don't think Philadelphia rejects the over-under policing issue, I think it affirms it, that the candidate who won was the candidate who doesn't go after the low level stuff and wants to focus always almost entirely on the higher level stuff. And Vega, for all of his incoherence in the campaign trail, and I think that probably did help Krasner, was the one more likely to start bring back and forcing the low-level stuff and he got crushed in the areas where he'd be most likely to bring that stuff back. As for how to address it, I don't have a great answer. I think it's important to realize that sometimes very subtle things can matter. So one culprit I've heard about is actually COMSAT. COMSAT actually encourages low level policing over high level policing because the low level stuff shows productivity, that's great. They're going after aggravated assault, well if your AG assault number goes up, that's bad because now your district is in trouble.

So you need to go after these crimes more aggressively and that makes you look bad, but you rack up all these drug busts you're being productive. And so we have to think profoundly carefully about what we measure because the police will adapt, will respond to it as we want them to, but they might not respond to it the way we think they're going to. And then one last, very small point I just want to add, because it's important to do whenever it comes up. There's almost no empirical evidence linking anything close to a Ferguson effect to rises and homicides. Richard Rosenfeld's done the most amount of work on this and he consistently finds that while there might be some crime connection between protest and pull backs, the connects between pullbacks or protests and homicide is close to zero. And since homicide is the thing that went up, violent crime didn't go up, homicide did. I think it's just important to point out that that protest story is far more complicated than it's oftentimes portrayed.

Shiek Pal: Thank you. Danny Vargas.

Danny Vargas: Thank you. I'm not sure if you can hear me?

Shiek Pal: Yep. Go ahead.

Danny Vargas: Great. So thank you all for your input. It's very valuable. I appreciate it greatly. The one question I had was around the fact that Virginia's increasingly ethnically diverse in many portions of the Commonwealth. So it goes to the notion that, I'm convinced that the vast majority are good apples that might be getting involved in situations that escalate as a result of a lack of cultural awareness in many respects. So in addition to some of the deescalation training that has been suggested, would some additional cross cultural and cultural awareness and cultural intelligence training might be helpful in terms of avoiding some of the escalations that might result as a lack of awareness of cultural nuances? And that's to anyone.

Dr. Rashawn Ray: I'll just quickly say, I think if these type of implicit bias and cultural competency trainings are important, but they fall way short of having any impact unless it comes along with accountability. One thing I found about the whole good apples, bad apples argument, if there are so many good apples, then why can't they stop the bad apples? The reason why is because the bad apples are not held accountable structurally, and that needs to be the focus. What we're doing is we're focusing on individual level responses and not the structure in some of the things we're highlighting deals with accountability within police departments. I find that these good apples oftentimes get stained and poisoned. Either they end up in situations where they make mistakes or they're unable to actually make the change they want because structurally these bad apples are protected. John mentioned Timothy Loehmann who killed 12 year old Tamir Rice. He had already been at a another department, killed a 12 year

old and then went to work at another department. There's no reason those sort of things should happen. How do we address that? We have certification standards at the state and federal level, and we link certification standards to the ability for law enforcement officers to get individual liability insurance, just like we do for a lot of other professions. And if you're unable to get that insurance, then you can't get certified to patrol people on the streets.

Clark Neily: I would say just very quickly. It's the kind of question it's very hard to say no. Of course you would want police to be more culturally sensitive than they are in the best of all worlds, but of course we have to deal with the problem of scarcity. And so every training that we require police to undertake takes them away from something else they could have been doing potentially including other kinds of trainings. So I support the idea that we want police to be culturally sensitive and that should certainly be part of their training. But I think we should take a really hard look about whether incidents of unnecessary violence between police and citizens, are those mostly because there was some sort of a cultural misunderstanding or are those mostly because of some defect or some problem in the way we're training police?

For example, to perceive every situation as a potential threat to their safety and to establish tactical control over the scene by insisting that everybody follow their orders immediately and without dissent. My own suspicion is that probably this is what contributes more to the problem of unnecessary violence between police and citizens, not so much a failure of cultural understanding, although certainly that can happen, but the fundamental mindset of an us, them dynamic between police and the people in the communities that they're interacting with. And I think if I had to pick an area for more and better training, it would be deescalation. It would be to stop training police to think of themselves as warriors, and to think of themselves as people who are there to help and serve and truly try to make those communities safer.

Dr. John Pfaff: I guess the one thing I would add, a broader point about the bad apple, good apple discussion. I think one thing worth keeping in mind, is that some of the most anti accountability, harshest, I wouldn't say pro bad apple, I thought I'd put it, but least willing to acknowledge the bad apple problem tend to be the union chiefs. Now, to be fair to the union chiefs are the public face of the department. They're the ones who are supposed to speak to the press, but the other thing to realize is union chiefs get their job usually by a majority vote of the officers. And so these are not just, the ones in New York City are incredibly strident and incredibly anti-reform, anti any sort of accountability and the majority of the patrolmen and the majority of the sergeants are voting for these people to speak for them. Which makes me cautious about ideas that most are, is it generally a

problem of a few bad apples? The cultural challenge is much deeper and it makes me a little more skeptical about it. So, I agree though everything is makes things better, but how far can cultural training go when there's this other deeper culture issue that these seniors voices who are being popularly elected reflect that is concerning to me.

Shiek Pal: Great. Thank you. Andrew Wright.

Andrew Wright: Thank you, Mr. Chairman, and thank all of our panel for their great participation today. Dr. Ray, I was particularly interested in something you mentioned about the no-knock warrants. I know Virginia just got rid of them in 2020, so there probably isn't any data available, but I'm wondering if there is any data anywhere, I know a few states that have been at this a little longer. Is there any positive outcome from having gotten rid of the no-knock warrants?

Dr. Rashawn Ray: So that's a really good question. I guess it depends on what we view as positive. I think one big positive is that we see a decrease in certain types of racial disparities. I think another positive actually becomes that it actually can improve the relationship between the local community and law enforcement because law enforcement isn't just showing up, engaging in certain type of behavior. Qualitatively some research suggests that it actually can lead to building better relationships because now law enforcement, I'm not saying that they weren't working hard before, but now they have to go about their job in a different way to try to potentially gather information to engage in a no-knock warrant. So I think when we start looking at some of the positive impacts, I think the big one is that we see some reductions in racial disparities.

Andrew Wright: Okay. Thank you. That's very helpful. The other thing that everyone mentioned, or I think all of you mentioned was the issue of qualified immunity. Something that's very interesting to me. Dr. Ray, I didn't understand the point about insurance in that circumstance. Could you maybe go over that a little bit more for me, please?

Dr. Rashawn Ray: Yes, sir. So, currently the way that qualified immunity is set up that people oftentimes miss, is that qualified immunity of course, is about civil litigation for the most part, absolving law enforcement and other government officials from being able to be sued financially. The key point is where this money comes from. The money for civil settlements does not come from the police department budgets. The money for civil settlements comes from the general funds budget on top of what has already been allocated for law enforcement. By creating insurance policies for a police department, a part of what will happen there is that that insurance policy will then start to pay for these civil settlements instead of them coming out of the budget. The other thing that these insurance policies will do is they

will also increase accountability, because then you'll be able to link an increase in a premium to an officer's actions, the same way that happens if a person might wreck their vehicle, which is why similar to what Colorado has done, they are combining police department insurance policies with individual officer liability insurance.

What they are saying is that officers are liable up to $25,000 of a settlement and part of what they're trying to encourage and it's piecemealing at this point, but they're aiming to encourage law enforcement to get insurance with the plan to then link the ability for police officers to get individual liability insurance to certification. What this will lead to are bad apples being more likely to be put out. It will also lead to police chiefs being able to do something about these bad apples in many ways that they can't. If we go up to Minneapolis, the current chief was actually over internal affairs when Chauvin got many of his misconduct settlements. He couldn't do much, partly because of the union as we heard from Dr. Pfaff earlier and so hopefully that's explaining it. I'm trying to be succinct here because of time, but if you want to talk about it more, we definitely can.

Andrew Wright: I'd like that. Thank you.

Shiek Pal: Thank you. We've been joined by Angela Ciccolo so I'm going to go to her for a question. Guys, we've got five minutes.

Angela Ciccolo: Hi, thank you, panelists. And I wanted to just discuss briefly the vast differences we have in the Commonwealth. Different communities. Policing looks very different in McClain than it does in Hopewell or Richmond or Norfolk. Some have suggested that police departments be accredited, that there be standards that police officers be licensed and accredited much like you would a university or a charity or a profession, like the legal profession. And that is I think, based and rooted in the expectation that we'd like to see as equal treatment by police officers of all communities and fairness and the basic human dignity that everyone deserves when they have an interaction with law enforcement. I was hoping that you might share with our committee, your thoughts about what accreditation might look like. What would professionalization look like for law enforcement and what kind of standards would be important across communities for all officers in departments?

Dr. Rashawn Ray: I'm going to defer to the other panelists, I've heard them talk about these quite a bit and maybe even Lieutenant Colonel Rizer, if he wanted to chime in, but Clark, I'm pretty sure you want to talk about this.

Clark Neily: Yeah. Just very quickly. I do think there's a lot of promise here. Very clearly there are some officers who are not fit for the job and who have

remained on the job too long. Everybody knows that Derek Chauvin, for example, had more than a dozen misconduct complaints against him. Some of them clearly substantiated. There's no reason at all, why he should have still been wearing a badge and a gun when he murdered George Floyd. Most states actually do have a certification problem, but a I'm sorry, a certification requirement for police, but the problem is that there are many loopholes and exceptions, and they really don't operate as an effective kind of oversight regime to ensure that police who have demonstrated through their on the job conduct, that they're not fit for the vocation are consistently removed. So I think it's an idea with great promise, but that promise has largely not been fulfilled as of right now because we just haven't taken the consistent and uniform approach to police certification that we have with, for example, or at least that we're a lot closer to, with other vocations like law and medicine. So a lot of promise, but unfortunately, still lagging in actual results.

Dr. John Pfaff: And I guess I just add, if we're saying that we haven't gotten to where law is that's troubling because we're law is, is pretty miserable. The whole reason, which is why I don't think licensing adds much beyond all the other things we've talked about. The idea of a self-regulating profession that can control itself. The reason why the Supreme Court has given prosecutors absolute immunity, not qualified, but absolutely, so it's even harder to go after a DA, an assistant DS or a state's attorney for misconduct is because the Supreme Court said with profoundly misguided optimism, we trust the profession to regulate itself, we have our bar committees and they will stand up and do the right thing. And they don't. It is nearly impossible for an ADA to be sanctioned by a bar association even if it's a gross misconduct. When states try to create these commissions, the prosecutor associations do a great job of trying to gut them, New York State's in a giant fight over that right now.

And so the idea of licensure and professional responsibility being the thing that steps in, I'm not sure that's worked great in the legal setting. Prosecutors remain fairly unregulated and, I don't think there's much difference. They have a badge and a gun in a way too. Jails and prisons are a different type of way of basically a badge and a gun. Ad so given sort of the dismal nature of prosecutorial oversight due to licensing and bar associations, doing exactly this, I'm not confident that adding that to policing would provide anything more benefit beyond whatever real meaningful accountability structures you already have in place that we've talked about earlier today, so I'm skeptical as to what that would do.

Angela Ciccolo: As a practicing lawyer though, I could lose my license. I could lose my ability to have a livelihood. I can be suspended. I can be disbarred. There are professions that do hold or have other accountability and so perhaps it's not the profession regulating itself, perhaps there's another method of

regulation or standards that would be suitable. I just think that the current climate of lack of professionalism seems to be something that could be addressed. Not that it's the solution to the vast problems that we're seeing in this field, but it might be a way to create some accountability that has some expectations that could be met across communities because I want to be treated well, whether I'm in McClain or I'm in Hopewell. And I do think that there's a vast difference in the qualifications, the training, the expectations for those officers. And maybe it's up to the legislature to set those higher standards and hold accountability across the Commonwealth. But I really appreciate your comments about the legal profession. Thank you.

Shiek Pal: Thanks Angela. We are actually out of time for this portion of the program so... I'm sorry. We're out of time for this portion. So in lieu of asking my question, what I want to do is I want to make a brief comment that I hope the panelists can reflect upon. And at the end of the public section, if we still have time remaining, I'd like to revisit. And so my comment is a number of you in your presentations and also in response specifically to Lisalyn and Jacob's question about what we saw transpire on January 6th, you raised the notion of implicit bias. And it strikes me particularly in the context of January 6th, but also in many of the other stories on this issue that have dominated the headlines for the past year and a half. The bias is not always implicit. In a lot of these cases, it's actually become explicit, which I think raises an entirely different conception of constitutional protections for first amendment protections and things like that.

And if we have time, what I'd like to revisit with you is that the space between the explicit and the implicit and the ramifications of that in terms of the other comments you've made. But in the meantime, we're now going to transition to the public portion of the hearing. So any members of the public that would like to be heard and to make a statement, please press star three on your telephone, or use the raise hand feature on your computer screen. And Melissa will call on you.

Melissa Wojnaroski: And once again, if you're joining us online, you can go ahead and use the raise hand feature on your computer screen. Or if you're joining us by phone, you can press star three on your telephone keypad to indicate that you would like to make a statement to the committee at this time. If you're having difficulties you can use the chat feature. I do see one hand raised from David Batz. Go ahead, unmute yourself and please go ahead.

David Batz: Thank you, very much. I would like to thank the commission and thank each of the presenters for your contributions and your thoughtful recommendations. For the presenters, given the enormity of the, I'll call it the current situation, some would characterize it as a crisis. What are the recommendations that you would have for ordinary people, people like

me, members of the general public for practical methods that they can engage with their local community to bring about a greater level of accountability and responsibility, and even discussion on these matters within my community. What are the.

PART 3 OF 4 ENDS [01:30:04]

David Batz: Within my community, what are the one, two or three things that I should be doing within my community to bring greater awareness and accountability. Thank you.

Dr. Rashawn Ray: I'll just quickly say that, David, thank you for that important question. That I think that's something that a lot of people want to know. I think the biggest thing is to get involved.

We talked about a lot centered around community oversight boards that have transitioned them from being symbolic to impactful and I think that's one of the main things to do.

I think the other thing is to advance some of the policy oriented solutions that we've discussed around accountability around how we think about restructuring civilian payouts for police misconduct and how we even think about police culture and advancing those with your city council, your county council, your state legislatures, and even your federal representatives to let them know what type of policing you want to see in your neighborhood, in your community.

And that includes shifting from quantitative responses to more qualitative oriented responses that we talked about.

Clark Neily: Washington, D.C. Has an interesting program called the Community Engagement Academy, that one of my former colleagues, John Blanks completed, and this essentially enables you to go out and ultimately do drive alongs with police.

You do some classroom work, essentially you educate yourself about what their jobs involved and you get a police officer view of what that job is like and what some of the situations are that they find themselves in.

And I know not all communities have this, but to some extent there may be formal or informal opportunities to engage with the police and to show them that you're trying to be fair minded, try and understand where they're coming from and trying to get a clearer and accurate understanding of what their job entails so that when you have opinions or when you make recommendations as a citizen, hopefully you'll be perceived as having

more credibility and you will have made the effort to inform yourself what the reality is for the officer on the street.

And I think that that can again enhance your credibility and also improve the quality of the recommendations that you might ultimately make.

So bottom line, besides the things that Dr. Ray said, if you have an opportunity to educate yourself about what the police officer's jobs are like in your community, I think it's a good idea to do it. Doctor Pfaff, anything to add to that?

Dr. John Pfaff: Sorry I was muted there. I was just going to say, I would also add that, Patrick Sharkey, a sociologist at Princeton has argued that one, that invisible contributions to the great crime decline in the 1990s and 2000s were groups in the most high crime neighborhoods working hard to reclaim the neighborhoods in their own, these community groups that reclaim abandoned lots and provide after-school programming that the city wasn't doing.

And they all ran on basically $0, right? They have no funding at all. And I think just contributing what we can to those groups, right? Because if the neighbors are reclaimed their own space, you don't need the police in the first place, but we'd had to pump all our money to cops and nothing to these groups that probably played a really huge role.

There's some things where the police budget is one third of the city budget, can be the policing one quarter, 20%. And I think just helping those groups that are on the ground, doing the work already, right on $0 but can have a real impact and there are in the community already that have that credible messenger of power that outsiders just don't have, I think can be hugely important.

And I think outside of this committee, I think even just the way we talk about things, right, like being very careful the language we use. I think a lot of the violence we see comes from this general view of the dehumanizing way we talk about the people who get caught up in the system, right?

They're perps, they're ex cons, right? They're not people right. They're violent offenders, not people who've done violence. I think just the way we talk about it changes how we think about the people, I'm always using the word people, matter.

And I think it changes the way the people we talk with think about them. And I think it's a small thing, but vote for your DA, vote for your mayor thinking about criminal legal issues, but also just the way we talk about

the thing and the system and the people who are pulled into it I think shapes the way everyone I think views what is okay and what's not.

It's hard to rationalize is shooting when you really think about as a person with a family and not like an ex-con on drugs, you did something bad. Right. And I think that can play a really big role also.

Shiek Pal: Thank you. Do we have other comments from the public on the line?

Melissa Wojnaroski: I do not see any other hands raised at this time.

Shiek Pal: Okay. Well, we still have some time left, so I will take a personal privilege to circle back to the comment that I raised earlier to see if any of the panelists have thoughts or response to the space between implicit and explicit bias and what the implications of that might mean for the other comments that you made today?

Dr. Rashawn Ray: Sure, yes. I'll just quickly say that in a lot of the comments that I was talking about, I was referring to not only implicit bias but also explicit bias and was trying to be clear and know that particularly what we saw on January 6th is oftentimes explicit racial bias.

And we know that white supremacist groups, white nationalists groups, continue to view law enforcement as a space to infiltrate. And there are numerous examples around the country, including in our own backyard that highlight these particular examples.

What's also important to note is that a lot of the research that I've conducted finds that whether or not an officer was exhibiting explicit racial bias or implicit racial bias, oftentimes can lead to the same place, which is one of these incidents that all of us would like to avoid where a person is unarmed, particularly a person of color, a black person who is killed by police.

And that is partly because when we follow the process of police interactions and based on the way that they're trained, explicit and implicit bias can come out in similar ways.

We can think about former Officer Slager with Walter Scott in South Carolina on one hand. And then we can think about other incidents where we might've thought that it was more implicit on the other hand.

So explicit bias is a big deal and that's the reason why addressing that explicit bias when it comes to background and the ways that psychologists are reviewing potential applicants, as well as in advanced technologies

with virtual reality, can not only capture the implicit bias but also the explicit bias.

Clark Neily: Yeah, of course, this is one of the most important questions that we face. And I think, as in so many areas, it's vitally important to be absolutely clear and rigorous on this point.

I'll give you an example, Professor Pfaff pointed out how something like 25% of all crime takes place in 2% of city blocks. If it turns out that the demographics of those blocks where the most violent crime is happening is of a particular ethnicity, then we're going to expect to see a greater police presence there.

And if we see a higher rate of arrest within that area, that is not necessarily the same thing as an implicit bias, it means there are more police in the area and they are more likely to make arrests.

And if there's, again demographically, if most of the people who live in that area happen to be black or brown or some other race, then the fact that we're seeing more arrests in that area is not necessarily evidence of some bias in the system, but neither is it the case that we should simply ignore that.

Obviously that's a problem that needs to be addressed, but we need to be absolutely clear and rigorous with ourselves about why we're seeing that disparity, because there are an unbelievable number of racial disparities in our system.

They are real, they are persistent and in many cases they are invidious. What we have to challenge ourselves to do, I believe, is to be intellectually rigorous about this and to identify the reasons for those disparities and to target our efforts on the ones that are the least justifiable, the most invidious, the ones that engender the most resentment and the greatest feelings of injustice on the part of certain communities.

I think we're not doing a very good job of that now. I think we could be doing a much better job and of course this starts with just being conscious of the problem in the first place.

Dr. John Pfaff: And I suppose I would add that I think, as I think I heard the question, I know there's implicit bias in one hand, there's the more explicit infiltration on the other hand, right? How do you address that ladder infiltration concern, which is a very real one, right.

And I think it does point to the need for much more aggressive screening. I think it also suggests a need to think about ways to automate that

screening also, right. I could be wrong, but I'm pretty sure I remember that one of the people arrested in the January sixth attack was in fact a police officer who was in charge of background checks, right? They infiltrate him, the person who screens out the people who are trying to infiltrate, which is a huge failure, right?

And think about ways to try to remove the human element from it, right? Because if we think it's a serious problem implicitly or explicitly as it stands, right. This is one of those cases where for all the problems algorithms might have, or the humans to me are even less trustworthy right?

Especially given the concerns we have about what's taking place and focusing much more on rigorous investigations of who's coming in. Much more automated, actuarial approaches to screen for problems of racism, and therefore meaning the fact that also this idea, like I said before, you should be very wary about having our primary form of budget cutting being cutting the incoming classes because those are the classes we can screen off the bat.

We should think about other ways and this might require some contract revisions and that's another place to work of how you screen the current officers and figure out how to legally do that, which contracts might make hard, right? And how did we dismiss those who show up late? Sometimes it happens, right?

The guys who go around with Swastika with their sleeves rolled up. Dismiss those, the more subtle cases are harder, right?

And so I think there's our contract issue for that serving officers and then there's an actuarial screening mechanism and the need to preserve inflow for turnover on entry level are probably the two combined ways to go about addressing the infiltration concern as opposed to the implicit bias concern.

Shiek Pal: Thank you. I appreciate that. We have 15 minutes left, so we have time to entertain additional questions from committee members. And again, as a point of personal privilege, I'll go first.

My question, it should be a pretty quick one, it's for Dr. Ray. Dr. Ray, early on in your presentation, you had a slide in which you juxtaposed I believe it was the rates of police killings against the incidents of crime. And to show that there isn't a correlation there, but I noticed that in parts of the graph, the incidents of crime were far above the rates of killing and others it was below.

Are there any lessons in the places where the discrepancies on the right side, where the killings are lower? What are those communities perhaps doing that we can learn from that could be applied in the other communities where the rates of police killings are higher?

Dr. Rashawn Ray: Phenomenal question, Chair. Yeah. I'll be succinct. Yes, there is a pattern. In some of the cities where we see much higher rates of police killings and say lower crime, are actually cities that have overwhelmingly large police budgets.

For example, Oakland, over 40% of its general funds go to law enforcement. That's significantly different than say Washington, D.C. or Atlanta or other cities that are around 25%, Cleveland. So that is one pattern.

The other pattern is that places where we see the violent crime going lower they have engaged, not only oftentimes if those cities had federal oversight, which we can talk about, we haven't talked about that a lot, which creates a lot of change.

But they have also engaged in more innovative responses to enhancing the police community relationship that we've described here. They've thought diligently about mental health. They've included the community when it comes to community oversight and not just included them to be symbolic, but included them to actually have an impact.

So those are some of the key patterns is that it oftentimes starts with funding and from there you can follow a track record to actually see how simply throwing more money, that's the quantitative boots on the ground response, doing that does not lead to a reduction in the outcomes we want, whether that be crime or racial disparities and police killings.

Shiek Pal: Thank you. And I appreciate you also raising the idea of federal oversight. That that is certainly something that we need to spend more time discussing.

Other members of the advisory committee, if you have questions rather than go through the list, I'll just let people chime in.

We've got about 13 minutes left, or if nobody has questions, we can open it up to the panelists to talk about federal oversight since you just raised it.

Ilya Shapiro: Chair Pal, I'll ask a quick question.

Shiek Pal: Please go ahead.

Ilya Shapiro: Just Dr. Ray, you titled your presentation towards a more equitable policing or something along those lines. Is there any difference between equitable that language might raise red flags to some people who aren't already on board? Was there any difference between that equitable framing and what Mr. Neily called effective versus ineffective?

Dr. Rashawn Ray: Not necessarily. I don't think so. I find it fascinating that saying the word equity would raise flags. That's just mind blowing to me. I think we have to start there. That saying the word equity all of a sudden triggers something in people. It's not shocking, but it continues to be-

Ilya Shapiro: I don't want to open the Pandora's box of Critical Race Theory, but it's just people are on board with equality but equity is obviously a controversial term and I'd rather not add even more controversy to police reform discussions that have their own controversies.

Dr. Rashawn Ray: Yeah. Like I said, if saying the word equity is problematic, I think that's problematic in and of itself. We could talk about Critical Race Theory, but we haven't talked about that nor do I think we talked about those core tenants in this session today, so I think we can just save that for another conversation. Maybe me and you can talk sidebar on that because I think it's a distraction.

But I think the key point is that when we start talking about equity and we start talking about effective policing, that shouldn't be something that we should shy away from. I think things being equal and equitable is something all Americans should want.

And if it's something that's problematic for people, I think it speaks to the importance of panels like that we're having today.

Dr. John Pfaff: And I guess I would just add that putting aside the politics of it, right? Equitable policing conveys a sense of addressing disparities in enforcement, effective policing doesn't.

And what people view as the effective goal of policing can be very wide ranging, right. Oftentimes law and order, another term that should be as controversial as is equity apparently is, right. Is it's not really about crime reduction. It's about social control, right?

And so effective policing might not really be about reducing crime, so certain kinds of order, maintenance or a sense of protectiveness, right? Bill Stuntz' point about how when crime started going up in the 60s no one cared in the white suburbs.

It wasn't till Watson, Newark and Detroit, that all of a sudden law and order became a thing, because policing wasn't really about reducing crime, policing was about maintaining this wall between the white suburbs and the racial threat of civil rights unrest in the blacker cities, right?

And so equitable policing gets at the sense of the real issue that we are trying to target. Effective policing, maybe politically more effective, because it's a much more multi-varied term and everyone's buying into their own ideas about it, but it has that risk of it also that to many people, effective policing is not really reducing crime, right?

Effective policing is making sure I feel safer about my kids segregated white school out here and I don't really care about what it takes to keep my suburb feeling safe. And you might get a much different view as to what that's going on, right.

And so I think there is something there. As much, I think that, Mr. Neily and Dr. Ray on the same page when they talk about equitable and effective. At a broader macro level, equitable and effective can have two very different meanings, with political costs embedded on both sides, right?

It's the same thing if you have little progressive prosecutors. Lots of people can buy into that term who don't mean the same thing, is both a weakness of the term because we're all disagreeing about it. But it's a strength because you have a bigger coalition coalescing on a term we're all disagreeing about. We're all dissatisfied with who these progressive DA's are because we all have a different sense of what it means, but we're electing them, right?

And so is it stronger or better politically? That's an interesting question, but I think there is a meaningful political difference in the meaning being equitable and effective for a large portion of the population.

Dr. Rashawn Ray: Yeah. I just want to quickly recenter us too because the key statistic that really guided what I presented today is a very important stat that I think people miss, they gloss over or they don't know.

Black people are 3.5 times more likely than whites to be killed by police when they're not attacking or have a weapon. Who says that? Police officers themselves and their reports. We're not talking about people who have attacks, we aren't talking about people who have a weapon.

Once we address that gap, that is inequitable in order to do something about it, we have to make it equitable. And so if will center and we focus

on that key stat I think it leads to addressing a lot of the other issues that all of us are concerned about.

Shiek Pal: Mr. Neily, did you want to add anything to that question?

Clark Neily: No, I yield my time.

Shiek Pal: Okay. Lisalyn, go ahead.

Lisalyn Jacobs: Yeah. And this is just super quick. So I'm happy to cede the floor if folks want to continue with this present piece, which I think is very important.

I'm just wondering at this moment, if any of you or all of you in fact, have recommendations about particular cities that are engaged in reform in this space and doing particular things well that we should look at as we put together this report?

I found it troubling and horrifying the discussion around the jurisdictions that are now wanting to stack civilian boards with all law enforcement. But I think I do understand that there are other places in the universe that are trying to undertake this reform work with seriousness and rigor and that some of them are getting it right, Newark comes up frequently.

But I would like if any of you have some succinct suggestions that X jurisdiction is doing Y thing correct. I think those would be things that would be useful for our inquiry.

Dr. Rashawn Ray: I'm just really, oh, go ahead, John.

Dr. John Pfaff: I see one small example. I think in terms of moving away from policing is Denver just adopted this Star Program and also thought about how to fund it right, so Denver's funding itself with its own tax which [inaudible 01:50:48] is pretty purple. That's not a bad idea to insulate yourself from the state budgets, right.

And so I think there's cahoots in wherever, I'm the terrible New Yorker [crosstalk 01:50:58].

Lisalyn Jacobs: Oregon. I believe it's Oregon.

Dr. John Pfaff: It's Oregon, but it's a smaller town in Oregon. It's not like Salem, it's something slightly smaller. And I'm a horrible person for being vague place over there. But I think there are places but there's not a lot, right.

And much of the hype about the big changes have been fairly oversold. Very few cities have actually cut police budgets in any meaningful way and there's very little reallocation that that's taking place.

So no, the only one that really, really jumps to mind, I'm sure there are others, but Denver is at least one place that's thought about how to start shifting things away. It's a very small program. It's still a very piloted, but it seems to be fairly successful so far.

Shiek Pal: Dr. Pfaff, could you just take 30 seconds and give us an overview of what that program is for those that aren't familiar?

Dr. John Pfaff: Yeah. The basic idea is that for certain kinds of non-violent mental health kinds of issues, when you call, I'm not sure if you call 911 or a different number, but they don't send the cops in the cop car with the guns and the badge.

They send a social worker in a van and perhaps a medical health who are there to assist you directly. And so you don't end up with that immediate escalation that can take place when people with guns and trying to take control, confront someone with a mental health problem that that can be-

Shiek Pal: Okay. Thank you.

Dr. John Pfaff: Yeah.

Shiek Pal: I didn't mean to cut off anyone else that wanted to answer that question.

Dr. Rashawn Ray: I'll just quickly say ditto on that point about Denver, I think on community oversight is Nashville and then I think when it comes to qualified immunity, there starting to be several examples, but Colorado again is the main one along with New Mexico.

Dr. John Pfaff: And New York City. We did it ourselves too.

Dr. Rashawn Ray And New York. New York is trying to figure out what they're going to do with the civilian settlements though. That's the key issue.

Dr. John Pfaff: Yeah.

Clark Neily: In terms of places to look at it, we look at Camden, New Jersey, that that comes up a lot. My friend Chief Scott Thompson who recently retired really turned that department around. He did it through a variety of mechanisms, but he basically managed to instill a much different culture within that department.

He was given some unusual powers in order to be able to do that and that probably can't be replicated in all departments. But I would say that a very clear policy to focus on is limiting the different kinds of things that police unions can bargain for.

If you're going to have a police union, it's perfectly legitimate for them to bargain over things like salary and hours and to a certain extent, conditions of employment, but they absolutely should not be bargaining over things like the extent of a Citizen Review Board or the ability to override a police chief who believes that a particular officer needs to be separated from the force.

I think that probably is among the most important things that we can focus on in ensuring that both the community and the leadership within a police department has the ability to eliminate the proverbial bad apples once they've been identified. And I think that's among the biggest problems that we have in policing right now.

Dr. John Pfaff: And I would just add about Newark. Newark is also a good reminder we have to think very carefully about what success looks like. Because one criticism of Newark is that since they started to these changes, complaints against police actually went up as opposed to what they were before.

But that actually might be a metric of success, not failure, right? That before why complain, you're just going to draw more negative attention. Nothing's going to change and now you got a target on your back.

Now you can complain, right? Just like when unemployment goes up, means the economy is getting better sometimes, right? Because you are entering the labor force to look for jobs, right? I think when we try to measure success, it's very easy to not think carefully about exactly what these numbers tell us and failures feels like successes and success can look like failure, right?

Just like when police engage in abuse, sometimes people stop calling in, so crime goes down when the police are violent. Well, no, right, they just stopped calling the police when the police are violent.

And so I think when we think about success and failure, right, you have to be very careful how we interpret numbers. Because success can look like failure. If it encourages more complaints and encourages more engagement, that's great but might look bad if we're not careful.

Shiek Pal: Just before we wrap up Mr. Neily, I may have missed it. Are you able to give us any specific cities or jurisdictions that is going in the right direction on the union question?

Clark Neily: No. I'm working on my paper about that right now so I don't want to weigh in prematurely, but I'll certainly make that available to the committee once it's done.

Shiek Pal: Appreciate that. We are just about at the end of our time and so what I'd like to do is on behalf of the full advisory committee, I'd like to extend my deep appreciation to all of you for your time today, for your preparations and for your very thoughtful comments and presentations.

I want to thank all the panelists and the members of the public that attended. The next meeting of this committee will take place on Wednesday, August 18th, from 12 to 2:00 PM Eastern, please contact the regional programs unit for registration information, which will be available, it's on the screen right now.

The record for today's meeting will remain open for the duration of our study, so if anyone, the panelists, the members of the public that are participating today, if anyone would like to submit written comments, please send them to mwojnaroski@uscccr.gov. Also on the screen right now.

If you provided your email upon joining this meeting, we will follow up with you to provide the minutes and the transcript from this meeting and a link to access those records.

We will also notify everyone when the committee is hosting its next meeting as it prepares its report and recommendations for submission to the commission.

Again, thank you to all of our panelists. Thank you to my fellow committee members and have a good afternoon. We're adjourned.

PART 4 OF 4 ENDS [01:56:47]