

Transcription details:

Date: 17-Aug-2019
Input sound file: DPS _ AG Working Group_ Hearing on Investigation_ Oversight and Accountability (Part 3 of 6).mp3

Transcription results:

S1: 00:00 There's nothing wrong with waiting things out. Right? But there's other things that I think that are emerging. And I remember many conversations that I've had over the course of many years with police officers, and I think some of those things about changing the way that we train maybe are possible now. And so the work that the post-board and you that I see as leaders in law enforcement, I think that's really important, and I just want to make one more thing really clear. Our public has a right to be a part of those discussions about what the use-of-force training should look like and what are our expectations. So please allow them to be a part of that process. And I know that in Ramsey County - because I'm familiar with it - people in St. Paul and [inaudible] have done that, and they've been good processes. I think there's more legitimacy ultimately in those use-of-force policies. And then the final thing I just want to leave you with, and it's how I began. But I would encourage all of you, especially those who have power and those who are elected officials, to say it out loud, to keep saying it that what we are doing here today that the work of this committee, what we want to do is to reduce the numbers of fatalities for law enforcement, and we want to reduce the number of people killed by police. We can do that. But we just have to say that out loud more. Thank you very much.

S2: 01:31 And finally, to address [inaudible], the first assistant of the [inaudible].

S3: 01:39 Thank you, sir. Good afternoon, members of the committee and the working group, and I want to truly thank all of you for your service on the committee, and I also want to thank you for inviting us from the US Attorney's Office because we obviously, as part of the Department of Justice, play a role in these very important matters. I also want to thank the attorney general and Commissioner Harrington for your leadership on this issue. It's a vital issue for law enforcement and the public to work out, and again, we're delighted to be here and hopefully offer something to this working group as you continue to take testimony and continue to provide leadership to the state of Minnesota on this.

S3: 02:19 As the commissioner stated, my name is Anders Folk and I'm the first assistant United States attorney for the District of Minnesota. I oversee all of the functional components of our office which is our criminal division, our civil division, our administrative and appellate divisions. I have experience both as a federal prosecutor in the past, as well as a criminal defense lawyer, as well as as a United States Marine Corps judge advocate and so I have had the good fortune over my career to be on both sides of the criminal justice aisle, and I've seen the issues that both sides of the aisle present. There are so many reasons that this working group is important. And as we sit here today and acknowledge the recent five-year anniversary of the death of Michael Brown as well as so many of the other poignant and tragic moments involving Oscar Grant, Laquan McDonald, Philando Castile, and so many others, the need for dialogue, the need for education, the need for empathy between and among law enforcement, between and among law enforcement and the communities that they serve, that need couldn't be more clear. And that's a need that extends all the way from our state and local law enforcement to our federal law enforcement to our

elected officials, and again, that's why I'm so grateful to be here today and so grateful to all the members of this working group that you've taken time out of your lives to address this issue head-on and in a transparent way. And as I think County Attorney Choi mentioned, that transparent way sometimes is uncomfortable, and I again think it's important for all of us as leaders in the community to take on that transparency even when it is uncomfortable. So, thank you for that. Let me give you a little bit of background on the US Attorney's Office because I don't think it's necessarily intuitive to everybody, in terms of how it is that the Department of Justice always fits into a criminal investigation that could involve a use-of-force and a deadly use-of-force by law enforcement. So, the US Attorneys' offices are a part of the United States Department of Justice. There are 93 US attorneys that represent 94 districts across the United States and all of the territories that the United States has. For example, Virgin Islands, Puerto Rico, Guam, they all have a US attorney that's responsible for those territories, as well as our states. In Minnesota, your US attorney is Erica MacDonald. She was appointed and has been in the role for over a year. She is, as US Attorney for the state and district of Minnesota, the chief federal law enforcement officer for Minnesota. So, our office works in conjunction with all of our federal law enforcement partners, the FBI, the ATF, the Postal Inspectors, as well as all of our state and local law enforcement partners, whose work at times brings them into the orbit of federal criminal law. While it's not so important for your work here today, just so you understand, we also represent the federal governments' interests in civil litigations that in some instances involve civil rights and other instances may involve defending federal agencies. But our mandate is centrally to represent the interest of the US government in all matters, criminal and civil, that have some nexus to the state of Minnesota, what we call the federal district of Minnesota. Our office has wide discretion to utilize and prioritize our resources as we believe most appropriate for the state and district of Minnesota, and so the cases you see coming out of our office may look very different than some of the federal cases that are brought for example, in Iowa, in New York City, in San Francisco. However, we all operate under the same federal rules and the same federal laws. Our casework is broad, and it varies considerably. We are combating violent crime. We are combating gun crime. We are combating transnational narcotics organizations, national security, sex offenses against children, child pornography. That's all part of our criminal prosecution portfolio. Importantly, and for purposes of today's discussion, part of it is also civil rights violations, and federal law enforcement, and specifically the FBI, is tasked with investigating instances where there may be actions by a state, local, or federal law enforcement officer that violate the civil rights of a citizen. And specifically, for purposes of today's conversations, that can involve deadly force that's used by law enforcement. The federal statutes that we have available to us, for purposes of our investigations and prosecutions under federal law, are different than what you have available under state law, and so it's very common that when there's a shooting, an instance involving deadly force by a local law enforcement, by a police officer, that the counties attorneys' offices will be deeply involved, that the BCA will be deeply involved. But then at some level, there may also be involvement from the federal government, as we look at our federal crimes that could be prosecuted. But the crimes we're able to investigate are significantly narrower and let me just explain that in a minute. At a high level though, we are only looking at whether or not that law enforcement officer violated an individual's civil rights, more on that in a minute. Before, though, we are able to bring charges, there's kind of two standards that we apply to every single case regardless of the subject matter, and I think attorney Freeman referred to this a minute ago, but I also want to orient you to this because I think it's important to understand how a federal prosecutor approaches an investigation and a charging decision in these types of cases. First of all, we are

governed by the Department of Justice's Justice Manual. It's on the internet, you can go find it, it's a few hundred pages long, and it basically provides in black and white all the instructions that detail how, as a federal prosecutor, my office and I are required to operate. Those principles require federal prosecutors to meet two standards in order to seek what we call an indictment, but it's just essentially a criminal charge. First, we have to be convinced that the defendant that we are investigating, or the potential defendant, committed a federal crime. And second, we have to conclude that we would be likely to prevail at a trial. And we, like our state prosecutors, have to prove at trials beyond a reasonable doubt. So together, if you take those two standards in any given case, but in particular in a case involving a civil rights violation, we have to be convinced both that a federal crime has occurred and that it can be proven beyond a reasonable doubt at trial. And if we can't convince ourselves of that as a result of our investigation, we will not bring a case.

S3: 08:57

Now, in most cases involving violations of civil rights or potential violations of civil rights, our investigation through the FBI will include a thorough review of physical forensic and potential testimonial evidence. And we will often use that physical and forensic evidence as a way to measure the credibility of the witnesses that we're going to inevitably interview throughout the course of a law enforcement investigation. We also utilize a federal grand jury as part of our fact-finding process. Unlike our state court and county prosecutors, we don't have any ability to bring charges without going to a grand jury. No felony charge, no felony indictment can issue in the federal system without a grand jury finding probable cause that a crime was committed by the individual who's being investigated. That is all done in secret, pursuant again to federal rules and federal law. With all that as background, let me just briefly turn to the federal statutes that address police use of deadly force. Title 18, United States Code, sections 241 and 242, prohibit law enforcement officers from violating the civil rights of any members of the public. It is a violation of those federal laws for one or more persons acting under the color of law to willfully deprive or conspire to deprive another person of any right protected by the Constitution of the United States. And to prove those violations, to prove a violation of section 242, there's four elements that a federal prosecutor has to prove beyond a reasonable doubt: first, that the defendant, and in this case a law enforcement officer, was acting under the color of law; second, that he or she deprived that victim of a right protected by the Constitution; third, that the officer acted willfully; and fourth, that this deprivation resulted in bodily injury and/or death. Without those four elements proven beyond a reasonable doubt to a jury, we cannot achieve a conviction. The phrase in our law-- or the phrase in this statute, under color of law, means that the person who's doing an act is using power given to him or her by a governmental agency whether it's a state, local, or national agency, so any of our state law enforcement officers fall into that category. And the law enforcement officer can act under color of law, even if they exceed his or her rightful power. Now, the types of law enforcement misconduct that are covered by Title 18 section 242 includes excessive force, deadly force, sexual assaults, intentional false arrests, theft, if you're fabricating evidence. Almost any kind of behavior can fall into that category, but those four elements that I discussed a moment ago need to be met regardless of the type of investigation or violation you're seeking. Enforcement of these civil rights-- or enforcement of a violation of this civil right law, however, and importantly, does not require that any racial, religious, or other discriminatory motive exists at the time the crime was committed. It is simply whether or not that use of force, as I discussed, violated the constitutional rights of the victim.

S3: 11:59

Put simply a federal prosecutor has to establish, beyond a reasonable doubt, that a law enforcement officer acted willfully to deprive an individual of a constitutional

right. And the way I often think about it and talk to people about it is an officer knows what he or she is doing is wrong, but does it anyway. It's a high legal standard. It requires proof that an officer acted with a specific intent to do something that the law prohibits. It's not enough to show a mistake, to show negligence, to show an accident or even bad judgment. Additionally, when we take these cases to a jury, the jury has to look at the evidence through the officer's observations at the time they're on the scene. We do not allow our fact finders to look at the evidence with the benefit of hindsight. They are instructed to review the evidence through the eyes of the officer as it's happening. And, again, as you can imagine, this creates a high bar for us to prove a civil rights violation when it relates to use of force by law enforcement officers. Jurors are often asked to interpret situations that law enforcement officers face involving split-second judgments in volatile and unpredictable environments. It is a high standard of proof for us to prove a civil rights violation. We also have some civil enforcement tools that I will save for our written testimony, but we do have other abilities that we can help provide federal law to pursue violations of civil rights. And these involve, at a very high level, pattern and practice investigations of law enforcement organizations if we believe there's some type of pattern or practice of constitutional rights being violated by that department. Any complaint, whether it's a civil or criminal one, that involves a potential violation of an individual's civil rights, is taken extremely importantly, is taken seriously by our office and by the Department of Justice. And just to give you a brief understanding of how they are investigated, they're investigated by the FBI and then they will either be investigated by your local US Attorney's Office alone, by the US Attorney's Office acting in conjunction with the Federal Department of Justice Office of Civil Rights, and then, in certain instances, the Civil Rights Division of the Department of Justice will investigate independently. And that decision is made on a case by case basis depending on the type of case, the particular facts in that case, and other particular equities that may exist to include concerns about a perception of a potential conflict depending on what law enforcement agency is being investigated.

S3: 14:37

Over the past few years, just to give you an example of how these different potential scenarios have played out with cases involving civil rights violations, there is currently a case pending against a St. Paul police officer in federal court for a violation of deprivation of rights under color of law, civil rights violation for, essentially, misuse of force. That particular case, investigated by the FBI, charged out and the prosecutors running that investigation are out of our Washington DC office of the Department of Civil Rights. In the past, we've indicted an officer, Officer Griffin, from the Minneapolis Police Department. That was a prosecution, again, for a violation of civil rights based on excessive use of force. And in that case, our office prosecuted that independently, without the Department of Justice Office of Civil Rights involved. And a third example of how we often participate in these is the Jamar Clark killing. And in that particular case, it was not prosecuted by our office. However, one of our prosecutors was essentially deputized to join the prosecution team at the county level and he worked on that case alongside his colleagues from the Ramsey County Attorney's Office. With that, again, I want to thank the Working Group for its work here today, for the opportunity to appear in front of you, for all the hard work you're going to do in exploring this incredibly important and timely issue, and I welcome any questions that you may have. Thank you.

S2: 16:08

[inaudible] The Working Group.

S4: 16:11

I've got a couple questions.

S2: 16:12

Okay. And then Brian [crosstalk].

S5: 16:16 Kind of questions all the way around. But I'll start with the Assistant US Attorney?

S6: 16:23 Yep. Perfect.

S5: 16:24 Special Assistant to the US Attorney.

S6: 16:25 Assistant US Attorney's perfect.

S5: 16:26 Okay. Couple questions. And I know that this is likely some type of codified process within your federal practices, but what public benefit would there be to review a deprivation of an individual rights through the eyes of the officer who conducted the act? What public benefit would it be to review that through that type of a standard of review?

S3: 17:10 So I don't know that I can speak to the public benefit. But I can tell you that the jury instructions that require the fact finders to essentially review the evidence in the way I'm describing is based on a Supreme Court decision and then cases that have interpreted that Supreme Court decision. The, I think, most important case, or seminal case, that sets forth that standard of review is Graham versus Connor and that's frequently the case that's referred to when we talk about what the law requires. So it's not so much a Department of Justice specific issue, but it's how the Supreme Court has interpreted the law in this area as it relates to civil rights violations. I can't really answer your question as to the public's benefit, but this is how the legal standard's essentially been [crosstalk]--

S5: 18:00 So that's an instruction that the court would give to the jury?

S3: 18:05 Right. That's essentially how the court has interpreted the Constitution in these civil rights violation cases.

S5: 18:13 Yeah. And so the second question that I had, it sounds to me as though-- was there a final outcome with the Clark case from your office, specifically?

S3: 18:27 There were no charges that followed from our office if that's your question. That's correct.

S5: 18:34 So it sounds like there potentially could still be a final-- has there been a final designation for the case? A final report issued? Has anything final been rendered from your office, specifically in the Clark case?

S3: 18:53 The best way I can answer that is I believe the victim's family has had conversations with the prior US attorney and with the Department of Justice who were involved in that case and I don't think there's anything I can add to that at this point.

S7: 19:12 Maybe I can help a little bit. The United States Attorney at the time, after discussion with Justice, decided they could not go forward. They lacked the evidence to go forward.

S3: 19:26 Yeah. And we don't tend to issue press releases or other kinds of public statements that we've reached that conclusion, but that's exactly right.

S7: 19:36 That's what I thought [inaudible].

S5: 19:38 And then I had a question of both Freeman and Choi. County Attorneys Freeman and Choi. It sounds as though you all have had discussion among yourselves about the investigative arm of these types of incidents. I just wanted I just want you to speak just a little clearer in terms of what your specific recommendations would be specifically from investigative and even a charging aspect in the incident that we have in the officer-involved shooting. Do you have specific recommendations for this body?

- S1: 20:24 Let me go first.
- S3: 20:25 Sure. You go ahead.
- S1: 20:26 So, I think just to make it very clear, what I'm suggesting is that I am open to the discussion if some other entity would be created by law that would ultimately make the prosecutorial decision. I think included in that is also a conversation about what powers of authority you might have. They could be in charge of the investigation. There's so many nuances to that. So, I'm saying that I'm very open to having that discussion because I think what we need to ensure is legitimacy of people believing that when-- and somebody undertakes an investigation that it's being done independently, fairly, ethically and that the prosecutor, the same thing. And so I know that we've had many adjustments to kind of our current paradigm. For instance, a long time ago, the St. Paul Police Department used to investigate their own officer-involved shootings. Now the BCA does. Perhaps there's another model after that. I don't know. Ultimately, these things would have to be established by law. So, I think these are at the table here, our stakeholders and I'd be very open to having those conversations to talk about the pros and the cons of all that but it's a much nuanced and deeper conversation that I think if you wanted to specifically call that question, I think a lot of people would have a thought about advice for this committee.
- S7: 22:24 Let me separate between investigative and prosecutorial. Just like in St. Paul in Minneapolis years ago used to investigate their own. Some of us felt that was wrong. Chief Rando felt it was wrong. And they do no longer investigate their own police officer in shooting cases. [inaudible] goes to the BCA and that's a separate independent agency. And as a person who's been a critic of the BCA, I'd like to say that my criticism, they've made changes in the things that I was criticizing and I believe the BCA does a fine job and they certainly are doing in the last complete case by office and the present case. And I say that without hesitation. He wouldn't have gotten that from me two years ago. They've really come back. Then there's a whole question who prosecutes. Under Minnesota law, the elected county attorney in the jurisdiction where the crime was committed has jurisdiction. The attorney general can't even come in unless we asked him or her to come in. We get to do that. Now, we often have conflict of interest. I took a case from Mr. Choi, one of the priest sex cases between John new the priest from high school. He doesn't have to justify his conflict. If he says he feels he has a conflict and he wants somebody, I took it. The same time, Mr. Choi just took a police shooting case from the Washington County attorney and we have worked out an informal handling when the prosecutor, themselves, believe that they have a conflict of interest and they send the case out and I do it as well. Now, the bigger question is, some folks feel-- and in my case, if I knew and had worked directly with the police officer who had done the shooting, I would not allow my office, not just me, but my office to prosecute the case. Okay. I would seek someone out. I didn't know of Seringenberg or officer [inaudible]. I didn't know the officers in the Blevins case. I don't know the officers in the most recent-- we have as police department has 850 sworn officers, and the chief wants more. I don't know those people because I don't work-- if we did, it'd been somebody who'd been assigned to our office for a period of time. We would seek a conflict and ask one of our sisters or brothers to take it.
- S7: 24:47 But there are some people who feel that any person-- I can't prosecute any case in Minneapolis police because I work with the Minneapolis police and other issues. That it would be cleaner and neater to have a different prosecutor to do that and what I've said in conversation with John and a number of other including brother Ruben from St. Louis County about whether or not we would be willing to consider a change in state statute about the jurisdiction of that. And I'm willing to have that conversation.

It's been sort of done in New York, but it's sort of hasn't really been done. And I don't think anybody else has done it before. And since you provide me an opportunity, let me just state the challenge, okay. We had today here earlier, two of my most senior people who prosecute these cases. They present them to me. I make the decision to charge it-- they try the case. Aimee Swayze and Patrick Lofton were in the courtroom and they charged and convicted Mohammed Nur. And they are experts. They spend a tremendous amount of time understanding that. The attorney general would have to hire such experts. And who knows how many cases they would get. It's fundamentally wouldn't be very fair for me to say, "Hi, John. You get all my police cases," because even if I got all of his, it wouldn't be even. And it's kind of unfair. So I think we're willing to talk about that if we think people think it's important to talk about which is something I couldn't say of all my colleagues two years ago or even me.

S8: 26:24

[inaudible].

S2: 26:27

Thank you gentlemen for sticking around and having to endure some of the things that people said. I thought that was wrong. But I appreciate that you're still here. Correct me, both Ramsey County and [inaudible] County are not using grand juries on police shootings? Correct.

S1: 26:47

So, let me clarify or let me state what Ramsey's position is. So, for the most part, in police-involved shooting in my jurisdiction in Ramsey County I have committed to my public that moving forward from the moment that I made the decision in the Philando Castile case that I would be making that decision. But when I made that announcement, the record is very clear that I also said, "That I would use the grand jury in such situations where there are investigative reasons to do so because through a grand jury, you can supplement, enhance, and obtain information and evidence that perhaps the BCA was unable to obtain just through their powers or whatever it might be." Also two, I do believe there are instances where it may be public that benefit to the public would be very great. So just recently, we had a case in Washington County that we handled on a conflict based on at the end of the day, I came to the conclusion that the legitimacy of that decision would be better for Washington County if it came from the people of Washington County as opposed to the elected Ramsey County attorney.

S7: 28:19

I will use the grand jury if I must for investigative purpose, including subpoenaing people who will not go operate. I will not use the grand jury for adjudicative purposes. They will not decide whether a police officer should be charged or not. I will make that decision.

S2: 28:37

So, from a due process standpoint, why is a police officer being treated from other individuals under equal protection?

S7: 28:46

We don't use the grand jury at all except for the nuances of state law that if a person is looking for life-without-parole sentence. In the most serious cases or first-degree murder, you have to use a grand jury. Otherwise, it's totally within our discretion. We normally never in the past used grand juries for if a civilian shot someone, unless it was first-degree murder, and we'd have to do that with police officers, too. But if it was second-degree murder, we wouldn't use a grand jury for a civilian, but we would for a police officer. And the reason we did that was we felt the decision by 23 grand jurors would be respected more than the decision of one elected prosecutor. Times have changed. The problem with the grand jury is not that the people don't know how to make a decision. But nobody knows what goes on there except us and that's not good for transparency reasons. And it's really lousy for accountability reasons because nobody knows who's on the grand jury. People know who made the decision

in Clark and Mohamed Noor, and that's part of my job. And I have to stand there and take that.

S3: 29:57

Okay. Can I add something to that, too? And I think that's another thing that this committee should put on the table. Whether or not there are rules and statutes that govern a grand jury that should be changed if that's the better process. Because I believe that the reasons for a grand jury never really contemplated a situation involving district attorneys or prosecutors utilizing them for decision-making-- I think they were intended for different things. And so, they're just antiquated provisions and the statute and the law that you might want to think about as well.

S2: 30:40

Thank you.

S6: 30:45

Thank you. Thank you for your time.

S2: 30:45

Thank you, Mr. Chairman.

S6: 30:47

To the prosecutors. I know you belong to associations. 87 sheriffs belong to their association. Auditor-treasurers as well as county attorneys. Have you had this discussion with the county attorneys with regards to possibly changing the law to grant, I'm assuming, the attorney general the power to do the prosecution of all law enforcement? Or am I misreading you guys?

S7: 31:17

Mr. Chairman and Senator Ingebrigtsen. And we have not had formal discussions in meetings. I have had informal discussions with a number of my colleagues. Some people are more interested than not. I don't anticipate that the county attorney association would consider a formal position. What I've tried to do is-- let me step back. I became convinced that having the grand jury make the adjudicative decision about whether to charge a police officer or not was wrong for the reasons I've shared with you. I've talked a lot with my colleagues about that because we all have all 87 of us have a right to make our own decisions. Some people agreed with me; some people didn't. But they had a right to do what they did, and I have a right to do what I do. And some braggadocio enough to say that a number of my colleagues have followed my lead in the last couple of years and I think that's the direction that's occurring across the country. On this issue, [Bill?], I think it's going to be hard because different people feel different ways. But the reason I raise it here-- John actually raised it and we talked about it because we think on the table for this commission if we're going to come here in totally good faith, in discussion putting everything on the table which I think we should, we ought to bring this here. Now I'm not here as a representative of the MCAA here. And I'm not going to spend my time trying to get a vote. I guess if you all came out, that something was important to you. I have an obligation to do that, but right now I think this is a legislative hearing so you're not going to pass a law right on me. But I think we deserve to talk about it. I want to talk about all of these important things.

S9: 33:10

And just a follow-up if I could. I think that's a good idea to bring it forward. There's nothing wrong with that. But like you had said earlier about knowing your own jurisdiction, being the sheriff for as many years as I was, I made my decisions and part of my decisions was that I would go to a neighboring county if there was a problem with the deputy or if there's a problem with any kind of a conflict which could interfere with my office. But I knew that jurisdiction. And my only fear for what I talked about there, the possibility of having just one centrally-located prosecutor for those types of cases would be I think quite problematic. I think it would take away the local function that you and sheriffs and other elected officials are elected for, so. But yes, you're right. It's good to bring the discussion to the table and willing to listen.

S4: 34:11

Thank you, sir.

- S2: 34:11 Thank you for being here. So when law enforcement is called to the scene, obviously there's a duty to investigate allegations of criminal conduct and be independent investigators which it's referred for either criminal prosecution or not depending on what's found. When law enforcement is called to be independent investigators of the facts, officers do and should include exculpatory evidence in the investigation of their cases. Currently, the BCA isn't officially affiliated with any law enforcement agency in the state. You've referenced the possibility of something be included under the attorney general's office for investigating it. Can you explain how having a prosecutorial agency directing an investigation is truly in the interest of justice as opposed to independent fact-finding referring appropriately?
- S7: 34:56 Mr. Chairman, Chief, I do that based on my experiences and the cases in my office, okay. We work very hard collaboratively with Minneapolis police on a case it's not an officer-involved shooting case. What we should do and how we should do it. And we have a good enough relationship that once every three or four years, I have to call the chief and say, "Chief, we really want to do this." And chief works it out down his chain of command. We figure out how to do that. But an officer-involved shooting cases, they are so wrought with potential difficulties and because we have to do everything, we need a decision-maker. We can't go to a judge and say, "Hey, judge, the BCA doesn't want to do this. But we want to do that. You make up your mind." We think that we should do that because we have to carry the case in trial. Let me just say that may not be necessary. It may be unnecessary one time, and it's not necessary today. We haven't had that kind of difficult discussion with the BCA over the last two cases and I hope we don't. But I put it there because we need to get that worked out, and if the conclusion of the committee is, no you all don't think it's a good idea, okay, it's not a good idea. And the next case, I mean we'd like to expedite our process of investigation and making a charging decision in police-involved shooting cases if at all possible, community wants it. I don't want the have to be fighting over what we think needs to be done, and we have to do everything, in my view, in these kind of cases, so the public will respect us.
- S3: 36:40 Can I respond to that, too? I think the thing that you bring up is a really important one. I think if there's a value with the current system that we have today, is that the fact finder, the investigator is independent of the prosecutor. I mean I think in concept and in theory, that's a good thing. It really is. I've seen it in other jurisdictions where that independence isn't necessarily there, so I think if we're going to make any change, we want to figure out a way to preserve some of that because there needs to be that check. But at the same time, and I want to be absolutely clear because I think some of the frustrations that I've had, if the prosecutor says, "I need this information." okay, the prosecutor's the one that's going to make the decision and stand up to the public and say, this is a justified shooting or not. I mean, you can push back and say, "Why do we need to do that? It seems like it's a waste of my time or resources." or "I feel like that's unfair." There should be space to have those conversations and there should be mechanisms by which the investigative agency should be able to push back. But at the end of the day, the prosecutor has to have the final call and they have to say, "I need that information whether you think it's a stupid idea or not. I need it." and it has to be done. Otherwise, this whole thing falls apart in terms of, and what are we trying to do, we're trying to get to the truth, and that's what ultimately, we need to get to.
- S5: 38:12 One more question and then we're going to recess for about five minutes so we can get set up for the last [inaudible].

S2: 38:20 Attorney Freeman correct me if I'm wrong, you said as far as video release, no longer than 45 days. Is that correct? Is that kind of your stance?

S7: 38:28 Yes, sir.

S2: 38:29 How about when deciding whether or not a case is going to be charged? In the instance where you released the video but haven't made a decision on whether or not you're going to charge the case, do you think that is appropriate?

S7: 38:43 I'm sorry, restate it again, I'm...

S2: 38:45 If you say that within 45 days a video should be released, does that mean if you were to release video, do you already have a decision made on the case, or are you saying that you would release video even though you haven't made a decision on a case?

S7: 39:04 Well, first off, that's a really good question and I'm glad you gave me a chance to do that. First off, the video is in the hands of the police agency that's doing the investigation. That means in the cases with, let me just say, Minneapolis and BCA, BCA has the video, okay, and we don't want that released until the initial interviews, at least the initial interviews of everyone at the scene is conducted. We don't want-- because it may impact their testimony and what they recall, and I won't go through the science, but I think it's pretty solid. What we're trying to do is make sure the investigators investigate those people first, if at all possible. Let's get it done and let's get the video out because people want to see with the video. Sometimes the video is very clear. The police officer shoots somebody and the video from two body-worn cameras shows someone else with a gun pointing it directly directly to the officers. Okay? That's much clearer. Other times, supposedly, there's a gun and no one can see it in the videos. But we've got to get our basic investigation done first. Frankly, in the old days, we would take our time. We didn't hurry as much. It wasn't a sense of urgency. The public won't accept that, and I don't either anymore. Now, the California law of 45 days is longer than - [Well?], didn't Allison talk about 10 days? That's too quick for me. Because in some cases, we release it within 10 days. Okay? And that's fine. In California law, it's 45 days. And if you have to go beyond that, there's court proceedings to extend it. Let me make one other point very clear. The decision to release, that belongs to the investigative agency. Not with the [county?] [inaudible], not with the mayor of Minneapolis, but with the investigative agency. And I don't have to tell you we've had that problem recently. And all due respect to Mayor Frey, he sat on it because we needed to finish our work. I commend him, but I could see in another case, "My God, we got to release it." And the problem with that is he has the chief of police who he appoints, "Release it." And that ain't fair. So, we think the video belongs to the investigative agency. And they hold it. And let's get it done by 45 days ideally Okay?

S10: 41:28 I'd like to just ask a follow-up to this line of questioning, which is [around?] the release of the video footage out to community. And it appears, from my point of view, that it has been inconsistent. In the case of Thurman Blevins, it was released very quickly. I think some of the community concern is that when it appears to be in favor of the police officers, it's released more quickly than it is if it is not. And so how can the community have confidence because I'm not really hearing-- I heard that there's a window. It feels really subjective. So what needs to be changed or understood so that the community can better understand when the videos are released?

S9: 42:13 Good question. I think the videos-- the standard that needs to be done is the videos need to be released as soon as the key investigation around what the video shows has been completed. Okay? Just talk about Blevins then. In the Blevins case, all of the

witnesses that could comment upon what happened on the video have been interviewed fully prior to the video being released. If a couple of those witnesses had not been done, I would have argued strongly with the BCA not to release it. But as soon as they had completed, because the citizens wanted to know what's on it, we ought to release that. And fundamentally, we're changing. We used to hold it. Okay? That's really [inaudible]. We'd hold it and look at it and maybe somebody new would come. Because there wasn't the interest. Now we understand the interest and it makes no difference about whether I'm going to charge the case or not charge the case. When we're done with the video and the investigation surrounding what the video shows, I think we have an obligation to release that. And that's what I was trying to say in my points.

S4: 43:30

[inaudible].

S6: 43:33

[inaudible], if you're so willing, I wanted to just say one piece on this body-worn camera video release. Whether it's 10 days or 45 days, one of the things that we've certainly seen in Minneapolis is that you still have to do [inaudible] because when that video is released to the public, it can create trauma. And so it's not just the matter of, for me, when it's being said, "[inaudible], we're going to go ahead and release it on Friday and it's Monday." We are trying to galvanize community and get our stakeholders and our community leaders together to make sure that we have the care for those communities because it can re-invite and reignite trauma back into our communities and, as many of you seen, some of these body-worn camera videos, they're very violent, they're very horrific. And so it can reignite trauma. And so we've been very fortunate at one. I just recognized our committee member, Ms. Chanda. She's been very helpful [inaudible] others in this room to create space to say, "This is coming out but we have to be prepared because our communities are already suffering trauma and those videos can also do that again. Thank you, Chair.

S7: 44:36

Mr. Chair, if I can just add on what the chief is saying. Do you mind? Okay. I'm following up with getting from what the chief is saying is not only releasing it and the trauma that's there, but we also have to be prepared to explain as much about it as we can as well, not only to those families that we heard earlier today but to the communities so that there is better understanding what's going on. I do have some concern.

S4: 45:09

[inaudible].

S7: 45:13

It's on. Usually, I'm told to be quiet. [inaudible] speak up. I lost my thought. The last thing with it is I'm concerned with setting dates or standards and I get the 45 days. I'm understanding that more as we go but I'm concerned that due to the lack of cooperative witnesses, cooperative suspects or others that are out there or they're missing by those dates, we're somewhat setting ourselves up for more distrust which is a concern as well. Again, it puts us in a position to try to make as much known as we can but still concerned about where's the case and how we're going to solve this, how we're going to move forward. And I think we're very aware of it, there's a lot of variables here that can be very challenging as we go forward. First of all, explaining it as much as we can, as best we can to try to minimize trauma and that secondary trauma that develops. But then also understand that there's challenges as much as we are open, where's the trust going to be? It's a struggle. I know we all get it.