

TRANSCRIPTION
Police-Involved Deadly Force Encounters Working Group
Hearing 3: Policy and Legal Implication-PART 2
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02:45 [Break Ending]

03:29 [Harrington] Thanks everybody for coming back this afternoon. It is afternoon. We're having a second part of our conversation on body cams and Technology Policy. And with us for this afternoon is Irene Kao from the League of Minnesota Cities and Sheriff Pat Eliason from Cook County Metro which is slated to go first. Well your slides up so I guess that might be a clue. [Kao] Yes. Thank you Commissioner. Thank you. Working Group members for having me here today.

04:01 [Kao] I want to just start by saying so. My name is Irene Kao. I'm with the League of Minnesota Cities. For those of you who are unfamiliar with what the league does, we're a membership organization for cities. We provide education, risk management, and advocacy. Eight hundred and thirty three of Minnesota Eight hundred and fifty three cities are members. In all honesty I don't know who the 20 cities who aren't members are probably pretty small. And if they were to call and ask a question, we would still help them. For myself, I am a lobbyist at the league. I'm one of the in-house lobbyists there.

04:32 I'm also an attorney so I serve as legal counsel. My very first legislative session with the league actually was when the body camera law passed. And so I'm very familiar with the line have done a number of presentations related to the body camera law. My role here today is to provide education. Earlier I mentioned that's one of the roles of the league, and I want to make sure to help the working group have the same foundation when it comes state of practices and when it comes to this body camera law.

05:05 Particularly when there have been some questions about release of data. So today what we're gonna do is I'm going to talk briefly about data practices to provide an overview, specifically about body camera law. Talk a little bit about compliance what kind of audits are required. Talk about some resources for more information related to body cameras, and then a little bit on factors to consider if there are agencies who are considering adopting body cameras.

05:36 Now I will tell you that data practices, and I'm sure the legislators in the room would say, it's a very complicated area of the law. I'm going to try my best to provide a general overview, but if you have any questions please let me know. I'm happy to go into depth. The purposes of the data practices act is the balance is three important things. One, is the right for the public to know what government is doing. And with that means that there is a general presumption that government data is public.

06:05 The second is privacy of individuals. Governments, including cities, collect a lot of data on individuals. And so we want to make sure that we maintain that privacy. And the third is related to government efficiency. As I mentioned government data is generally presumed public, and that actually includes law enforcement data unless a state law provides otherwise. And that's really where we are.

06:33 This chart is actually something that the department, I'm sorry the Department of Administration has the data practices office in that agency. And so this chart is a good example of explaining some of the terms that you all have actually used today. Data has different types of classifications. The first one is that it's public, so that type of data is available to anyone for any reason. And when we're talking about data or when we're talking about law enforcement data in particular, it is information such as adult arrest data.

07:05 When we're talking about private or non-public. And for simplicity for today I'm going to call it private. For private data, what that means is if you are it says data subject if you are the person in which you have that data for example if the videos on me I'm the data subject, then I would get access to private data. Other people who get access include those whose work assignment requires access, if there are different entities including other governmental agencies by who are authorized by law,

07:35 so it has to be in state statute. They get access, and those who are authorized by the person who has the data on them. So an example of this is peace officer records of children. And the final category is actually something that Superintendent Evans talked about. Evans talked about as well which is confidential, and this is different.

07:58 So what this means is those in government who have to have their work assignment requires access, they get access and again only the only other entities is if it's authorized in state law. But different here is even if the data is related to me and I'm the data subject, I do not get access to this. And so that would be active criminal investigative data. So when we're in this world of law enforcement data, and I will tell you there are other areas of data, but when we're focused on law enforcement data, I want to share what is public.

08:32 The other thing you're going to notice is this is where in the slides you're going to see statutory citations. The reason why have those there even if you're not a lawyer is just that you can go into the statute yourself so you can see where this information is. For law enforcement data what is always public are different categories, including arrest data, requests for service data, response or incident data, investigation data, investigation data presented in court.

08:59 If there are questions I can dive into those more specifically later. But there is also data as I mentioned that is not public, and that includes active criminal investigative data. That is probably the shortest amount of time I've ever spent on data practices. And so I do want to provide these resources the Senator is appreciating that. These resources are really helpful.

09:24 As I mentioned it's the data practices office that has that they have a number of great resources and I even for the public this is what I would say to, their videos they started producing videos their short videos I noted it's 10 minutes the one on law enforcement data they have presentations that they've done across the state. And so I would encourage folks who have questions about this to look at these words resources but also to reach out to the data practices office.

- 09:51 So wanna go a little more specific into body camera law as Superintendent Evans had mentioned, it was a lot of stakeholders who are involved in this process there. This is a very complicated area of law. And honestly when it comes to body camera data we're handling it differently than we do with most data practices related laws. We have focused in on the type of technology which makes it unique.
- 10:19 I am covering as much information as I hope will be helpful for you. But like I said if you want more specifics let me know. One of the interesting parts of this law is that it actually isn't called Body cameras in the law. It's called portable recording systems. And so what that means is it needs to be something as the previous chief from Burnsville was wearing has to be something that's worn on the peace officer, that's capable of both audio and video recording of the officers activities interactions with others, or if it's to collect multimedia evidence as part of an investigation.
- 10:53 One of the things to note here, and it was an important transition and I think that maybe today it's not as much of an issue, it has to be agency issued body cameras. That's what comes under the law. OK. Even though Senator Ingebrigtsen was so excited that I just did data practices in a short amount of time and actually is much more complicated. So when it comes to body cameras, I want to emphasize what was shared earlier.
- 11:20 There is an overarching classification of confidential when there active criminal investigations. That means even if the data is about you. That except for some of the exceptions that you talked about which I'll talk about as well. You do not have access to it. After the active criminal investigation is done, then that data is generally private, private would mean if that data is on me. I would have access to it. There are some exceptions. So some of these exceptions are really important to note.
- 11:52 It's public, so if the investigation is done then certain data becomes public. One is if it's a discharge of a firearm in course of duty. That would exclude things like training or shooting of an animal. There were some specific things where that's not the case, but it becomes public at that point. And also becomes public when there's use of force resulting in substantial bodily harm. And I noted in some of the previous previous conversations that there may have been a question about if it's the same level of harm when this stuff becomes public, it is actually at that level of substantial bodily harm.
- 12:28 Or if the subject of the data, again this could be me and I say I want to make that public. There are some exceptions and there is not an exception but there's some redaction that might need to be done if that's the case. There's also there has been some conversation there's an overlay of the interplay of potential discipline or maybe union representation.
- 12:51 But there's a piece to it becomes public if part of the data documenting when it says final disposition of discipline it means that if we're going through that process, through the union, and having representation through any labor arbitrations, that all of that has been exhausted. And finally through court order. This was something that Superintendent Evans talked about too.
- 13:22 So even if the law does classify body cam our data as confidential or private, there is something called public benefit data. So law enforcement agencies can provide data that's classified otherwise if the access will aid in the law enforcement process, promote public safety, or dispel widespread rumor or unrest. So that is an exception

to the current law. But as he also mentioned there are some circumstances where even if it were public,

- 13:53 that it would not be released. So they could withhold it if some of these portions are clearly offensive to common sensibilities and I think Superintendent Evans did a good job of explaining what that is. If that's the case, then this data is classified as private or non-public. OK. So let's say you have body camera footage and it's catching a lot of people who are on that footage. The question then becomes who is a data subject under this area of law.
- 14:25 And it includes all officers who are part of that peace officers, other individuals, and other entities. This actually is included even if it's both by image or by voice. These people can have access to the data after the investigation is done. But when you ask for a copy of the data then you have to redact it.
- 14:47 So earlier I said if I were the data subject, and I said I want to make this public, then what can happen is it probably is catching other people. If you could get consent from everybody it was collected from, then they would not be redacted. But if you can't then you have to redact them right. And that makes sense. Earlier I talked about the balancing for data practices in terms of transparency and privacy of individuals. Who can never be redacted or on duty police officers who are working at the time.
- 15:22 One of the areas we spent a lot of time on at the capitol was retaining. How long do you keep this data for? I'm going to see that in the law, this is a minimum amount of time because there is also another thing at play that is that will consider the max. So minimally, if this ends up being data that is not criminal investigative data agencies have to hold on to this for 90 days. They have to minimally hold on to it for a year
- 15:48 if it's a discharge of a firearm in the course of duty. Again it's the same level of force substantial bodily harm. Or if there's a complaint made against the officer related to whatever the incident is. Those are minimums because there is still a max. Public entities have to have a record retention schedule. And so here the destruction, or when you get rid of it, is governed by that schedule. There's a couple of things I wanted to note. I was looking at four cities in particular. What that would be.
- 16:19 So it's it's six years if there is any force used or if there's been a complaint that's filed. It's seven years if it's a criminal if it's criminal evidence. And in the case of homicides it's permanent. So it doesn't go away. There are other things though. So let's say that the minimum retention and it's not under one of these categories. If the data subjects,
- 16:43 so if I said in writing you know what I want you to hold onto that data longer, either for evidential exculpatory use then the agency has to hold onto it for another hundred and eighty days. And that can be extended, but I have to do so in writing. Government entities as well can retain it for as long as reasonably necessary again for evidentiary or exculpatory use. Superintendent Evans also discussed this a little bit in terms of public comment, before agencies can actually use body cameras or adopt policies they have to go through certain steps first.
- 17:21 So before you even consider purchasing or implementing these body cameras, law enforcement agencies have to have to accept public comments either electronically or by mail. Then for ease of sake I'm gonna say the city council, but it would be any government or any governing body has to also have a public hearing at the regularly scheduled meeting. Before you adopt any policies, and it is required that when you

have body cameras you have to adopt policies, the law enforcement agencies have to accept public comment also either electronically or by mail.

- 17:57 And you can't write you can't use them until the policies have been adopted. If law enforcement agencies have websites, they need to have those policies posted there. There was a comment earlier about inconsistencies in terms of what policies are when body cameras are adopted. What this what the legislature did and what's in state statute is that certain topics have to be addressed. So that includes this is a really long list.
- 18:26 I apologize now. But it has to include data classifications, how what kind of how do you access this, how long you hold the data for, and how do you safeguard this data so there aren't any breaches, includes testing of these body cameras to make sure that they work, that if they malfunction or fail for some reason that what are your documentation in terms of proving that you've met these requirements, when recordings are mandatory prohibited or at an officer's discretion.
- 18:58 If or when the subject of the data needs to be given notice of them being recorded again. So if I am on there, does the officer have to say I'm recording you right now. When the recording has to be ended or an investigation response or incident is ongoing. There has to be policies related to store secures storage and backup. And then compliance and violations of these policies.
- 19:24 What are the consequences, including supervisory reviews, audits, and employee discipline if they access it when they're not supposed to. Which takes us to audits. So there was a real balance in terms of if we were going to let agencies do this. How do we ensure that our law enforcement agencies are doing what they're supposed to be doing? And so the audits actually have to be done biannually by we'll say every other year or every two years.
- 19:53 And it has to be done by an independent process. Now there's been a question as to what is really independent. We have really tried at the league as a membership organization, we're trying to find different resources for cities to make it cost effective, but still ensure that independence. One of the things that we had explored as an option, which I think more agencies are using, is actually the state auditor. So when it comes to the body camera audit process, there needs to be that independent audit done every other year.
- 20:24 And if based on that audit, the City Council finds that listen the agency hasn't been complying with their own policies. They can order more audits. And if they notice that there is a substantial noncompliance, they can suspend use of body cameras altogether. But before they can suspend that use, it has you have to allow for a couple of things to happen. One, the law enforcement agency and the public have to have reasonable opportunity to respond to the to these audit findings and it has to be in a public meeting.
- 20:57 A summary report is due to the legislature to the city within 60 days after the audit completion. This would be any governing body if we're talking about a county or a different or with a state. And it also goes to the Legislative Commission on data practices. You can see that I am a fan of the data practices office. They have some really helpful information specifically on body cameras.
- 21:22 And as noted here January 15th 2020 is when the legislative auditor needs to review and ensure that law enforcement agencies have complied with these requirements. I want to move on to some body camera resources one of the things that I didn't

mentioned earlier is the league also serves as an insurance trust. And we're we're looking at risk management, we often are thinking about that from that perspective.

21:49 We have a number of resources which I'll provide the links on one of the sides and just a second, but one of the resources we have is that we have a memo related to use of body worn cameras. As you can see from this slide, we did this in collaboration with a number of other entities, including the Minnesota counties intergovernmental Trust, which is another insurance trespasses specifically for counties, the Minnesota Chiefs of Police Association, as well as the Minnesota Association of city attorneys and county attorneys.

22:20 So there was a memo. And there's also a model policy this model policy goes through a number of different things. The law was not clear on everything. And so there are decision points for law enforcement agencies to be making. As you can see here there's a hopefully you can read at the very last paragraph says red tape indicates that the language is included in response to a statutory mandate for guidance of a particular topic.

22:48 While this language is recommended, agencies are may certainly have other options for addressing mandatory policy elements. So I want to show you an example of this of one of the topics that you all had discussed. So we have there's a when you look at this policy and I'll make sure to provide it for the working group you're going to notice that some of the text is in black because it is specifically there because the statute says you absolutely have it. And then there's going to be choices and options to make when their decision points. And that tends to be in red.

23:17 So one of those places it's actually regarding who accesses a camera video and when. So in this model policy this is one of those decision points. What it says here is access by peace officers and law enforcement employees, no employee may have access to the department's body camera data except for a legitimate law enforcement or data administration purposes.

23:43 This first option allows the option for officers to access and view the video only when there is business need to do so and it includes to defend against an allegation of misconduct or substandard performance. And this first option also says officers may review video footage of an incident in which they are involved prior to preparing a report giving a statement or providing testimony about the incident. So that's option one. Option two then says essentially the same thing in the beginning,

24:14 but it says that actually they can not be reviewing it. If there's a critical critical incident policy. They can only review, I'm sorry, except as provided in the critical incident response policy, officers may review footage of an incident in which they are involved prior to giving a report statement or provide a testimony on that incident. So these are choices that were alluded to earlier. These are choices that are made at the local law enforcement agency.

24:47 I did mention that we have a number of resources and so these are the links, both for the league in terms of the memo that I discussed as well as model policy. I would encourage you also to look at the data practices office which has its own information from a nonpartisan, they are just they're going to be pretty objective in terms of what the data practices laws are related to body cameras. The last one is that the Chiefs of Police Association has their own research page as well.

25:17 So some of the factors to consider in adopting body cameras. There were this is firmly within this working groups work in figuring out what kind of recommendations

you all would like to make. There's just some information that I want to make sure to provide to you all as you're considering that. There's the data practices part of it. When law enforcement agencies do opt to have body cameras it's not just the costs of the equipment itself. I'm sure you've heard some of this.

- 25:46 It's also about the storage which is something that cities can take on. One of the things that I want you to consider too is the down flow impact of having body cameras to prosecutors, to public defenders, to the court, to places like BCA. So any decision that is made either at the policy level or to adopt body cameras does impact a number of different other entities that are involved in the criminal justice system.
- 26:15 And that if we want to be successful in this that we want to make sure that any potential mandate of it which I know Mr. Castile had alluded to that, that we want to make sure that it's adequately funded and where we're ensuring justice throughout the entire process. With that I'm happy to answer any questions. But I know the sheriff also has some thoughts.
- 26:49 [Eliason] Thank you Commissioner. Thank you Attorney General and the rest of the panel. Thank you for. Excuse me. Thank you for having me here today. I was brought here to talk to the panel about some of the considerations for a smaller agency.
- 27:06 For the adoption of body cameras. As you can see and I'm the sheriff of Cook County which is located on the northeastern tip of Minnesota. We're bordered by Lake County Lake Superior in Canada. We have 13 14. I'm sorry excuse me 14 Licensed peace officers, including the chief deputy and myself. A small agency. We have a 25 total staff within the sheriff's office.
- 27:33 We have not had the opportunity to consider body cameras basically for budgetary concerns. And it's not just the initial startup cost excuse me which in the large scope of things from which I have studied the initial startup cost is probably the least amount. What what our concern is is the ongoing costs.
- 27:59 Of the extra staff we my my office would need for storage and redaction, to extra staff that the I.T. office would need for support of the body cameras themselves, support of any software that we would need, the ongoing costs you know five years down the road when you have to develop a depreciation schedule for not only the body cameras, but for the software as well. So. For us,
- 28:25 It's it's it's it would be considerable based upon our budget and the size of our county and the size of the entire county's operating budget. That's what, I was asked to do this real quickly so I don't have much of a presentation. That's basically what I have to say. I will certainly gladly take any questions and I will try to answer them best of my ability.
[Eliason] I want to thank both of you for your excellent presentations. Sheriff,
- 28:58 Aside from the issue of cost challenges, andd of course that's a big deal and I know that's like very important, do you feel that your department would benefit if somehow that cost bridge could be crossed? [Eliason] Yes absolutely I think the body cameras is a tool especially for law enforcement and for building public trust. Excuse me. are positive. Absolutely.
- 29:26 If we had the opportunity to implement the programming and develop policies and you know like I said look a few years down the road and make sure that is viable, then I would absolutely think so. [Eliason] You know Sheriff, I don't think you were here when we were in Mankato, but we had somebody who gave a great presentation from

Camden, New Jersey. And they talked about using the body cam and the video as a training tool to help people improve their skill.

29:57 So it's yes it's it's for the things you mentioned but there's also some additional uses as well. That's all the questions I have. [Rubin] Thank you Mr. Chair. Sheriff, Do your deputies feel the same way you do to they wanted or do you see it as something you find more value than they do?

30:28 [Eliason] Well speaking candidly, law enforcement officers are sometimes resistant to change, but they are also very intelligent people and they will accept something once it's presented to them in a way that shows that not only can benefit them, but it can benefit their investigations. As as the attorney general, said it can benefit training you use it while you're training you can we can build on that. I think well I shouldn't say I think I know. That yes they would they would embrace it.

30:57 [Darris] My question is to Ms. Kao. What steps has the league taken in order to help bridge that gap between those local agencies that don't have them and financial resources that may be a better available rather on a federal or state level?

31:25 [Kao] So that's a good question. I probably should have done a better job of explaining what the League's role is. So we don't. The way that we're funded is through membership dues and so we wouldn't as an entity, as an organization, a membership organization be able to provide any financial resources. [Darris] Well OK I didn't mean that directly, I mean a legislative request you know, whether you are putting forth legislation to our Legislature or seeking out any kind of federal dollars. Do you all have any role in that?

31:58 [Kao] I think that. Senator Ingebrigtsen and Representative Moran would say we we do have a role at the capital. And there are a number of different things where when the league testifies at the capital some of the things would be related to funding. So increased funding particularly as A.G. Ellison was saying, you know if if there was it could be alleviated any particular mandate that there might be coming from the state if there were financial or financial resources that would come along with it, then then that would make sense.

32:28 One of the things in the meantime however is that it is challenging if there is ever just generally a requirement from the state that that doesn't have that support. Then we have local entities struggling to figure out how to fund those things. [Darris] Could you imagine that being part of your legislative agenda? [Kao] That is a good question and our legislative process is actually wrapping up. It is currently it would really have to depend on what the proposal is

32:57 would determine what position we would take. We're wrapping up in our process. I'm actually here today while our board is being present and all of our legislative policies. This is particularly when it comes to technology impacts on data practices, it is something that is really important to cities in order to best be able to respond. [Darris] OK one final question and I guess I didn't get I didn't I don't quite

33:28 Have a solid feeling in terms of what is the league's position for body worn cameras statewide in terms of policy? [Kao] So there is. Our current policy is that it was a negotiated process in terms of adopting the law that was passed into our current policy is that that negotiated that it should stay in place.

33:54 What I will say is the caveat that I just had, if there are changes that are recommended from this group or from the legislature as long as there is support in order for local agencies to do so, then our position could change. Oftentimes even after our board has

adopted policies when they are really important issues to cities. We'll have the board we'll revisit our policies to see if we want to take a different stand. It really does depend on what's proposed. [Darris] So basically with the proper that we would have the league support?

34:23 [Kao] I would and as any good legislator will tell you it really depends on what the bill is. But it is possible. [Harrington] Thank you. Two quick questions. First question is, do you have any sense of how many police departments in the state of Minnesota currently have body cams? [Kao] So thank you for that question and with the good work of the Chiefs of Police Association,

34:51 I only generally have idea actually just found out there's another agency that has it that isn't on their list. When they did a survey back in 2013 it looked like it was 43 agencies, but that did not include sheriff's departments who may have them. [Harrington] The second question that is sort of speaks to both of yours what's the cost?

35:15 I know when I was setting up body cam policy back using your your sample policy for Metro Transit we were looking at hundreds of thousands of dollars on an annual basis for what is a reasonable of a middle sized department. I'm just curious as to if the cost has gone down or on average per officer what it would cost. [Eliason] I can't speak to the cost the specific cost the body cameras themselves.

35:44 I've not researched any of that. What I can speak to us as all the associated costs which which I think would be involved to you would have the cameras themselves, you would have the software, you would need to do for downloading and redaction, you would need server space or cloud space which which could be quite considerable, you would need probably added I.T. staff for support, I would probably need another staff person in my office for

36:15 redaction and for any of that data practices and for making sure that any footage gets where it needs to go as far as the courts. As I spoke to before, the depreciation schedules. And so, when you when you add all of that and you know like it like I had stated before.

36:45 A small office such as ours, that it could be quite considerable but I don't have a firm number for you. [Harrington] Thank you. [Kao] And commissioner, there is going to be a difference between how many cameras you have, depends on how much obviously more it is but how much it might be cheaper per officer. In addition to all of the costs that the sheriff just talked about, that data practices component shouldn't be underestimated. Not just related to investigations but related to any time you might have requests.

37:14 If there are people who are making a request to see them, which they have a right to do, there is going to be a process you have to review it. What do they really get access to, what don't they. The redaction costs is quite a bit. Sometimes you have to also consult a city attorney when we're talking about cities to make sure that you're actually complying with the law. But there are additional costs downstream. Right. So when we're thinking about funding for body cameras I would encourage you to think about some of the other things I was talking about. What impact is there to the prosecutor office.

37:40 What kind of impact is there to the public defender in sitting through you know as the senator sits through judiciary and we hear about the budgetary needs of all of our partners when we're thinking about this. The public defenders would need additional help there too. And so I it is greater than just the local agency. And again I only bring

this up because I think we want to make sure that we have that equity throughout the entire criminal justice process. [Rubin] Thank you Irene for bringing that up.

38:11 That's what I wanted to really highlight here because it is a matter of just buying the equipment and you know storing it. The additional downstream effect is so huge financially, and even St. Louis County were a lot bigger than Cook County, but we're hurting just trying to keep up with the data the body camera evidence from the Duluth Police Department. My question of you sheriff is your county attorney on board? Or does she share *name of county attorney* and you've got a great county attorney out there with so much respect for her.

38:46 The number two, are you getting any requests from the judiciary is there are the judges up there saying you should be doing this that would help us do our job? I'm curious. [Eliason] Thank you. Well the first part of the question as far as the county attorney. Goes and yes I think that she would. She should be a very. She would advocate the use of body cams as far as the judicial system we have heard nothing either for or against any of the body cams so far.

39:18 [Rubin] Thank you. [Harrington] Chief Gottschalk and then the sheriff. [Gottschalk] Do you know the actuaries looked at the impact of body worn cameras either from a risk mitigation standpoint? Is there an upstream either savings or cost to cities that cities could expect. Long term? [Kao] That is a challenging question because I don't know how you quantify something that doesn't happen. So one of the things that the sheriff brought up which I also hear from you know

39:48 Mr. Rubin's counterpart in the 6th Judicial District with a public defender is that that building of trust with the community is really important. I know there's been some conversation about how even the presence of having body cameras can impact the situation in positive ways, either for the officer conduct or for the person they're interacting with. And that could result in fewer complaints that are brought to

40:15 the law enforcement agency. I'm not sure how you figure that out. And honestly in the state of Minnesota we haven't had body cameras long enough to know what kind of impact there is. So maybe in time we'll know that but right now I'm unaware of any data sure. [Gottschalk] And that gets to my point as far as. Could there be a rebate for cities that choose to have them? Or would that city in turn actually expect greater costs down the road? So I think you've touched on a probably a lack of data to really say what that means for us.

40:45 [Torgerson] I was gonna say some of the comments for deliberation but I think it's worth saying I share if you were asked, How your staff would feel? That was a big question when our office went to body cams they were 100 percent behind it, our union was completely behind it with mostly based on the last comments from you chief and Ms. Kao with

41:08 the ability to show what the officer did has made a huge difference in our complaints when we have people that have made those kinds of certain complaints, and of course it's across the board, we've had once they know that there's body cam footage we've had several complaints annually that just disappear. They go okay it's on camera that's fine I don't want to go any further with it.

41:34 So as far as how they feel, our folks were and we weren't going to go anywhere with it if we didn't have the buy in from our folks and that's exactly where you were saying. And the question is to how many have them. How many agencies? I just asked that question last week of the MSA. We're going to do a poll. So we'll have that

hopefully for deliberation day coming forward and hopefully the Chiefs maybe all do the same thing so we can get that accurate number. It's not as many as I think we we would hope certainly.

- 42:05 And then we'll figure out too the per body cam per officer cost. Our costs in our first three years we had a really nice contract, and when we went back to our company to look at the the next phase our next contract, our costs doubled. And in huge numbers mainly because the amount of of of data that was being stored and the companies say well you guys here you're going to break our bank.
- 42:36 And so our costs went up and we're moving to a new company now that is able to do some different things for us so our cost is huge. Thank you. [Harrington] Well the policy this decision about when you turn them on makes all the difference in the world in terms of how much usage you've got. If you're when Chief Arradondo made it so you turn it on if you get a call to you have it on up virtually all the time and then you multiply that by eight hundred cops.
- 43:08 Suddenly that number becomes terabytes and terabytes of storage and then you how long do you have to keep it becomes part of that conversation of. Do you keep it to your internal affairs prices is no longer open or do you keep it through? What is a standard research and process sometimes six seven years? And so now you're exponentially adding that up on every year so. Senator.
- 43:37 [Ingebrigtsen. Thank you. I never. Was involved in much of the camera discussion other than that of privacy and the committee. But some of the other considerations that that I would suggest maybe you guys have asked those of you that have gone through this is. What are you missing because you're carrying body cameras/ If i am somebody that has some information for you Sheriff,
- 44:03 and one of your deputies and I know that in Minneapolis now the cameras on 24/7 one are being worn. Am I going to miss out on any information because I'm going to be tape coming up and giving that information out. That would be one of the downsides. And I'm just throwing that out just for just for a suggestion of to think about it as well as. The question was asked about the League of Minnesota Cities of financially coming forward. There has been nothing like that.
- 44:32 There's an awful lot of work to do here when you have when you're talking about county attorneys and. And everything else that has to get behind that county boards. So. At least at this point I find that the legislature probably would lean a little bit towards local control having the. However they may have some some some ideas if there were some grants or something out there that were available, and then make that local control decision makes it a lot easier so. Open for anything.
- 45:01 [Harrington] Any other final questions? Chief. [Arradondo] Appreciate your your comments here today and Sheriff I absolutely would say to you that when we launched our body worn camera program we talked about technology. We certainly talked about storage costs, but I would say for any departments looking at having this conversation you have to talk about personnel.
- 45:29 You can not no longer talk about just the technical pieces to this. You have to have human beings reviewing, redacting, and watching this. It plays a key role in the work that our city attorneys do or county attorneys do. I will also say that from any agencies that end up getting body and cameras, you got them for life. Try to take them back. It ain't going to work.

- 45:55 So you have them as my good friend the sheriff down here said to these companies these vendors who give you this product, they know like anybody still have VCR. No probably not. The technology is going to continue to increase it's going to upgrade and they're going to charge you for it. Also once the community knows that your department has body worn cameras, the data practices request is going to increase exponentially.
- 46:24 Media requests are going to increase exponentially. You will need to have, so when you're talking about this this this tool and it's in it's a wonderful tool. When we started out our body worn camera program we talk about the effect or the impact on the officers. We had an abysmal compliance with our audit. I mean it was it was abysmal. Change the policy and we started conducting our audits per state. We're in the 90 percentile.
- 46:52 Most of our officers now they won't leave the roll call without that body camera on. But again you it's a great deal of costs and you're going to need personnel. So I would just say Be mindful for those agencies that are considering this. Don't just talk about the equipment itself and the storage, you're going to have to have human beings to to really do the work for this area. And it's it's costly.
- 47:22 [Moran] To the sheriff the sheriff and the Chief. Can you give the estimate of the costs? What did it look like for you? What did it look like for you? Just estimate. If you have a number to give? [Arradondo] Senator I would say that our our cost is easily with with the equipment itself the storage.
- 47:45 Every new academy class that we bring on that's that's additional ,I will just say this here I've asked in terms of our budget for an additional eight personnel just for our records information requests. It's it's it's a lot. And so we're talking a couple of million dollars. Yeah. And so. [Torgerson] And for our agency again we're considerably smaller, but we we offered body cams in our detention center as well.
- 48:15 And the new program and I can't give you the right number. I will have all these numbers for us at the deliberation time, but it's one point two million for our agency to go to the new company that will be moving to here in the next month and a half. And that does include squad cameras too. So that's a little inflated as far as that goes. But it is a lot
- 48:42 [Castile] I believe cost is very important, but I think the benefits of even more important. In 2016, my nephew was shot and killed by St. Anthony police officer and he did not have a body cam. The reason that case was lost is because the jury did not have his perception when he looked in the car. If he would have had a body cam on, that perception would have been there and a case probably would have turned out different. And therefore the the the community
- 49:10 probably wouldn't even see what happened a little bit better in their perceptions would have been different and so that probably. I mean the body cams can make a big difference. So in my thoughts, that the benefits are more important than it cost thank you. [Ellison] You know Mr. chair, is gonna say something similar to that. It is difficult to sort of cast out this be interesting after there's more data what an economist might say. You know after looking at it over time.
- 49:39 But you know when you think about the Justin Damon case cost in the city of Minneapolis 40 million was it 40 or 20, 20 million dollars. So a lot of money. I mean it's a lot more than the 2 million you have to put out there. That case could have

somehow been avoided because I don't know different practices. Maybe maybe it could be worth it. And I will tell you this. I spent a lot of years doing defense work and I remember when we went to the scales decision, state versus scales and it was like Oh my God.

50:11 Now we got a tape all these in custody interrogations. Well you know what it cut down time because when I said oh my client wasn't Mirandized. Yes he was or no he wasn't. And we could make it pretty clear. And then on the other hand, when it was wrong it was clearly wrong. And nobody we didn't get into those kind of disputes anymore. And I do think that if if it alters behavior in a positive way because people know that they're gonna be watched it could have some real beneficial effects.

50:44 So I just want to I have that comment similar to what Mr. Castile. [Harrington] I think we're just about wrap this. I just had one last question which is I work on domestic violence and have for a number of years and there has been a sort of a break in that continuum that domestic violence advocates have been very concerned about body cams and I was wonder if you could speak to that?

51:11 [Kao] Yes there it. It is a balance when we're thinking about data practices when we're thinking about use of body cameras. I'll go back to the balance that I was talking about transparency, protection of privacy of individuals, and government efficiency. And it is complicated when we're talking about domestic abuse situations. Sometimes it will impact whether or not someone's going to come forward or not. There's always law enforcement knows that that's the case. But if you have a camera on, and you know you're going to be recorded. Now there could be policies related to when you turn them off and if that's allowed.

51:44 Right. But there there it is. It it does impact the situation that you're talking about in different ways than than other cases. [Harrington] And I remember when we're looking at your model policy that there were exceptions if you were talking to an informant and then personal conversations. If you're talking to. We talked about wellness before. You wouldn't have to have the body cam on if you were in a wellness situation where you're talking to a therapist or or a medical professional necessarily sorry.

52:16 [Kao] Mm hmm. [Harrington] Any final comments? Representative Moran. [Moran] I. I would just like to add to that one of the biggest another conversation that we had as we was moving this legislation was about police officers arriving to someone's home and the impact that that would have with a camera being on inside someone's house. That is not always a positive result from that. So I mean there are things that we need to think about some exceptions.

52:47 You know officer has to also take your personal business you know. And so I think we just really need to be considerate of those things about how, and often the camera needs to be on. [Harrington] Ms. Kao. [Kao] I just wanted to add to Representative Moran's comment about that, I think that is largely the reason why the classification became private. You know potential concerns of if the public had access or could get access to video when and officer does go into someone's home and you can see all sorts of things in that home.

53:17 Is that really information that you want? Again it is a balance. It's I think that when we make policy decisions it's the balance of that transparency, privacy of an individuals, as well as government efficiency. But I appreciate you bringing that up. [Moran] But I just want it is not just about the public seeing that information is about the officer who's carrying a camera and how they are scanning the home of someone's house you know.

They may be coming for one particular purpose but the camera opens up that visibility to so much other pieces that could be raised by a police officer.

53:53

[Harrington] Thank you both for your presentation. We're going to. Think we're our next panel is supposed to start about two minutes from now. So. Thank you so much. It's a two minute break. Two minutes.

56:29

[Short Break]

Transcription details:

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Session 2 Part 2.mp3

Transcription results:

02:29 [Harrington] Can we start moving back in for the next session?

03:14 OK let's go ahead and get started. Our next panel is on use of force legal and policy. And we have Christy Lopez from Georgetown University with us, and Fred Bruno who is a police attorney. Not sure which of the two would like to go first.

03:33 Age before beauty it looks like? He's pushing the button. [Bruno] So we decided I decided that because criminal defense lawyers always go last. I'll go first. So. Because there's no judge here to tell me otherwise. [Harrington] Where did the judge go. Oh that is an oversight right sir. [Bruno] Well good afternoon and thanks for asking me to give this presentation.

04:06 What we thought we'd do is I would start off with talking about what happens pretty much out on the street and I'm not talking about the fatal act itself, but I'm talking about what happens immediately after an investigation of an officer involved and let's just call it a fatal officer involved incident. And the thought is that I could peel back the curtain a little bit and tell you what we see and what we do or when we get the call late at night.

04:37 And I am a criminal defense lawyer. My it says here a police lawyer, but I'm not a cop and I don't know if I'm an attorney but I'm a criminal defense lawyer. And I don't represent institutions I don't represent the police. I represent individual defendants who I defend with no political agenda whatsoever, it's simply to get the best possible result for that particular client.

05:04 So I don't it's above my pay grade to have opinions on things, I can just tell you what I see and what we do out in the field. Background, I've been an attorney for I've been in the business for 41 years. I prosecuted two years when I was in law school as a student prosecutor and 39 years after that. I've done nothing but criminal defense. I half of my practice is federal.

05:32 Half of my practice is state, and about half of my clients are cops. And I just kind of fell into that years ago representing a police officer accused of stealing drugs from locker and. We got a good result and I was hooked. And then I moved on to the deadly force conundrums that we have now and the increasing prosecution of police officers. So that's about half of what I do now.

06:03 There was a question that I think just somebody on their side asked earlier today about you know why why do police get these different procedures when they're involved in an incident? And I think Drew's answer was Well it's a different it's a different situation, and it's different organically speaking meaning from the very beginning it's different and here's why.

06:31 In Minnesota it's against the law to kill somebody. A murder is against the law. And all the variations of homicide. So we start off with a proscription of behavior that applies

to all of us. Thou shalt not kill. And for police officers it starts off with the the opposite of that thou shall kill

06:58 under these circumstances. And they're defined and that's in 6 0 9 0 6 6. So this is a person we give a gun to, and we give them the allowance to to take a life under these circumstances. That doesn't happen to the rest of us. We shall not kill. It starts off with the negative and not the positive. And only in another statute or only in case law,

07:26 do we get to float the self-defense theory. So it's different from the very beginning. And it's different in a lot a lot of separate ways when you understand what happened so quickly after a critical incident. What happens right away that happens in no other type of case is that there are twin investigations happening very very quickly and unfolding very fast.

07:58 First, the suspect if not deceased is typically the subject of a serious felony which got him or her involved in a situation in the first place. And the reason that they it happened so fast is because they there are certain rules in charging people out. Now if they have the victim in custody for 48 hours

08:24 Mr. Rubin right before you charge of the person there is a drive very quickly to get all the evidence possible to not only investigate the police officer, but the twin target of what's happening. And that is the whoever got shot or whoever got shot and ran away or whoever got it. Was the victim of some assault by a police officer. So it's different because right away you have two defendants.

08:54 You have this police officer who is a putative defendant in a murder case and you have the victim or the suspect who could punitively be charged probably in a serious assault or something that happened that got the police there in the first place. So. That's why it's different. And it's different because the police officer

09:21 who was involved would not only be subject to scrutiny in a criminal investigation, but he or she will automatically undergo scrutiny in internal affairs and possibly lose his or her job. So there's three different things going on at the same time. You have the suspect's criminal charge, possibly you have the police officer a criminal charge. You have his or her career on the line because he or she didn't comply with policy in the internal affairs investigation,

09:54 they're done. My experience is that when you show up at these incidences not only is they looking at the police officer right away. They're looking at typically somebody from Internal Affairs shows up and there's Lieutenant Jones and this cop knows who this person is it's the vice principal to sit now here, the disciplinarian has arrived.

10:23 So these are circumstances that I would challenge anybody here to say exist in the world of citizen criminal. It just doesn't happen. So these are all these three different. Parallel investigation going on have career ending or maybe life ending ramifications for not only the police officer but the suspect. So everybody wants to get everything out as quickly as possible.

10:55 Why it's all so different different is that police officers belong to what we call a paramilitary structure. And Chief Arradondo you know what that means. You can give an order anybody down rank from you which in your situation is everyone. And so this is suspect this police officer who just shot somebody is not only subject to the whim of any superior officer, but

- 11:30 the key difference here continuing is that this officer is a captive bird. What crime do you ever see where somebody kills somebody and they stick around and they put him in a car and they still have the murder weapon. They are required to stay there. They're required to make what's called a public safety statement and that public safety statement is a 25 words or less. what happened?
- 12:02 Where'd you shoot? What direction were you pointed in? And they're worried about no one is the scene secure. Was anybody in the line of fire? Where did the where did the suspect go? They're required to say that. And if they don't they're fired. And and what other citizen in the United States can be required to answer a statement like that. Nobody.
- 12:33 So it's it's different in all these unfolding ways that happened very very fast. And the other thing that often happens is a mandatory blood or urine test without any probable cause that the police officer did anything wrong. They can be required to submit blood or urine or breath and sometimes you do all three. Now that's an issue that is is another dynamic unfolding issue about whether cops should give it or not.
- 13:02 In some some departments it's voluntary, and some departments it is mandatory. And it's not protected by Garrity, not is not compel testimony. It's not testimony, it is physical evidence. So where else can they do it. Common citizens it doesn't happen unless there's probable cause that they did something wrong. Then you can go get it. You can invade their bodily fluids with with probable cause, like a DWI for example.
- 13:34 Or a frenetic homicide where intoxication is suspected. So that's another way where cops you know have less rights than everybody else. They can be. They have to do it and they don't Chief Arradondo will fire them. Now in many communities, they don't many agencies they don't have a policy of mandatory testing. And I've done hundreds of officer involved shootings.
- 14:05 And whenever it's been a voluntary thing, a hundred percent of the time we have given whatever they want because we want to show that my guy wasn't in a fish house while his friends were smoking marijuana, or you didn't just eat a poppy seed bun, and he's not drunk or under the influence of prescription medication. No sometimes the issue of prescription medication comes up but that's another story.
- 14:32 But generally cops will step forward and provide a voluntary sample something most citizens wouldn't do. Now then continuing on to what happens. And there was a case a few years ago. And I think the victim in that case was Abner Louima and he was the the gentleman who was brutalized by New York cops.
- 15:06 And we not to talk about the details, but what happened in that case was they all went back to the union shop and they all started kind of cooking the books a little bit maybe you know getting the story straight. And what they didn't know. Well number one how bad that looks. And number two, that there's no privilege between a police officer and a union steward or any union boss or anybody. So all that stuff came out and cops went to prison.
- 15:36 So the lesson we learned from the Louima case is to divide and isolate and we separate everyone though the witnesses what we call the IOs, the involved officer, hands on the used a baton to use a gun. They shot those guys are separated put into into a room. And they're locked literally locked in the room.

16:05 And this is what happens. And they a union steward or a superior officer stands outside the door to make sure that no one's going in to talk to them except one of us, a criminal defense lawyer. So they'll sit in that room for hours and hours and hours until we decide it's OK for them to go home and they they've turned over their clothes. They've been photographed and done.

16:34 I mean. How often, what civilians get basically incarcerated without probable cause. Isolated from friends and family we tell them immediately when we're driving down there, stay off your phone. So now they can't even talk to their wife. They can't because they will grab do subpoenas for personal cell phones and find out who they talk to.

17:02 So now the police officers can't talk to their wife, they can't talk to their best friend, they can't talk to anybody, and they're in a room generally without a phone. And every now and then the union steward will come in and say do you need a cup of coffee do you want some pizza. So. It's different. And then shortly thereafter that, the chief will show up and say Officer Smith you need to go see a shrink.

17:32 And I'm requiring you to go see a shrink. And that policy in every department I know of and within two or three days they go see a psychologist to make sure that they're OK. Where does that ever happen to a citizen on the street who commits a crime. Then they have these things there may or may not be required to go to call debriefings where they're supposed to sit around, and I'm very critical of these, supposed sit around with other people who were involved and you.

18:07 Just see how they feel and not supposed to talk about what happened. Where else does that happen. I don't like those because I don't think they're protected against invasion by lawyers. I think that they're risky things to do. They get put on usually usually three days admin leave and during that time. The public thinks well it's this is a paid vacation or something like that.

18:36 Well the truth is it can be three days or three months. It could be for ever. I've had cops never come back from a fatal never ever. And it's when they're ready to come back you're not going to put a cop back on the street who's upset, who's who's got the thousand yard stare that never goes away. So another misperception that once something like that happens they're given a magic carpet ride somewhere. It doesn't happen.

19:07 And typically in Minneapolis office I don't know if this is true, like Chief Minneapolis Are they supposed to be home? OK. In other so they're now they're on house arrest at their own home. Other departments let them go wherever they want and they go bowling but Minneapolis you're on house arrest so not not exactly fun. And the the worst thing is that they're isolated they're told by us not to talk to anybody.

19:41 And I give trainings on that as I say. Now you can you can talk to your wife. You can do your husband your. You can talk to your psychologist your minister. All these different people, but you can't talk to your best friend forever. You can't talk to your son. You can't talk to anybody because guess what, justice is going to get a hold when they come up from Washington of your cell phone records and they're going to go to your wife. They don't care about the privilege in particular, go to everybody that you talk to and find out what you said.

20:13 So we tell them. Now. You know Attorney General Ellison you recall defense lawyer you know that. What's the advice we always give our clients. Shut up. Right. And that's how we

defend police officers. It's the same way they're the same as anybody else, except as far as criminal defendants go they're in the same court as everyone so we tell them. If we give a statement which they normally do, it's got to be under controlled circumstances.

20:44 And you're not going to give 10 statements, you're going to get one. And that's regulated thing and we schedule it when we can. Sometimes I've had cops say I'm given one right now. I don't care about you and I'm not going to you know sit on this. Most of them listen to us and we say just relax let the adrenaline dampen all that. But the truth of the matter is cops really like to talk. They want to tell they want to tell the world what they did, because most of them feel justified in doing what they did.

21:15 They want to get their story out. So we have to keep a lid on that and defend them the same way we defend any other criminal defendant. In all of this in the pressure cooker of scrutiny. Cop a cop shootings are the most political thing that can happen these days. And they seem to be happening more and more and more and more in the limelight.

21:43 So all this pressure is asserted on the chiefs of police to get us a statement on what happened. Why did your officer shoot that guy? They want to know how the guy is doing? What what is the name of the police officer? You know the family, they want answers. The community wants answers. Everybody wants answers and those are those are concerns that they're not mine.

22:11 I don't make those policies and I don't make the rules, but I just do what I do with my client to keep him or her sane and under control. But we do feel the pressure even as defense lawyers know the BCA is I used to make fun of the BCA, and I still do, because the truth is you know they want to interview my cop for the bodies even cold. I mean they're there right away.

22:41 They're always there before I'm there and they're doing their job and they're trying to get those statements immediately. And our point of view is a little bit different. We slow everybody down. And because that's what we're paid to do. So there's intense pressure not only on the Chiefs and mostly the chief and the politicians, but on it that pressure gets passed along to us. We'll get calls from the BCA.

23:11 We'll get calls from an investigator you know when your guy coming in and when's your guy coming in. So they're doing everything they can to get the story out fast and we're doing everything we can to protect our client. And that those normally aren't the same wavelength. So that's kind of what happens in a know. When we get out of bed and a couple of days after that and then. You know in the 40 years I've been doing this I've never not given a statement.

23:45 We've never not provided a statement. The Noor case was a watershed case for many many reasons. In that case it was the most vocal and most obvious. I'm not talking, and and asserting my Fifth Amendment rights, and the guy had every right to not talk, but the public and even criminal defense lawyers could not believe that the guy was not talking.

24:15 What really is the message there. The message there is that maybe cops are held to a higher standard and the Constitution doesn't afford them the same protections as everybody else. But you know it does, and that's why we're here. And that's what we get paid to do. Now let's talk a little bit about. When it starts into the legal system.

24:38 Recently, there was a pronouncement by a county attorney that there will be no more grand juries and you guys know grand juries are to 23 people who at a minimum convene the quorum as to be 16. They're randomly chosen to, 12 have to agree that this probable cause for an indictment. And. You know what. Cops have always liked grand juries.

25:07 And the reason is because it's it's 12 people will say twenty three but twelve people voting, is twenty three people who are citizens who are deciding their fate and not one politically elected official. So even we all know the prosecution can steer grand jury the way they want. I mean that just happens. Defense lawyers can't go in and there is not transparency. I agree with that.

25:37 And then they come out and vote and bill or no bill. But cops still like they consider that a safety net. That is going to be twelve people, randomly chosen, who are gonna make the call. Now what I don't get is how in Minnesota you can do away with the grand jury by just saying I'm not going to do it. Now what happened. So think of this.

26:07 There's a political baleful result from that and there's a legal result. If you say no more grand juries for teachers, no more grand juries for state senators, no more grand jury for comedians. And what if you cross the border into a you know a suspect class. So it's like a religious thing. No more grand juries for Protestants.

26:35 I mean it's a denial of equal protection that when you look at it in those terms cops just think that they just took away from me a very important right. And they didn't do it to anybody else. So cops are different again. [Harrington] In order to make sure there's room in and in order to make sure I have some time for everybody else, I'd like get if you start to wrap up. That would be great. And then we'll have time for her presentation and hopefully some questions.

27:05 [Bruno] Yeah. A couple of quick things. What the grand juries precisely is 628.61 says that the grand jury shall inquire into three things, the condition of every person in prison on a criminal charge. Number two, into the condition and management of the public prisons in the county. And number three, into the willful and corrupt misconduct of all in office of all public officers in the county. How do you get around that?

27:35 And that's the law? You must do grand juries for cops. And here's another thing why we like grand juries. When a prosecutor takes an oath. This is the same oath that he or she takes as if they're a notary public. And you know what that oath is, I do solemnly swear that I will support the Constitution of the United States and the Constitution of the state of Minnesota, and that I will faithfully and impartially discharge the duties of the position to which I've been appointed and the Office of the county attorney and the Office of whatever to the best of my ability and judgment.

28:10 And so so help me God. I'm not sure if they do that anymore. Here's the oath that grand juries take. You each do swear that you will diligently inquire and true presentment make of all public offenses committed within this colony of which you have legal proof. The counsel of the state and of yourself and fellows you will keep secret.

28:37 You will present no person to your present meaning indict no person through malice or ill will, nor leave any on presented through fear or favor, or the receipt or hope of reward. But it will present things truly to the best of your understanding. And according to lose, so help you God. Which oath would you feel more comfortable have somebody take who's going to decide what's going to happen to the rest of your life?

- 29:07 I like number two a lot. I'm going to stop there and turn the chair over to my. To. My. Compatriot. [Lopez] Thank you. Attorney General Ellison and Commissioner Harrington for convening is working group and co-chair in this working group. And for asking me to speak to all of you today.
- 29:32 My name is Christy Lopez, and I have worked in the area of policing reform for over two decades. For much of that time I was an attorney with the Civil Rights Division of the United States Department of Justice. I helped enforce the statute that gives the United States attorney general the authority to order to investigate police departments and other law enforcement agencies in order to determine whether those agencies have a pattern or practice of violating the law. The same statute gives the Department of Justice the authority to seek an injunctive order through litigation or negotiation aimed at eliminating patterns or practices of a unlawful policing.
- 30:08 As part of this work, I read investigations of police departments in Ferguson, New Orleans, Chicago, and many other places. These investigations had two objectives. The first was to evaluate the role that institutions and systems play in facilitating or failing to prevent unlawful conduct by the individual officers that they employ. The second objective was to implement police reforms that will prevent misconduct by law enforcement officials in the future.
- 30:40 There was another section in the civil rights division, the criminal section, that conducted the investigations and prosecutions of individual officers alleged to have committed criminal acts given the very specialized nature of those inquiries. In early 2017, I left the Department of Justice to become a professor at Georgetown University Law School, where I teach courses on criminal procedure and policing, and I co-director program called the innovative policing program. Through that program I work closely with Washington D.C.
- 31:08 Metropolitan Police Department on initiatives to bring policing innovations to the district, including a program called police for tomorrow in which we educate new officers about how to think differently about policing, and how to turn that thinking into better outcomes every day. Officers have told us that this program impacts how they think about the purpose of their work and about their conduct on the job. I'm happy to submit materials about this program to the working group. The work of systemic police reform has always come very natural to me naturally to me.
- 31:37 My father was a homicide detective for over 30 years with the California Municipal Police Department. He was proud to be a police officer as a Mexican-American from an immigrant family being recognized as a valued contributor to the safety of our communities was an important part of his identity. I believe that that is how most police officers feel. And I feel strongly that we have a responsibility to create both the institutional incentives and the support so that those officers can and will
- 32:06 consistently police lawfully and with integrity. And that those who cannot or will not police in that manner, are removed from law enforcement. Given the topic of this hearing, I will focus my remarks today on the role that policy and law can play at the state and local level in preventing the unnecessary use of deadly force. I know that the working group has already heard speakers talk about the difficulty of prosecuting individual officers after they have used apparently unlawful deadly force.
- 32:34 And of course there is some overlap between the critical between post hoc Accountability and Prevention since holding officers accountable can be a critical element of the incentive structure that prevents unreasonable uses of force from

happening. But today I want to focus on the on how law and policy how the role that law and policy play in prevention. In part that's because it's what I know, and in part it's because I think we would all agree that it is better to prevent the unnecessary use of deadly force than to hold an officer accountable after such an incident has occurred.

33:08 There are three particular aspects of law and policy vis-a-vi Officer use of deadly force that I would like to touch upon. First, I want to emphasize the role that law and policy play in shaping how officers are trained in using force. Second, I want to address the need to provide officers more specific direction on what the legal standard of reasonableness means in the context of the use of deadly force. And third, I want to talk briefly about the legal duty to intervene, and how we can do a better job training our officers on how to intervene to prevent not only unnecessary uses of deadly force, but also to prevent other tragic outcomes.

33:44 Regarding my first point, I simply want to emphasize how foundational law and policy are in shaping and really driving officer training. I know that this working group has had a hearing that focused on training and I reviewed the materials that were submitted regarding forced de-escalation and I'm familiar with that approach to use of force training. It is of course critically important training, and unless that training is required by law it will not be consistently provided to officers.

34:09 Worse it is my experience is that is that if it is not required by law, the agencies who most need de-escalation training will be the ones who choose not to provide it. I applaud of the state of Minnesota for requiring de-escalation training for all of its officers and I urge the state to ensure that this requirement is continued and most of all, to regularly evaluate this training to ensure that is delivered consistently and effectively.

34:34 It's important to keep in mind when requiring de-escalation or other use of force training that the underlying legal and policy requirements regarding what constitutes appropriate use of deadly force by a police officer will determine both the content and the rigor of that training. This has implications not only for how you define a reasonable use of force, which I will get into in a moment, but what tactics you permit in your agency whether by law or policy.

34:59 Some policies bear an obvious relationship to the use of deadly force, such as law and policy related to win officers may shoot at moving vehicles. Others see more tangential but can have equally momentous impact, such as law and policy related to vehicle pursuits, foot pursuits, or even how one approaches a home when dispatched to conduct a welfare check. De-escalation training is critically important.

35:23 But the law and policies shaping conduct need to support tactics that encourage allow and at times require officers to slow down and sometimes to let things go. Mr. Bruno just talked about the need to slow things down after there has been a use of deadly force. I think that we need to be focused on slowing things down before there is such a use of force so that there is no after. Additionally, law enforcement agencies treat training differently if the topic is specifically required by law rather than being optional.

35:56 The former gets real training time and officers are assessed on whether they understand that training. The latter is often covered quickly, perhaps during roll call if that. Thus far a topic as important as the use of deadly force, law and policy should define the requirements related to the use of deadly force with sufficient specificity

to ensure that training effectively directs and teaches officers to conduct themselves in the intended manner. Which brings me to my second point.

- 36:23 Given how policy and law drive training, it is insufficient for law and policy to require no more than that an officers use of force be objectively reasonable upon consideration of the totality of circumstances. This is of course the constitutional floor set by the Supreme Court in the 1989 case of Graham vs. Connor to determine the legality of an officer's use of force under the Fourth Amendment. But as good police departments have always recognized, this bare standard alone may not keep your officers or your community sufficiently safe.
- 36:55 It is for this reason that the police executive research forum included as its second use of force guiding principle, that quote agencies should develop best policies practices and training on the use of force that go beyond the minimum requirement of Graham vs. Connor. I want to talk about two concrete ways that law and policy can require more than does Graham. The first way law and policy can go beyond Graham, at least as that case has obstacle subsequently been interpreted, is to make clear that an officer's use of deadly force is not justified unless it was necessary to prevent imminent death or serious bodily injury to another office, to the officer, or another person.
- 37:34 Assembly Bill 392, a law passed earlier this year by the California legislature and signed into law in August, modified California's antiquated statutory framework regarding officer use of force and replace a vague reasonableness standard with a more concrete standard of necessity. Specifically, California Penal Code 835 a. now states that an officer's use of deadly force is not justified unless quote the officer reasonably believes based on the totality of the circumstances that such force is necessary unquote.
- 38:05 And then goes on to say that it must be necessary to prevent the imminent threat of death or serious bodily injury to the officer or another person, or to apprehend a person who has committed a felony that threatened to resulted in serious bodily injury if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.
- 38:27 AB392 does not as such a statute should provide a clear definition of what necessary in this context means. aAB392 as originally drafted would have defied necessary to mean given the totality of the circumstances an objectively reasonable peace officer in the same situation would conclude that there was no reasonable alternative to the use of deadly force that would prevent death or serious bodily injury to the peace officer or to another another person. However this language was removed before the bill was passed and signed into law.
- 38:58 But still AB 392 does seem to do a better job of providing guidance to officers than do most other statutes by stating that in determining whether deadly force is necessary, officers shall evaluate each situation in light of the particular circumstances of each case and shall use other available resources and techniques if reasonably safe and feasible to an objectively reasonable officer. In this way, California's new statute enshrines into law what is already common sense, that it is unreasonable for an officer to use deadly force unnecessarily.
- 39:33 Most importantly, this new legal standard almost certainly means new and better training for officers on how to safely identify and avail themselves of alternatives to using deadly force. The second way that law and policy can go beyond Graham is to

require that an officer's use of deadly force be proportional to the threat. It might seem self-evident that if deadly force may be used only when necessary to counter a threat of serious injury or death it must be proportional.

40:00 But by making the requirement of proportionality, you can explicitly help to ensure that officers are trained on how to choose from among various alternatives and levels of force to counter a threat of serious injury. Making explicit the requirement of a report of a proportionate force response will encourage agencies to train officers not just on the reasonableness of their perception or belief that they are under deadly threat, but on the reasonableness of their actions taken in response to that apparent threat.

40:30 And it will help officers be better at not escalating incidents to the point where the use of deadly force becomes necessary. This might be particularly important here in Minnesota where it appears from Minnesota's current deadly force by peace officers statute on its face that it permits officers to use deadly force even where an individual poses no imminent or even ongoing deadly threat.

40:55 I want to underscore that my point here is that when considering whether and how to change policy and law regarding officer use of deadly force, we need to look at more than the impact of these changes on criminal prosecutions and other forms of Officer accountability. We need to look at it more even than the message that legal and policy restrictions send about our commitment to the sanctity of all life. We need to recognize the impact that such legal and policy changes can have on improving training for officers so that officers are better able to avoid unnecessary uses of deadly force.

41:28 It is towards this end as I've just argued that law and policy should be modified so that officers may use deadly force only when necessary to imminent death or serious bodily injury and in a manner proportionate to the threat. Together these modifications would help ensure that officers are not simply told that if they perceive a deadly threat they may use deadly force. But rather that they are trained on how to use a force set of options on how to respond to such threats. So that avoidable shootings and deaths are avoided even as officers retain the discretion to keep themselves and others safe.

42:03 The third and final point I would like to discuss today is the legal duty to intervene and the need to train officers on how to intervene to prevent the unnecessary use of deadly force. Police have long had a duty to take reasonable steps to intervene to prevent another officer from violating an individual's constitutional rights. Notwithstanding, this duty to intervene training for officers on how to actually go about intervening to prevent misconduct even deadly misconduct is sparse and in many places it is non-existent.

42:33 We must change this. Ample research shows that while most of us believe we would intervene to prevent wrongdoing, most of us would not, at least not without training. We know the training can help people, including police officers, overcome the inhibitors that prevent them from intervening before a terrible tragedy occurs. And we know what it looks like to our communities when officers do not intervene.

42:55 I am sure that like me you have all observed that when people view footage of an officer using excessive force, they are as or more angered by the officers who stood around and watched or fail to step in to change the course of events as they are by the officer who actually committed the misconduct. I have written about active

bystander-ship training which is meant to teach officers how to intervene in a piece I co-authored with Jonathan Aaron, the court monitor in New Orleans, and I've been involved with efforts there and in Washington D.C.

43:24 to implement active bystander ship programs. I have been in my 20 years of doing this work. I have been amazed by this program more than any other. This training seeks to create a climate where intervention is welcomed. It shows how careers lives and families can be saved when officers intervene, and it teaches officers how to overcome inhibitors to intervening inhibitors like a paramilitary hierarchy in police departments, inhibitors like fearing that you are reading the situation incorrectly, that you make it worse

43:54 if you try to intervene, or that you will be ostracized or retaliated against if you intervene. To be sure at the instant an officer must decide whether to use deadly force, there often will be no time for another officer to intervene. However, it is sometimes the case that officer intervention can prevent another officer from getting him or hurt him or herself into a situation in which deadly force will be used whether justified or not. By requiring via law and policy training an active bystander-ship, we can ensure that more officers are empowered and able to intervene to prevent misconduct.

44:28 Further, and this weighs heavily on me today. Given the apparent suicide earlier this week by an on duty officer in Montgomery County, Maryland where I live. Active bystanders-ship training may help officers step in to prevent not only unnecessary uses of force, but also unsafe or self-destructive officer actions from improper handcuffing or searches, to drinking too much, to simply failing to attend to the mounting mental health burdens of their job. In other words,

44:53 active bystanders-ship encourages and teaches officers to protect each other from engaging in self-destructive behaviors whether those behaviors manifest themselves in a manner that harms the officer or harms met members of the public. For this reason, in New Orleans and elsewhere this program has been busy actively supported by stakeholders as varied as the FOP and the Southern Poverty Law Center and I would be happy to provide the working group material about this program as well. Thank you again for inviting me here today and I've of course I'm happy to answer any questions.

45:28 [Ellison] Mr. Bruno. You noted that you had some concerns about these sessions that officers are required to go to to talk about how they feel about a particular incident [Bruno] debriefing, that is the statutory definition. Right.

45:46 [Ellison] How would you respond to such sessions being regarded with some sort of HIPA protection given you know sort of like saying that these are therapeutic? [Bruno] It's a great question General. The statute is imperfect that needs to be changed. It's Like they used to say in biology it's a semi permeable membrane.

46:13 There are certain things that are said in that session that well whatever set in a session can't be used for some legal purposes, but can be used for others. So I have I shut those down. I have not let my officers go. If the chief if you really want my guy to go order him to go then it's Garrity. So and most chiefs won't do that. But you're right. The statute needs to be changed.

46:41 But if you have a psychologist present in there, then there are no more concerns because it's it's a psychological privilege. [Ellison] So you could support that. Also too you know you'd noted that there are. You listed a bunch of things that make officers

unique from civilians. But I did note that you said there were a few things that I did have to take issue with.

47:09 Like you know mandatory blood breath in urine, pilots have to do it. Driving professions have to do it. I just thought I'd mention that because while you're right in pointing out that the role of the police officer in a deadly force encounter is unique, it's not absolutely unique in their other professions that do have heightened scrutiny. In fact, as I was reviewing what you've had to say my thought was that OK so there are good reasons but there's a statute that makes officer involved deadly force different.

47:43 There's no there's there's an officer involved deadly force statute. There's not one for other professions and everything you said that makes officers unique then it seems like you're arguing that they should not be treated unique. Right. So I have to tell you that I was thinking to myself. You want officers to have the advantages of having a unique role but then you want them to be same

48:08 you know when it's to their advantage. And you know the truth is to to whom much is given much is expected you know and I just add that's just not a question that's just an observation that I made because it seemed that you were trying to argue that there's this is an unfair situation you know that officers aren't putting in a scrutiny situation. You can respond in a moment. I'm happy to hear your your thoughts on it. I'd like to hear also too. I'd like to, this is a question.

48:39 You represented officer Harrity correct. And just as a person who reads the news. I was concerned that. Three days after the incident, we hear that there was a noise that he heard that seemed to be offered to justify his partner n use of force deadly force.

49:04 And I just wonder you know he's Harrity was not the target of the investigation he was not the focal point. He was not the suspect. Why couldn't we get a statement from him. Right when it happened. Because the way it looks is like they came out with this later. Now I'm not saying that that's what happened. I'm just saying one could infer that. Per the conversation you shared with us regarding Abner Louima in which case he was sodomized with a

49:36 plunger stick. So so. So let's just say that that and that will just finally say yes you're right it is officers go through a lot in these situations and it is it is a lot and you pointed that out well. But and I don't blame you for pointing it out because your client is your client and that is it. The only ethical responsibility you have is to fight within the law for your client. And I did it for a long time. You've done it for way longer than that. I don't I don't question that.

50:05 But what I will say in response to it is. Our purview is not just what we don't. This body is not looking at this like a criminal defense lawyer would we're looking at it from the standpoint of the whole society. What's good for all of us, and what's good for all of us is that we keep in mind that yes there's a lot of scrutiny on the officer, but there is dead's civilian. And there is a wife, there's a husband, there's a child, there's a parent.

50:33 And and we got to take this kind of thing seriously. And while we should have concern run to the officers needs to run to the dead person to now I don't see that. I'm not gonna change your mind and I know I never could, but I'm just saying that for the purposes of this body, we've got to look at how this whole system works. And I'll just

say you know there are implications too. I mean we're concerned about people calling the police when when things happen that interrupt interrupt.

- 51:05 trust right. I know a woman told me the other day I got if I was a victim of domestic violence, I'm not sure I'd call the police because I don't know what would happen when the officer arrived. That is bad for society. We don't want that. We want people to call the officers. We want people did not fear the police. And and the other thing is that you know there's this whole civil judgment problem. Cities pay a lot of money. Cities indemnify these officers
- 51:30 generally speaking. There's a lot there's a whole list of things that's I'd just stop right there and just ask you why can't the non suspect officer give a statement right away so we can have some confidence that that is accurately reported? [Bruno] Well if you're talking about Harrity, I'm not saying too much about that because as you know there's no statute limitations on cases like this. But that was the soonest Harrity gave a statement
- 52:01 three days later whatever. That was the soonest that we felt we were ready to give a statement. Now it's a voluntary statement and nobody can compel any criminal defendant to give a statement so I'm going to give it either three days later and we're three months later or I defend my decision my decision [Ellison] But he wasn't a defendant. He was not a defendant. He was a witness. [Bruno] He was what? [Ellison] He was a witness.
- 52:30 Harrity was a witness not a defendant. [Bruno] Some people would call him one. [Ellison] Noor was the defendant. [Bruno] He was involved officer he was in the squad. The bullet almost killed Harrity. How long it could take you to recover from that [Ellison] Are you arguing he is a victim? [Bruno] No. You know it's just kind of a senseless thing because we as police as defense lawyers we're not you know we're not. We don't have a boss.
- 52:58 So we decide how to run our case, and we do what's best for the officer. And if there are some officers like us who never come back and there are officers who want to give one immediately, and ultimately that's the officer's call. You know in that case there was a lot of moving parts that the press landed within hours. The Australians were insufferable. How aggressive they were. And people were casing out his house.
- 53:28 [Ellison] Fred. Ms. Justine Damon is dead. [Bruno] What is that? [Ellison] Ms. Damon is not here anymore. Let's have some sympathy sympathy some respect for the dead. I I I'm just saying man calling these people on insufferable I'm not sure I want to go there. [Bruno] Well but the answer the short answer to your question is that we as defense lawyers take an oath to zealously represent our clients within the bounds of the law. You are a minister of justice.
- 53:59 I'm not. And I'll tell you this it's getting very hostile with police officers and everybody knows it. Now the fact that officer Noor said I'm not talking and he never talked till trial really really bothered a lot of people, including criminal defense lawyers. But when there is a kind of war or of hostility against for example the Minneapolis Police, they're accused of having a wall of silence or a blue wall.
- 54:32 When when you start a narrative like that you're you know if you're gonna treat our clients like criminals, we're going to defend them like criminals and you may not like it. [Ellison] I appreciate that. I appreciate what you do man. I'm a full on a supporter of the Sixth Amendment. So thank you. Well yeah.
- 54:59 [Peters] You know I've sat here. This is our third hearing and there seems to be an unfairness when it comes to you know representatives that are speaking on behalf of law enforcement whether it is

stopping their testimony, but we haven't done that for others when they get up and speak and you know. Has anyone asked why we haven't had a police officer sitting and testifying yet? I'll tell you,

55:27 because as Nicole knows who sets these meetings I have reached out to several several officers who have been involved in these incidents and there's been comments that officers get to go onto a paid vacation because of this and that is so far from the truth. Officers experience grief, emotion, depression because of these incidents. And I want people to understand that.

55:56 And so my question to you Mr. Bruno is you experience what these officers go through. Right after an event. Can you tell me from your perspective what you see the officers going through as well? [Bruno] Well it's I think. The first thing I really believe they feel is I am so

56:26 I don't want to swear but I am so effed. That's they all think that I know. No matter how justified the shooting, they think their life is over and they're not happy they're scared they're you know. I know people suffer, people get hurt and but my my point of view is the cops is seeing what happened to the cop.

56:51 You know I've had a year ago, I had a 30 year old SWAT veteran Army guy in my office and. He was a tough guy. He was a St. Paul or inner city cop and he had just shot and killed a guy with a replica gun. And he was just causing some trouble on you or something and then he pulls out a replica gun and he he kills them.

57:20 And that guy was in my office bawling when he found out. I had to tell him it was a replica that wasn't a real gun. And he couldn't believe that he killed a guy who was not armed. I know that cops when they find out that they killed a mentally ill person, they they lose it. They go the poor guy. You know I didn't know he was you know autistic or whatever.

57:51 But you know what they. So when somebody gets Killed who you know is a vulnerable person or is part of a lot. I mean that's when I see the most emotion and the most sorrow. But generally, nobody would justify the shoot is, they think that they're going to prison. Because that's what the atmosphere is today.

58:16 And that's why you see all cops lawyer up more and more and not talking and you know making the prosecutor get the business the hard way because we have to circle the wagons and just the atmosphere that we're in. You know the war is on. You know after 9/11, you couldn't lose a cop case. You know everyone loved cops. You remember those days Chief I'm sure. I mean it was

58:45 and now in the past few years since Ferguson that was a watershed event, and maybe for the better maybe for the worse. But it's that's why we're all here talking.

[Peters] I appreciate those comments. And you know I think it's unfortunate that we're bringing up specific cases and playing to emotions right now on such a topic that we need to be focusing on what the solutions are and nobody wins in any of these. The police officer doesn't when the families don't win. So what are we going to do about it instead of going back and forth.

59:15 So I appreciate you coming here because many people in law enforcement don't want to come here because one the way they're treated, two the aftermath of what they have to deal with, and three living live an experience that has changed their life

forever and I and nobody wins out of this. So I appreciate you coming here and speaking on behalf of law enforcement.

59:47

[Smith Baker] I'd like to jump it if I can.

So you know I as a member of the working group want to just reset that and certainly express my commitment to hearing from officers and all of those

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00:00 [Smith Baker] Our work here is to be good listeners then and take it all in. It's interesting to respond to emotion with emotion and then in a lecture. But I'll take it. And hopefully we can spin this to a place where we can hear and ask questions. Which is what I think is about a roll is. A couple of of definitions came up or questioning or or maybe there was a recommendation in there that I'm thinking through in so my question is about the definitions of necessary and reasonable.

00:34 Can either one of you provide any additional context on what we might consider? Or if you have any recommendations on what we should think through?

[Bruno] I can jump in on that because I thought that was going to happen. There is a movement that's had a lot of steam behind it to to take the guts out of the Graham vs. Connor. Graham vs. Connor was a decision 1989 and here here's what everyone took out of it and became the instruction in deadly force cases.

01:05 It went like this is literally it, the reasonableness of a particularly use of force must be judged from the perspective of a reasonable officer on the scene rather than with the 20 20 hindsight vision of hindsight. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split second decisions split second judgments in circumstances that are tense, uncertain, and rapidly evolving about the amount of force that is necessary in a particular situation.

01:37 The test of reasonableness is not capable or precise definition or mechanical application. So that came in 89 and then everybody was fighting well is this a subjective standard. Or is it an objective standard is it. What's in Fred Bruno's head or was what if what is in reasonable officers had you know mythical officer and so that was decided a few years later in the (inaudible). But he said it's an objective standard.

02:09 What's happening now though is that the reasonableness is is is the issue that many people have with Graham because it's a fuzzy word and is what's reasonable in the mind of a cop on in those exact circumstances. So it's still is a little subjective because those exact circumstances only happened once in history.

02:34 So what does an organization called a perf and if it's called a police executive research forum or something like that, but they are trying to take the reasonable word out because that's that gives us very little guidance and the result a lot more to that. But they are trying to change the reasonableness terminology of Graham vs. Connor to necessity.

03:04 Was it necessary now in. I beg to differ with my colleague who maybe hasn't looked at Minnesota law because 609066 is deadly force defined. And guess what it says, the use of deadly force by a police officer in the line of duty is justified only when necessary to protect the peace officer or another from a parent death or great bodily harm.

03:32 We already got it. For what then happens is the reasonableness of Graham is a separate jury instruction. So now we have reasonableness and necessity both floating around, but we we are already. But we already have then to set the necessary language in the statute. No need to change it. .

04:05 [Lopez] So that was almost entirely inaccurate. Graham versus Connor the part that was read Mr Bruno stop[ed] before the sentence where Graham says the force is justified only when it's necessary. So necessary is not so it's not far from gutting Graham, it is simply trying to restore the language that was in Graham. And actually PERF did not weigh in on the California statute which updated. Before there was Graham,

04:33 there was a statute Tennessee v. Garner which put into place the fleeing felon rule. And what that's what that law said was that if you had committed a crime in the past and you were fleeing an officer could kill you to restrain you. And Tennessee said no, Tennessee V. Garner said no that's not a good idea but many statutes including California still are many states including California still had that on the books. And so what California did was changed that and they changed it in two ways.

05:01 One was to restore the necessary language which unlike Minnesota. That's the part that's that's accurate. Minnesota does have the word necessary in their statute. They restored that into the California statute. But again as I said in my in my testimony it's not actually a radical thought it is far from gutting Graham to say that it's not reasonable for an officer to kill someone if it was unnecessary. That's all it says is what Graham said, and that's what people are trying to reintroduce because of the impact it has on training.

05:32 And we can all agree that if we can get office in a different mindset and prevent these incidents everyone is in a better a better spot. I absolutely agree with Mr. Peters that these incidents are hard on officers and we want to prevent them for their sakes as well. Now in terms of the Minnesota statute, I have actually read the statute and it is true that it says necessary but the part that I was referring to that part of my testimony was that it has to be necessary to prevent an imminent threat of serious injury or death. In there. And you have to pay attention to the 'OR' as I hate you know, this is why lawyers are such a pain.

06:03 You have to pay attention to such 'OR's' because the first part of the of that statute has to be necessary to protect the peace officer another from a parent death or great bodily harm. There's no imminent there but you know it's it's it's kind of there. But then you get into the second part because there's there's an 'or' in all of this. Or to effect the arrest or capture or prevent the escape of a person from from whom the peace officer knows or has reasonable grounds to believe has committed or attempted to commit a felony involving the use of threatened use of deadly force.

06:35 So it's very similar to the Tennessee v. Garner, the common law rule that Tennessee v. Garner overruled because what it allows you is that if someone has committed a felony in the past, granted a felony where violence was involved, but you can now kill them even if they represent absolutely no threat now or in the future. That is a problem and I think one of the reason I bring it up is because we all try to get fixes to prevent these sorts of things, but oftentimes they become insufficient in wanting because the jurors go in there and the like we just applied the law.

07:05 And in you are the ones with the power to modify the law. And so all of these other changes are only going to be of limited value. Without a very simple change in the law

that other places are making in the sky has not fallen.

[Darris] Thank you professor that was literally the course that I was going to ask you was what are your specific recommendations for adjustments.

07:36

Do you have any additional besides looking at I believe it was subsection 2 of our 6 0 9. 0 6 6. Do you have any additional recommendations for how to tighten the language of that particular statute? Specifically, any of the sub parts of that statute? In order to provide for a better outcomes and to reduce the number of officers involved shootings. That's my first question.

08:06

[Lopez] Sure. So I want to I obviously want to be respectful of how much more all of you know about this than I know so I would just these are just things that I would invite you to consider. I mean I don't know I would have to know a lot more about how your systems work and how this law has been interpreted. But as I mean as I mentioned in my testimony there was initially a definition of necessary in the California statute, and I think that is really helpful because it gives you more specific information and for me this is all about how we're how we're going to shape the training that's going to guide officer actions.

08:40

And so I think that definition is necessary and you can see it in the earlier versions of the bill. It is a good one and I read it in my testimony I'm happy to provide my testimony. The other the other issue is this is this is the very last paragraph of of AB 392. There's a reference to paying attention to what officers do that lead up to the moment where deadly force is required.

09:05

That's sort of an acknowledgment of a case that this court decided a few years ago Mendez versus county of Los Angeles where the court rejected what's called a provocation rule in California, but it accepted the idea that you can look at whether an officer is at an officer's act was a proximate cause. You know even though it wasn't the immediate thing to happen if it led up to that you can look at that when deciding whether the force was justified. Now this is I think the reason why this is so important is that.

09:36

The reason why I think that's important is that right now there's no motivation for departments to really train officers to take the steps before that final moment, to prevent to take the steps to prevent that from getting into the situation where they have no choice but to use deadly force. And when you add that sort of language you're really signaling to departments you better train your officers on this. And officers want that training.

10:08

[Darris] Would you mind taking a deeper dive or a deeper look at our particular statute and they're providing us some written recommendations? [Lopez] I would be happy to. I'd be honored to. [Darris] Yeah that would be great, I would really appreciate that. And then Mr. Bruno I had a question of you something that you said kind of stood out.

10:32

Yesterday my significant other told me that her father had been in an accident at work and the muscle from one part of his own dropped down to another part of his arm and so you know obviously he's not going to be able to work anymore. And so the job required him to take a drug tests. And so what you said that only in some cases are officers being acts to provide some type of toxicology?

11:05

[Bruno] Yeah it's all it. That really is a little bit of a Spider's nest. Some policies say you must, I think like Minneapolis it is blood and urine or something and they have to do it and

that's not compel testimony and they're not yet there's no probable cause to charge him yet. So you know General Ellison's thing about pilots and bus drivers and all that.

11:36 That's that's apples and oranges that's civil regulation we're talking about Joe Cop defendant versus Joe Smith defended in you know. So the cops are required without any probable cause to have their bodies invaded with a needle. And that alone sets them apart from the rest of us. But see it is different because there are some policies require it, and others don't like.

12:06 I just did one in a police department. I just say Richfield one of our suburbs and the Drew and his guys or whoever is doing the investigation asked if we do a drop of urine. Now you know what really happens is that if there's no policy for requiring that test and I'm a union guy I believe in organized labor et cetera,

12:37 the Union guys get really pissed off at me. Sorry Brian. When because they say you're setting a precedent. Don't do it. You know why would you why would you let somebody search your body without a warrant. And you know you're just making it worse for the rest of us. I don't care about what they think, my guy wants to prove that he's not intoxicated or had a Xanax in his system or whatever it is at the time of the killing.

13:03 So generally cops do it. Well in my experience 100 percent of the time. Now that could change. There could be a state law requiring them all to do it I suppose.

[Darris] But to me it just kind of points out even more the lack of uniformity. To me just you know based off of when I think about other jobs when I think about my significant other's father you know it seems to me that you know we would want to continue to move in a more uniform fashion and now I think of all officers.

13:38 [Bruno] And you you make you make a great point. And some of the one of the things I read that you either co-authored or a part of was this idea of reasonableness in Graham versus Conner is a fluffy concept and the Supreme Court doesn't give us police departments any guidance on what's reasonable or not. Now here's an example, and what happens is you have critical, you have

14:06 policy manuals like Minneapolis might say this is this is what this is deadly force. A gun or something. Everybody responds in different ways according to the policy. So I think where that article was going was that there's too much discretion with the individual policies. Now I don't want to weigh in on that. That's above my pay grade.

14:32 But what we do right away when we get a case where there's a fatal or deadly force is we look at the policy and say well what what does this officer have to do. What did they do? Now I had a case once where. There was a really unfortunate case and I don't want to go into the details, but there was there was a guy in a wheelchair. And he was fighting with a police officer. And he was fight was all the way should take his coat off or not.

15:03 It was in the meantime the guy in the wheelchair goes like this and he hits the police officer in the eye of the area. And then my guy got charged with using improper force, but guess what the policy defined deadly force as any strike to the orbital area. So that's going to be way different than a policy somewhere else. So and to your point you know it it's a moving target.

15:32 And the first thing we do as a defense lawyers say OK where's the weasel word where's the rule. How do we get out of this. [Darris] And then I have one final question. Well my final question is.

16:02 Oh. OK. That. Something. So so so the final question that I had a kind of concern. The again we're talking about uniformity and we're talking about how different jurisdictions in Minnesota are doing things differently.

16:25 In Hennepin County, the county attorney made the determination to not go to the grand jury and grand juries, particularly because there was a lot of outcry for the secret nature of them. And that these are public officials engaged in activities with with civilians within that jurisdiction.

16:51 Was I was mistaken that your position is that these public officials should be subject to grand juries which are private proceedings and not subject to public pronouncements?

[Bruno] The way I read the law is you must use a grand jury for any public official accused of misconduct in criminal alleged criminal behavior is the highest form of misconduct. I don't know how you get around that. I really don't.

17:18 But the most criminal defense lawyers that I talk to you we wish it would be more transparent. We'd like to go in there and participate. We'd like to get the transcripts in federal court is all but impossible to get the transcripts in state court it is very easy. But, I've talked to a lot of them officers and prosecutor. Yeah I think maybe preserving the identity of the grand jurors like that's supposed to be.

17:48 They don't want to. People know who they are. And I understand that for safety reasons if you're got a drug lord in front of you. You know you probably don't want it at all where you live or we are. But so I'm okay with the anonymity of the grand jurors. But I think most people probably everybody in this room would say. Open it up. Let's get the transcripts. Why. Why be so secret. I agree with you on that.

18:17 [Ingebrigtsen] Thank you Mr. Chair and I have to agree with what Brian said earlier here with regards to kind of the police going on trial here. But I guess that's probably not the right term. But Mr. Bruno, I really appreciate you finally somebody finally saying that if we don't get control of this pretty soon, police officers are going to have a tougher tougher timed doing their jobs out there in fact of the matter is we're going to have a hard time finding good

18:46 Good well-trained police officers because no one is going to want to go into it if we don't start supporting them. That's not to say that. And I think both of you sitting there today would say that there is a mechanism in place for police misconduct. Would you both agree with that? If somebody shoot somebody unjustly there is there is a place for where those prosecutions.

[Bruno] I agree 100 percent.

19:13 You know what they say in this business that when there is a there's a bad shoot, I know it before that that cop comes into my office. I mean it is out there and. Bad cop should be punished [Ingebrigtsen] and there is a mechanism in place to handle that? [Bruno] There's tons of them too many. But there's a in my opinion is you know civil venues, there's a civil rights departments, there's internal affairs, there's criminal charges directors at least four.

19:46 [Ingebrigtsen] Ms. Lopez, you mentioned about shooting somebody running away and I think that was in California where just because a person was deemed dangerous early on doesn't give the officer the right to shoot somebody running away I don't know of anybody. [Bruno] You know that that's you she makes a good point because the statute itself is you. I agree. [Lopez] I think he said Ms. Lopez. [Bruno] Oh I'm sorry. [Ingebrigtsen] I did. I did ask her. Yes she talked about the police officers running or shooting somebody running away.

20:16 [Lopez] Yeah there is an old common law rule before the case of Tennessee v. Garner that allowed officers to shoot at someone who was fleeing if they had committed a felony. [Ingebrigtsen] What year was that? [Lopez] The common law rule was back when there were only five felonies and so in 87 I believe it was Tennessee v. Garner was decided and the court said no that that can't be the rule. Unfortunately, a lot of states did not update update their statutes in California is one of four states that until this year had not updated its statute.

20:46 Most states have updated their statute and so they still they now require that the felony have been violent, but they still many of them like Minnesota do not require that there be an imminent threat of serious injury or death. So those statutes allow officers to kill someone even though that person does not pose an imminent danger of a serious injury or death. [Ingebrigtsen] Well first of all I don't think any of our police officers here and I can't imagine anybody in this room agreeing with what that all law that you shoot somebody just because

21:18 they were a dangerous felon and if they're running away from something and they get shot in the back. To me that's not only cowardice but it certainly should be dealt with harshly. However, unless that officer would have, excuse me it was that person's running from shooting the officers partner. That wouldn't that would justify a shooting. But during your testimony everything was good until you you brought up the most recent and I think you were talking about the welfare check incident.

21:50 I think lost me little bit there and then it kind of runs hand-in-hand with the support of law enforcement. This is a news item that's only about 40 days old and you use it in your presentation and I think that's a little bit out of line. And I say that because you know we still are innocent until proven guilty. There's information coming. That it may not be exactly exactly how the media had put it. But to come here and see that really doesn't do the the incident that we're trying to deal with here a whole lot of good because

22:20 if in fact that the evidence shows that that officer had no reason to shoot, then he should be prosecuted. But we can't take it from the media. We just can't do that continuously because we're going to be losing control of our whole law enforcement community is watching us. [Lopez] Yes, Senator I did not refer to any particular incident in my testimony. I did refer to a tactic of welfare checks. And there are different ways to conduct welfare checks. I've seen them conducted many different ways.

22:49 [Ingebrigtsen] Maybe it's just coincidental that there was a killing within the last three days on a welfare check. [Lopez] I think it is important and I don't think it's in dispute that there was a welfare check happening. And the point is that my point was that there are different tactics that we can teach our trainer officers on, so you can train your officers that when you have when you can when it's not an emergency maybe you can go the front door and you can and you can ask about what the welfare is. That's my only point is that these are there are myriad circumstances in which tactics can make a difference.

23:18 And where we can prevent officers are being in situations. I absolutely agree we don't know at all yet what happened. We don't know with sufficient specificity here to know whether the officer's actions were justified much less criminal. We don't know that yet. But we do know it was a welfare check. And that's just one example of many types of situations that we can train our officers and with that training we may be able to avoid some tragic consequences.

23:51 [Moran] First, I would just like to say that I'm glad the group of Brian and the Senator that we need to get some control over police officers because as we heard earlier the pathway to policing we can't get people of color to want to be a police officer and that is a result of what where we are today.

24:09 So we have to get some control over that because I would like to see more police of color in the community that I represent. So I think that's important. So this is to either one of the testifies. Christy or Fred or anyone around the table because I don't know the answer to this but we talked earlier about two trainings. We talked about the use of deadly force training and we also talked about de-escalation training.

24:39 How are these trainings similar, different? Lemme just stopped there. [Lopez] How is deadly force training different than de-escalation. OK. So first if I can respond. There is a bit about your really important point about more officers of color in policing. I'll just note that for example in Ferguson when we conducted our investigation there were 50 police officers, four of whom were African-American one of whom was a woman.

25:10 And now there are 38 officers and over a third of them are African-American and women. I think perhaps up to half and allow all the while crime is going up and St. Louis County is going down in Ferguson. So I think that there is a path forward here that can check all those boxes. I think de-escalation training is training that is broader than just training in how to avoid deadly force. It's how to avoid all sorts situations from escalating so that you don't have to use any force ideally

25:40 and still keep everyone safe and achieve your law enforcement objective. Deadly force training can be there are many different approaches to deadly force training. Some of them don't focus don't don't provide that training to officers on steps you can take to avoid getting into that situation or how you can intervene or how you can work together to sort of avoid having that what we call what is often called the final frame of yes at that moment that the shooting may be justified.

26:13 But if you had done things differently beforehand, you could have just as good outcomes for the officer and for safety, but also no one has been killed. So it's both broader de-escalation training but both broader than deadly force training. And at the same time there's a lot of deadly force trained that is not at all about de-escalation. I don't know if it helps that.

[Moran] This is very very helpful.

26:32 And I asked that question because we have some decisions to make around this table and I think language is really really important and trainings are important in so you know. What I just heard from Brian and the senator is in the testify is that this impacts police officers as much. You know they are hurt, there is a lot of emotions that happens when police officers are

27:02 encounters the deadly force where someone is lying on the ground floor and they're dead. And so as we think about this path forward around trainings. And the language that we're using to implement the training you know if if we're trained around how to use deadly force or what that looks like that's what you get if you're training around de-escalation with some

27:32 also information around deadly force you get what you're training for. And so I would just like us to encourage and really think about what is we trying to move forward. Whether it is on behalf of the victim or the police officer. What do we want to do in this working group to ensure that we are you know my hope is that we

want to try to as much as possible begin to decrease the number of deadly force encounters. You know.

28:01 And if you have some in my opinion my thought, is that if you have more training about how to de-escalate the problem, that that may be a solution to it. So I just want to show that, I also needed some clarity on the two different trainees and what we are getting when we are doing a training what law enforcement officer are getting when they do their training. So thank you.

28:26 [Kappelhoff] Very quickly Professor Lopez when you worked in the Civil Rights Division, when we worked together Civil Rights division, when you did your investigations part of your investigation focused also certainly on use of the force and training, but also officer wellness could you talk to us briefly about how important that is with regard to ensuring that police officers get the tools that not only the tools the training but also any mental health therapy they may need as part of their job.

[Lopez] Yeah. And I don't think it. Is just often.

28:56 There are a lot of reasons to dress officer wellness when it is a very tough job. And we need to support our officers so that they and their families can have as sort of healthy and productive lives as possible. That alone is a reason that we need to support Officer wellness. We're not doing a very good job at that right now in part because there's a stigma. You know for example, Mr. Bruno said you know you need to see you know when the sergeant says you need to see a shrink on a note what normal citizen has to do that.

29:21 And you know I say like if only we had a world where everybody who is criminal defendant got to see talk to a mental health professional. And I think we need to really move beyond that stigma and frankly change some of the rules so that there aren't you know there's some consequences for officers. Officers would be able to talk to my health professionals about worrying about the impact it's going to have on their career. So I completely agree with that.

29:44 But in addition to all those reasons to be concerned with Officer wellness, there is research that shows that that the officer wellness impacts how they treat other people, including using force and that is such common sense. We all know that, but we have research to back it up. There was one say that showed that the lot the strongest predictor of whether an officer is going to use excessive force on a call was whether the officer had just come off of a suicide call. Right.

30:12 So officers it you know you. It is hard to imagine and for many of you on this panel it's not, maybe for none of you. It's hard to imagine for many members of the public it's hard to imagine how truly difficult and stressful it is for an officer to this job. And not to be an apologist for officers who use excessive force at all and not that officer wellness would prevent all officers from from using excessive force. Right. But we absolutely are missing the boat if we don't recognize the connection between Officer wellness and a lot of the misconduct that we see now.

30:43 [Kappelhoff] Just quick question with regard to the necessity and the language in California the Camden police time which I know you're very familiar with. They've actually built that into their use of force policy. I know you're familiar with it. Do you know of any studies of whether or not that has assisted officers reduce the use of the force and ensure that officers go home also at the end of their shift? [Lopez] Whether Officer wellness has? [Kappelhoff] No no.

31:08 They built necessity and sanctity of life into their use of force policy and has that changed the either the uses of force and whether officers are safer as a result of that? [Lopez] So that I don't know of any broad studies of that and it hasn't been done right. I mean we'll know more probably in the next year or two and out of California. One of the difficulties at studying the impact of these sorts of changes is that everything is always changing in law enforcement in the world and so you never know if something has changed because of or despite of something that you've done.

31:38 But in Camden I will say that observe our shootings are down and crime is very is way down in Camden. And it isn't it is an example from what we can see so far that you can make these changes without actually having certainly no negative effect and certainly no dramatic negative effect. But we haven't seen any negative effect at all. [Kappelhoff] And one last quick question over were over time.

32:04 You were in a section in the Civil Rights Division that was specialized in pattern practice investigations which are complex and we had a we've had a discussion about Graham vs. Conner and Tennessee versus Garner. It's a very complex area of the law. What are your thoughts about having a specialized unit responsible for investigating these types of offenses in within a state? I know that we worked in the federal government together but what about within the state. And are you familiar with any models that are along those lines?

32:33 [Lopez] Yeah I am familiar with those models. I think it can be, I mean every place is different you have to look at what's right for Minnesota. But so one of the problems that officers and members of the public complain about in an officer involved shooting investigation is the lack of expertise by the individuals conducting the investigation and that can be particularly true. You know if you're a small department or a small county, you may see one officer involved shooting once a year maybe once every five years. You don't know how to investigate those.

33:03 And in my experience that's not good for anyone. There is there is there are different things about investigating officer involved shootings than other kinds of homicides, and frankly some places don't have a lot of experience investigating homicides. Right. So what this what what a combined unit does is collect people in one place who can develop that expertise over time because they see more cases because they have a they respond over a broader area. A lot of places I am aware of the in.

33:33 The D.A. the district attorney in San Francisco has developed a special unit focused on investigations of officer involved shootings to develop that particular expertise. And am I believe that New Jersey also has that kind of setup. But I'd have to look further to confirm that. [Kappelhoff] Thank you.

34:03 [Park] Thank you for both of your testimony. My question was for you Miss Lopez, you referred several times to having enough specificity in the statute to direct the training. And my question is whether you have seen examples of where this has been effective? That you could provide us with examples of that language you refer to with to it several times.

34:29 But you know like reasonableness. So de-escalation you're these are words that it's helpful to have some examples for clarity when we're thinking about the importance of training that was what I took back from Camden experience as well as from both testimony today around it as this need to have more clarity. So we're not arguing spending a lot of time arguing about it. Yeah.

- 34:59 [Lopez] So I think two areas to be more specific are simply on defining reasonableness. And so I tried to give examples of that, but it's proportional and then it's necessary to respond an imminent threat. That doesn't sound like much more specificity but it is actually much more concrete. When you actually try to train out what does that look like than just objective reasonableness it's hard for anyone to know what to do. There are some states. Some states have been very specific at the state level.
- 35:30 For example I believe Colorado opines and state law about choke-holds you know when others may use them when not. Right. You can get very granular at the state level, more departments do that at the policy level. And the Camden policy that you that you mentioned I think is a good example of the right level of specificity to try to aim for, and it that it's it's it is policy not law and you'd have to explore whether you wanted to borrow any or all of that to elevate to the to the state level or included in sort of is part of a post requirement for training. You know there are different ways you can do it at the state level
- 36:11 [Gottschalk] My my question be directed towards Mr. Bruno. You've had a front row. I guess inside look at officer involved deadly force and for the last several decades in our state. And as we we hear best practices from around the country and I think that's great because we can learn a lot of things. But what we're also learning is that, our educational requirements in the state of Minnesota are some of the highest in the country.
- 36:38 The when we talk about proportionality of force the Minnesota post board use of force learning objectives is a seven page document the first three of which talk about non-lethal forms of force, de-escalation, scalability, appropriate application. The model use of force and language from the post board that all law enforcement used that are required to adopt the fundamental elements of it indicate that number one in determining what forces in reasonable the severity of the crime at issue whether the suspect poses any immediate threat to the safety of the officer we've been doing a lot of this stuff for a long time and it's and it's different.
- 37:12 I'm not saying we we shouldn't learn from other areas, but we're not in the same place that Camden was we're not starting from where they started from. Can you with your unique perspective I kind of have a twofold question that what are it what have you seen and are the results of Officer deadly force encounters a result of A lack of accountability are we seeing officers shooting people in the back when it's inappropriate is there an element to that? But further is there common ground for improvements? You're very aware of what we have.
- 37:40 Is there common ground for improvements to reduce officer deadly force encounters either on the grounds of policy accountability or training? You mentioned transparency in the grand jury proceeding so sorry it's a little many layered question but can you kind of speak to those generalities and your your unique perspective. [Bruno] I. Am you know I'm in the. I'm in the front office and not the back office. So I don't.
- 38:10 As far as training and. You know when to use deadly force when not to. I don't really think I'm qualified to talk about that. You know we get I get a case and then we try to fit it on to the laws as they now exist. And what does the policy say. And as Christy said, you know the first thing we go to is the policy. And how do you define deadly force and what can you do. And that's in fly.
- 38:40 Every department has its own policy. And you can agree with that. Or as Mr. Darris says it should be more uniform and I guess. But as far as what we're seeing you know

are there less deadly force encounters or more. To me it seems like it's. Had all of them. There are more. Just look at the news and I had three in one week once and they weren't all fatal.

39:11 Then there's this disturbing concept that we all hear of you know the Ferguson effect, you know cops are afraid to engage. I'm not seeing that as a generality, but you know a cop uses deadly force it's like he or she is shooting himself the way they get treated when they're done. And so you know he can't blame him for backing off. So I think there's probably going to be less in these tremendous civil judgments.

39:43 You know I remember Chief. Blair Anderson testified at the thing that he spoke at the criminal justice institute. I was moderator of a panel on what's wrong with cops and kind of diffusing all these myths out in the community. But he said that in St. Cloud now they have 40 applicants for 11 spots. And you said they used to have 400 for one. Who's going into law enforcement these days.

40:12 You know to me there's two people two types, it's in their blood they're because of their father, and mother, their uncle, or they're military. And the other type because they need a job and it's a good paycheck. And there are many people who think that the you know the Muhammad Noor case was the result of poor hiring. I don't subscribe to that opinion, but that's what you hear.

40:41 You know these are terrible terrible times for chiefs of police to get the right people, the right training. Heart goes out to your chief. [Gottschalk] Perspective for my question was really a perspective that only you can bring in that as the defense attorney if there were if there was a dirty secret of things that need to be improved, and you as a citizen and all of us up here we were trying to reduce officer deadly force encounters. Where can we see a lapse or some common ground or things that you think would be areas for improvement?

41:15 [Bruno] Are you talking out on the street or in the courts? [Gottschalk] You know as a member of society you see you see the front you got a front row seat to know behind the scenes probably in more detail than would any of us see. And where can we get better as a society in reducing them? [Bruno] Well you know I think. Education that's a lot to do with it. You know I used to say that some people have not signed the social contract and they don't obey an order from a cop. But now I think they haven't even read it.

41:46 They don't even know it exists. And you know when I get pulled over and I'm fairly well known I keep my hands on the wheel. And I don't if I'm going to reach for something I'm going to ask the cop you know is it OK if I reach into my pocket and I'm knowing what I know. And the lesson that I learn is obey the cop. And you know it's just common sense and you start fighting them out on the street. They're probably they're going to win. Most of the time.

42:16 And. So when I you know again I keep my hands in the two o'clock position and I don't get out of the car. And. You know generally, I you know I'm I'm you know I live in the suburbs and but different community. So I don't know. It's different. [Rubin] Following up on Mr. Bruno's comment about the perception that there are probably more deadly force officer involved shootings today than there was before.

42:48 I've been at this for 40 years I probably would have that same broad opinion. Ms. Lopez, I would ask you you know you've studied this for 20 years. Twenty years ago our law enforcement officers did not have the type of training that they have today. And we've heard a lot of people present testimony to us about different ideas so we could

do this and this and this and this to enhance their training to make them more prepared. do your studies reveal what has changed?

43:19 Our officers are not they were not as highly trained back then as they are now. And we want to train for what has changed in 20 years to cause the increase in officer involved shootings based upon your studies? [Lopez] I haven't studied the rate of increase of officer involved shootings. So I don't know it to be true that there is in fact an increase in officer of all shootings. We've never done a very good job about counting the number of officer involved shootings, and even even now it's done by two newspapers.

43:50 So that's the best count we have which is problematic. But if you're if your question is your question does training make a difference or are you asking why we're still focused on training when we seem to have better training and yet officer involved shootings still go up? So I again I don't know the officer involved shootings are going up I think are. I think we know more about that ones that happen which I think is important.

44:19 I think communities feel empowered to speak up for their rights in a way that was previously more difficult. And I think that's a positive thing. And I think we can always get better with training and it's you know no one loses with that officers want that, Communities need that. When we provide better training this is training that has been shown to you know help officers have better options than in killing someone. So we should continue to do that. And even if, regardless of which direction after all shootings are going in, we should continue to try to get them to reduce.

44:51 So I think it's not a it's it's kind of a win win. For providing more training. [Rubin] Thank you. [Harrington] Thank you to you both. We will be back at 3:45 for the next panel.

[Break]

55:42 [Harrington] All right. We're going to start panel D. And just to get it. We have some time constraints on some of our speaker so Mr. Chris Burbank is going to speak first.

55:54 We'll do what I hope is a sort of a an abbreviated Q and A at the end of his presentation and then we'll finish up with the other presenters that would make up the panel D, and then we'll do the final Q and A after that and then we're going to move directly from that into family testimony. So Mr. Burbank, the floor is yours. [Burbank] Thank you so much for having me and for accommodating me, I apologize for skipping out for an airplane. Let me just introduce myself, my name is Chris Burbank.

56:24 I am the vice president of the Center for Policing Equity a nonprofit research group that works on the intersection between policing and race hoping to reduce the actual disparity in the outcome of policing across America. Prior to that I was the police chief in Salt Lake City for nine years. For those years, I was a vice president of the Major City Chiefs, the 70 largest agencies in the United States and Canada. And I've had the opportunity to testify in front of Congress numerous times and

56:55 have really a strong commitment to what data can do to change the outcome of policing. I was on the phone the other day with the very large media outlet and the reporter asked me, well according to The Washington Post this is how many shootings and what's gone on. And it's a travesty to think that the Washington Post is the best source of information about officer involved shootings in the country.

57:26 Because without a doubt those individuals and law enforcement sitting around the room, if I were to ask them about the officer involved shootings in their jurisdictions could tell me precisely how many they've had, what each incident looked like, good bad indifferent how they resolved that, what are the officers doing now. We have so much information available to us but yet we have not shared that. The other thing is as we look throughout history and I go back and I started my policing career

57:56 around Rodney King, and I look and I think well have we changed the outcome of policing? Some of the things that we know and I'll try and distinguish things that we have studied and can say factually with some of the things that I think you project when it comes to data. As a black individual in this country, you are more likely to be arrested and incarcerated, you are more likely to be stopped by the police and issued a citation, you are in fact more likely to be asked to be searched.

58:27 But interesting enough as you look at the searches that are conducted when consent searches are conducted in many cities across the country, the efficacy of the effort, so the time that the officer finds something that they are looking for as it pertains to a

black individual that they are asking for consent. The efficacy drops to 3 percent or less so 3 percent of the time the assessment made by the officer or the pursuit that they're wandering down is accurate and actually justifiable.

59:02

You conversely look at white males of the same age group, and the efficacy of the effort jumps over 20 percent in most cities. Now that's not to say that one individual is committing crime at a higher rate based on that race because we know because there's many many good studies done in the past that race is not an indicator of criminal behavior.

59:25

But what we're seeing is the phenomenon that the scrutiny that goes into asking a white male for consent actually falls into that category of very good profiling. And that's police profiling that's behavioral profiling that observations are made about what the individual is doing prior to asking this and they're pretty good assessments right.

59:49

This can be a person is continually going into their pocket, that they're exchanging things with people on a regular basis, that they are concealing that one side of their body from

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00:00 [Burbank] very articulable things that go to good behavioral assessment. Conversely, what we see on the other hand is we see wrong place at the wrong time, wrong neighborhood, why are you out tonight, and there's not a lot of scrutiny that goes into prior to. What data analysis does for us. It provides an avenue that we can now make determinations about everything in policing. In this modern day and age,

00:31 we have more information than we know what to do with especially with you all we're talking about body cameras earlier. And there's actually assessments that can be done on body camera footage that we'll pick up on keywords, key actions, and those things that can give you more information. But yet when it comes to the number of cars stolen in the United States, we can tell you almost to the hundred how many cars were stolen last year in the United States.

00:59 If we ask the same question how many people had force used upon them and what type of force was used upon them, or the success rate of searches conducted on individuals, potentially limiting their Fourth Amendment rights, we can't answer that question accurately and that's going to be a little different for every police agency. This is one of the things that we have very committed to is that well from a science perspective it's very good to make large national, hey this is what's going on and this is the trend that we see.

01:32 But more importantly for the people who, some are sitting behind me today, members of your community much more important to know what's going on in my community. What's going on on my block face. Why is there a difference in how I feel I'm being treated or my family's being treated as opposed to other neighborhoods in the city. We can make accurate assessments as to how much time and energy does the police I was there spend in a certain area.

02:00 How many stops does that individual make/ What is the makeup of those individuals? And also what is the officer attitude and behavior? Many many people look at many scientists look at population benchmarking so you say all right if my population rate at 15 percent is Latino and 15 percent of my tickets arrests occur and are Latino, well then I'm good right.

02:30 There is no problem. If that number is higher than oh yeah we all have a problem with that. No. But really what is accounting for that. Because oftentimes you get the attitude or the response. That we just go where the crime is. In fact, most cities and we work with about 250 cities across the country right now. In most cities across the country, individuals of color are arrested a higher rate than they are committing crime. There is more involvement with these individuals than there are,

03:02 or would be if we were just simply arresting the criminals or going where the crime is occurring. And wouldn't you like to know as you discuss how many what makes up an

officer. That's a good officer how many uses of force are okay. What historically has that officer look like. We know that female officers commit a crime or commit crime. I apologize. Actually female officers use force at a smaller or lesser amount less frequent than their male counterparts.

03:33 But yet they make up a small percentage of most of our police forces across this country. If we want to make a concerted effort. Right. How are we going to change that? What are we going to do to infuse more people? And why is that. In fact there's some inference that can be made that officers that work for a female supervisor are less likely to use force or excessive force. But interestingly enough one of the things we found and certainly not enough study or research to throw it out there.

04:02 But we need much more. The race of the police chief does not make a difference as to whether or not your agency is committing crime, I apologize because it is horrible because I'm not here to accuse law enforcement of committing crime, but are not engaging in less bias behavior. When we look at the discrepancy in law enforcement we know what the outcome is.

04:31 Why are we not changing that? And if you run down the inference right, scientifically we like to say there's disparity in a study that takes place, and that simply means that there's unaccounted for difference. It doesn't indicate bias and it doesn't indicate racism. But certainly as we know, as we identify disparity in the outcome that we cannot rightfully explained.

04:59 I daresay that moves into bias or racism when we do nothing about it when we make no decisions. During my career as a police officer, I can I don't know that I can recount all the training I had as many of the officers in the room as far as community understanding, Cultural sensitivity, Anti bias training, implicit bias training. Has that training been effective?

05:29 Well we actually have the ability to look and say ,All right We're instituting training in an organization. What is the long long term effect of that? Does it change the outcome/ Does it have the impact that we want on our police officers and the interactions that are taking place? But yet we have not done a very good job of analyzing some of those things. And so to be brief because I certainly want to answer your questions. The Center for Policing Equity is committed to doing this at no cost to an agency that works with us.

06:03 And in fact, we we don't take money from advocacy groups and we don't take money from government. And the reason for that is because we want to be the independent third party. And so what I would recommend, the best thing that you can do is collect the data. Every encounter that an officer in Minnesota has with a member of the public in which their authority is utilized in order to detain to question to search to arrest or to write a ticket or just stop

06:35 should be accounted for. That information should then be analyzed by an independent third party because nobody trusts when the cops do it. That information should be made public, but more importantly that information is then what should be used for the dialogue in your communities in order to determine what you should be doing. Because we have for years and years identified racism

07:06 as a hearts and minds problem that exists in society and we've trained people. And if we could easily change hearts and minds oh we would have done this a long time ago. I dare say it's time to look at the behavior that leads to a racist or biased outcome.

And behavior can be changed. This can be as simple as saying We are not going to do certain activities.

- 07:34 We're going to rotate shifts. We're going to change out how long you're on a motorcycle unit? What areas we write tickets? Maybe we shouldn't be writing tickets at all? But that should not be Chris Burbank or anyone else coming here and telling you hey this is what you should do in order to change the outcome because this is what I think and feel. Here's the science looking at your individual organization, your city, your block, your neighborhood and this is what you can do to change the outcome.
- 08:03 We can change behavior. We can measure it. And then we can institute change. And the nice thing about it is. I admire this body tremendously. But many things can happen in an individual police department, an individual city, doesn't require ordinance change. You know what we identify that we have a problem with who we asked for consent searches. And the outcome of that.
- 08:30 So we're going to do a little thing called informed consent and we're going to give everyone that we're talking to a piece of paper that says you understand your rights under the Fourth Amendment of the United States that you don't need to say yes to me tonight and that you can in fact say no and I can't use that for probable cause in order to search you further. Little things like that change what the outcome is. I will never minimize the impact of an event that occurs especially when someone loses their life in any city in this country.
- 09:01 But it's time to look at what led up to that, not that moment in time where you have human beings that come together in a moment of crisis and the outcome is tragic. Why are we doing what we're doing, why are we stopping who we're stopping ,why are we working in the neighborhoods that we're working in, and as we change that we can change that moment in time. In fact I dare say that moment in time would ever occur. Now this is not the solution to everything.
- 09:29 I don't know of anything that solves every situation. But absolutely if you look a year from now or two years from now and said because we undertook a data program, because we engaged with our community and use that information that we got to change the outcome to reduce the number of people who are killed. We have seen in agencies that we've worked with that are doing data, some sitting at the table in his room today,
- 09:58 about a 17 percent reduction in use of force a 13 percent reduction in officer injuries. Hasn't solved. I'd like to see 100 percent reduction in both of those categories, but that is a step in the right direction that I think data and independent study thereof is an avenue. So thank you for your time and I'm happy to answer questions that you have. [Harrington] Thank you Mr Burbank who's up first.
- 10:28 [Arradondo] Thank you so much Commissioner. Chief Burbank thank you for your words here today.
- 10:39 I will full disclosure let folks know that when I came in to my role and position as chief a couple of years ago, I fully admit I'm not the smartest person in my organization and may actually have two very smart folks here much smarter than me here today who will be speaking later, but probably one of the best things that I did was the relationship with CPE and data must tell our story. And I will tell you that everything that Chief Burbank said their work is so critically important in terms of guiding that I

meet with many different organizations, community groups, social justice groups, and that data is so very important in how we track the data is critical.

- 11:28 We were able to launch our data dashboards and a great deal of how that was framed is absolutely through the work of CPE. One of the things I will say that is really going to be our north star, well certainly with the Minneapolis Police Department, is for forever in policing have been able to track crime,
- 11:55 but we've never up until this point been able to measure justice. In so many in our communities if we ever going to bridge that gap, how do we measure justice? In the work that CPE is doing guiding us and talking about the parameters of data what we need to be putting and what we need to be making sure that our communities have access to that is very critical to us and we'll continue to do that.
- 12:24 I do think that it is astonishing that in 2019, as you mentioned, we have to look to the Washington Post to give us what their assessment is of what what the the numbers are in terms of whether it's officer involved shootings or what have you. I think that we certainly have to do much better than that. Chief Burbank, I was just going to make my question for you is you're working with 250 agencies across the country.
- 12:57 Do you see more agencies accepting the importance and the wealth of what data can do in terms of helping to build that bridge up not only the community trust or the public trust, but also in this effect of reducing levels of force with the police departments? Thank you. [Burbank] So yes we're seeing a great upward trend in fact it's more capacity than we have the ability to do.
- 13:20 And while I would love to come into every one of your agencies and say we have the solve for you, most of you have some sort of university or higher learning center that will do the same research for you. And we would be happy to work with them and help and see what we can do. So the capacity, that's our biggest challenge right now because there are a number of people. What I really need to emphasize is where I saw this and where I got the most benefit as the police chief.
- 13:48 So I was on CP'S board from its inception about 14 years ago. And in 2006 as the immigration debate raged in Utah and our legislature was OK are we going to make officers immigration enforcement agents or deputies thereof and how are we going to do that?
- 14:07 Having CPE come in at the time look at who was committing crime because obviously the rhetoric was such that all undocumented people were committing horrible crimes, when in fact they were under committing crimes in the city of Salt Lake then the rest of the population. And more importantly and more telling was the fact that not surprisingly the undocumented community and our Latino community would be less likely to participate with the police, the white communities in Salt Lake City would actually be less likely to participate with the police because they viewed us as less legitimate if we were engaged in that activity.
- 14:43 Now while this didn't sway a very conservative Legislature completely, what it allowed for is the opportunity for the business community, for the faith community to come together and sign You Cannot compact which has been replicated throughout the nation and different communities that have had strong excuse me struggles with immigration. And that is one of the best things, it's just a document that says this is what we believe in, not breaking up families, that all people are created equal.

15:12 But to have your community stand up and say yes we're going to treat everybody equally. So that law went into effect or was passed by the legislature but in fact never went into effect in the state of Utah and a lot of it had to do with the research that was made available to me. Because before it was a crazy liberal police chief sitting in Salt Lake City screaming at the legislature. When I had a third party independent data to support that that was made public,

15:41 many people could get behind research and science and that's the value that third party brings to you. [Ellison] Thank you very much for your presentation. You know today we've heard, and even days before, that and I think I heard this properly maybe I didn't get it right that the race of the chief doesn't necessarily reduce bias.

16:07 I think I heard someone say that the gender or sex of the police chief might affect that. I also heard somebody say earlier that leaving a suicide call might impact an officer's response or use of force in the next call. And I guess my question to you is what are the indicators? What are the things that we should be on the lookout for to reduce to reduce this stuff? and then just sort of just sort of a numbers question,

16:39 Do you know whether officer involved shootings are up, or down, or even? Because nobody seems to know. [Burbank] So the assessment that I engaged in the other day it looks like it's a flat trend right now that it's not escalating dramatically. But again, the data is not accurate. We could go look within seconds right now on the FBI Web page and tell you how many robberies were committed in the United States in the past twenty five years and be pretty accurate.

17:10 And to not be able to answer that question when it comes to social justice issues and the impact on our communities. Well that that's the wrong thing to do. Some of the things that I referred to when you talk about the race to the chief and those things those are some national things that we can look at which are important right. One of the things that I want to make sure that people recognize right, there there's nothing that we do in policing that is not important and valuable. Right. Training our officers everything else. But what we need to decide is what is the most important what has the most impact.

17:42 And while I could make an assessment or we could say broadly across the nation this is what it is. More importantly what are the officers using force within your organization in Minneapolis? And how often are they? What's how long have they been on the job? What's their education, what's their gender? Those are the questions. What's their job satisfaction? In fact, interestingly enough some of the things that Christy referred to. Some of the bigger indicators are the fact that if officers believe they're being viewed as racist,

18:14 that is a high indicator of their use of force. Which is just fascinating. The feeling that I will be viewed as less of a man if I don't take action has tremendous impact on an officer's decision to use force in an encounter. And the notion that a black man is perceived as larger or more threatening, and more violent, and a bigger challenge to my manhood,

18:43 plays into my decision to use force. We should then be training our officers specific to that we should be evaluating what our police force looks like the age of our police everything that goes into that, and then saying okay this is who we want to hire. Because one of the things that I will not agree with. Right yes. Hiring police officers is down. I think there is a challenge, but part of that is are we looking for the good candidates. Are we recruiting for these individuals.

19:13 This notion that we increase the performance or the necessary requirements to be a police officer will somehow inhibit our ability to bring women and individuals of color into law enforcement is ridiculous and in fact racist and sexist in and of itself. Let's go out and recruit these people just like Google does. Does that mean we're gonna pay some more money? Absolutely it does. Does that mean we're gonna require education? Yes. But I honestly think that means we're gonna need to change the outcome of policing in the long run because if we want to do this,

19:47 it's going to take something dramatic. And it's a profession I love and committed to, but we need to change. The crisis of legitimacy that we're experiencing in law enforcement today has a lot to do in part with our inability to address the community concerns that we hear every single day.

20:17 [Page] Thank you for your testimony. I'm just curious do you, does your organization collect data on disability? And if not. Does anybody and can it be done? [Burbank] So I think it can be done some of the challenges when you look at data so there's actually states in the country that do not allow race to be indicated on a driver's license. So it's very hard to look at bias when you were

20:45 you have no idea what the races the individual is being stopped or written issued a traffic ticket. So disability is another one of those hard things that yes in some cases it's very visible there's plates, there's no identifiers on their driver's license and things, in a lot of places there is not. This is also gender identity is a very difficult one that we can start to make some inference into. But I think more study needs to be done on that specifically, but it also is what is the data that's collected and how can we do a better job.

21:17 And I will always argue because there is expense associated with this. Right. I mean and chief can testify to that. Putting your staff to collect data, to gather data, to ensure the integrity of that data, there's cost associated with that. But having access to the information and being able to tell the story about what goes on in policing. That's nearly invaluable. And especially then I got nothing against the Washington Post,

21:48 but wouldn't you rather tell that story than have the post tell that story. They should be coming to us as police agencies for that information or to the state for that information. Not that they're gathering through some third party indicator.

[Park] Thank you for your testimony. You spoke to the need of having a third party assess the data and how vital that is.

22:16 And though I would agree are there some standards are messages you would give testers has a group on how to assess whether the third party is really able to do that. We had a recent incident about a year and a half chief Arradondo where a third party evaluated. He started for Minneapolis police and came up with a very inaccurate, very biased, very damaging conclusion that basically Minneapolis police were profiling Native women. When you actually dug into the arrests and looked at the data as well as actually met with the women impacted which is who we work with.

22:55 Their conclusion was wrong. But the numbers but just pure data we all know how you can manipulate. I love data. I'm a tell a data geek, but you can make that data say whatever you want especially because these these authors went into this looking with a bias already. So how how would if we determine that more data analysis is really important, you don't have the capacity to do the country I'm suspecting. What guidance would you give us to ensure that our third party analysis is done by someone who's competent in this area?

23:32 [Burbank] So. I would look for people who work for or represent research institutes, universities. I would look where the funding is coming from because there are people who fund studies specifically to have an outcome right. There's no question about that which is always a challenge. I would look for are they\what do you know is there a fee associated with that right. Are they publishing some of this data in scientific journals?

24:02 Because that is an indicator and it's one that is very hard for me. So I'll confess I am not the data nerd of this organization. I don't know that any of you thought I was, but that there's lots of PHDs out there right. That's that's not my role in the organization. But one of the things that I think is valuable and important is that these people want to publish and are able to publish their findings in scientific journals, not just in the newspaper. And that is one of the biggest challenges we have.

24:32 If the goal is to just make it public and to have a splash and say, Ah ha, well there's lots of avenues for that. And in fact many reporters will do that on their own. I would look for those people who are looking to publish these in scientific journals in which there's a scrutiny a peer review that goes over those articles and the data and the research, that then indicates that boy they're pretty willing to go through the rigor.

25:27 [Burbank] And I absolutely want to respect my other colleagues. I appreciate you giving me a moment by myself. I would be happy I will make sure that my information is provided to each of you and you can certainly contact me at the center and we'd be happy to answer specific questions that you may have. But if there's something you wanted to get on record happy to answer that. And I'll be brief. [Kappelhoff] Just I guess a comment in response to Attorney General Ellison's question.

25:52 I guess the common question here is there any uniform collection mechanism for data there actually is a federal statute that requires it. Believe it or not. It's 42 USC Section 14142. It's been on the books for a couple of decades. And to my knowledge having spent two decades at department justice I don't believe it's ever been enforced, nor has data been collected. It's a directive to the attorney general United States to collect that data specifically and use the force of officers. And I don't think it's ever been collected.

26:24 I don't I'm not aware of it. I don't know if Ron or Christy knows. I don't think it has ever been. But it's on the books. It's an active statute to my knowledge. So I just share that with the committee. [Burbank] And CPE actually participated in the prior administration to try and get that in force. [Kappelhoff] And I was part of that. We tried unsuccessfully to get it enforced but it is in fact a law federal law. Thank you.

26:59 [Harrington] Chief Arradondo, I want to ask if we can have your people present the next meeting, Then we could get Mr. Roesler in from the Department Health. Thank you gentlemen. Appreciate it.

28:13 [Roesler] OK. Thank you very much Commissioner. Attorney General and members of the working group. I think I have a bit of good news with some provisos, but we'll talk about it and I'm going to talk about the data that we have today looking at in part the Minnesota violent death reporting system. So I am an epidemiologist at the Minnesota Department of Health.

28:36 I've been there for more than 30 years and I've been with the injury and violence prevention section within the Minnesota Department of Health since 1992. I'm currently principal investigator for the Minnesota violent death reporting system as well as the sudden unexplained infant death and sudden death in the young reporting

system. I'm co-PI on the alcohol epidemiology project that we have as well as the state violence and injury prevention program.

29:07 Most of these programs are funded by CDC. Good news, this is a journal article that appeared in the American Journal of Public Health in May of 2016 and it asks the question, What is the best data source for counting deaths from homicides by police? And it looked at three different data sources death certificates,

29:33 it looked at the Supplemental Homicide reports, and it looked at the National Violent Death Reporting System. They looked at it from a period of 2005 to 2012. They compared state counts, the vital statistics, and the Supplemental Homicide reports. And their conclusion on it is that NVDRS, the National Violent Death Reporting System provides more complete data on police homicides than do any other existing systems.

30:03 Death certificates aren't getting the good counts. The SHR isn't doing the best thing the NVDRS is seems to be giving the best data. Their conclusion was that the sensitivity was at about 90 percent on it the pv plus was 98 percent. Predictive value positive as an indicator of true positives and the sensitivity is indicator of the the proportion of all the positives that were captured by the data system.

30:36 I had a or I had a student intern this summer. And working for me to use them McAllister student and we have a program with McAllister where they bring in a couple of interns or fund them to come into work with the Department of Health as part of their training in education, and I had him look at Data Systems for Minnesota to see if we could get a count of how many police homicides actually have occurred.

31:07 And he looked at five data sources. He looked at the the list in the Star Tribune. He looked at the list in The Washington Post. He looked at the Guardian. They had a list covering 2015 to 2016. He looked at our MVDRS data system or Minnesota's Violent Death Reporting System and he looked at the death certificates, and he got a varying response rates. I mean he built then an aggregate dataset of all the cases that he could find that intersected between these different datasets.

31:39 Washington Post had this had the poorest count, they were at about 83 percent. The Guardian was at 90 percent, but they only had it for two years 2015 and 2016. The Star Tribune's list had 88 percent. The death certificates were the worst with overall 63 percent. But by the third year was actually at 91 percent. But the best data system in Minnesota for counting these deaths was the Minnesota Violent Death Reporting System with the sensitivity of 97.6 percent.

32:14 We captured almost 98 percent of the cases and I think that means we missed one for that period of time. There were 41 deaths that he was able to count in the period of 2015 through 2017. Now this number is not published. This is not a verified number this is an undergraduate research or undergraduate summer intern who I had work on this project. We have the data to a large degree.

32:44 What I lack on it is having the epidemiologists really to get in and spend the time crunching the data and making sure. I have not verified these numbers. You know I've not had one of our senior epidemiologists go in and make sure that these numbers are right. This is what I have you're hearing it first here today as to what kind of counts that we're getting. So that Minnesota's Violent Death Reporting System works with the National Violent Death Reporting System. It's funded by CDC and we collect that on almost a thousand cases a year since 2015.

33:17 There's about 700 plus suicides a year. And so this really to a large degree is a database about suicides. But we also have 100 plus homicides, 70 plus undetermined manners of death.

33:29 And we have the legal intervention deaths that are included in this data system. The National Violent Death Reporting System is really about linking data, linking different data sets and the data that it links as the law enforcement reports, including the Supplemental Homicide reports, death certificates, and the medical examiner and or coroner reports, which include the toxicology reports. And as of just a couple of years ago this has now been expanded to all 50 states in the United States when Minnesota came on in 2015 I think we were in the group that raised it from about 17 states to 30 some states.

34:09 But now as a last couple of years it's now all 50 states in the U.S. The there are over 600 data elements that are captured within the MVDRS. We also in Minnesota collect some additional data elements with the supplemental abstract form and it gets kinds of things such as the location of injury characteristics of the victim et cetera.

34:34 You know the the thing that really characterizes MVDRS is the data is about the the decedent to a large degree criminal justice systems and to a large degree have been about the perpetrator. That's where their data tends to excel. Public health data systems tend to be better about the victim. It's also just another perspective.

34:57 We deal with what happens to residents of Minnesota, regardless of what jurisdiction the death occurred in. Criminal justice is course they have there it's more of a geographic jurisdiction. So our counts never quite add up but anyway so you can see a lot of these different things that do occur the alcohol or substance abuse, that toxicology report, relationship problems. We try to capture those circumstances immediately surrounding the injury.

35:28 The data then is used to inform decision makers, educate communities, and then help decision makers and program planners through the analysis of this data. Now there are really two ways that we can use Minnesota's Violent Death Reporting System in part as of the first one is a descriptive epidemiology where first question and this is the one I get from reporters all the time, how many how many cases have there been? They're doing a news article on you know on a recent police involved homicide, and they want to know how many have there been so they can give some context to their story.

36:02 So I get a call from them and I try to work with them to come up with a number and we'll have some other characteristics looking at some of the demographics etc. of decedents of police shootings. The other way that we use data with the Violent Death Reporting System is with fatality reviews. Deaths are the most basic public health statistic that we have in part you know the health department administers the death certificates.

36:32 And this is really important for developing policy. And fatality reviews have been done for more than 100 years. The first real fatality review panels that occurred were around maternal deaths and this was in 1917 and in New York. So we've been doing these in public health for over 100 years now. And we do a lot of different kind of fatality reviews. We do the maternal mortality, we do fetal, and infant mortality.

- 37:03 I been working extensively with doing the fatality reviews with our sudden unexplained infant deaths and the sudden death in the young. We have been doing and used our MVDRS data for intimate partner violence domestic violence, we've done them with murder suicides, have worked with the Minneapolis Police Department on doing drug overdose fatality reviews.
- 37:28 And that's why I've worked with Austin here who was going to be presenting as well, and then we are looking to do farm a fatality reviews around farm suicide adding a new component of a psychological autopsies as well with that something that we're learning how to do. So now these are some of the demographics that the student came up with. You know I'm not going to necessarily vouch for this.
- 37:50 This is to give you more of a qualitative sense of the kind of data that might be available as we work through our MVDRS data we can see that the median age of the decedent is 38, but it ranged from a 20 at the youngest to 73 at the oldest. We can see the demographics on this in terms of the racial distribution.
- 38:16 We can look at marital status, we can look at gender, we can look at their educational level, whether or not they served in the armed forces. Here is a place of birth is a question that often comes up. So we did out of the
- 38:35 and this is two years worth of data now we're looking at I believe this is 2016 and 2017 of which there were twenty five deaths identified and we can see for those were born outside of the US. Then we can look at but most of them are though the majority they're being born in Minnesota. And did they die in their county of residence. Prior Minnesota conviction, precipitated by another crime.
- 39:09 Those are couple that wants that we collect on the victim circumstances, documentation of mental health issues, documentation of a history of substance abuse, documented history of suicidal thoughts and suicide attempts, a life stressor occurring at the time, and then having multiple circumstances. We can look at the toxicology and then also the multiple toxicology of the individuals.
- 39:43 A little bit more in the toxicology, we see amphetamines means coming right up there near the top with those 25 homicides that we had that we investigated here in this report. We can look at day of the week which they are they are occurring on, we see Monday is coming out ahead.
- 40:06 Now we can look at the time of day when these incidents are occurring and look at the geography of the injuries, what parts of the you know is this the central city, the suburbs, or the rural areas where these are where these deaths are occurring. And of course we can also look at a couple of deaths of Minnesota residents that did occur out of the state as well.
- 40:31 So we have two of those in the 25 that we were looking at. So that is the data that we have. The good news is we have data. The bad news is is I don't have enough resources in terms of staff time to really look at this and in part one of the challenges I have right now is that we're contributing significantly to the staff time for this for the vaping injuries and deaths that are occurring right now, which is a very hot topic.
- 41:01 We don't really know what's going on and we're spending a lot of staff time and a lot of epidemiology time trying to collect the data for that analysis on the vaping injuries and vaping deaths. So. That's what I have. Questions. [Gottschalk] As the state is beginning the BCA is beginning to

41:28 Roll out use of force data collection through the FBI system and they're looking at serious use the force resulting in serious bodily injury and death, and they're working on getting towards full state compliance is there a plan to interface your system with the BCA once that system gets up and rolling that maybe can result in less staff time but rolling that data into your full data? [Roesler] I think so. I mean we don't have a formal plan on this, but it's very clear however when we use multiple data sources we actually don't create any new data with the MVDRS.

42:00 We use extant data from different sources, most notably from local law enforcement and from from the medical examiner or coroner and we use the reports in the investigation so where existing data is there. That's the data sources that we use. Yeah. Okay very good.

42:31 [Harrington] if there are no more questions, thank you. At this time we would like to open this up to families who have come to testify.

43:50 Good afternoon.

43:52 If you would identify yourself for the record and then whichever order you wish you certainly can proceed. [Garroway] My name is Tashira Garroway. I want to first thank you guys so much for caring enough to want to make changes, to sit here all day shows your heart, it shows that you are trying and pushing for something for lives to be saved.

44:20 And so families don't have to endure what our families have had to endure. I wrote down a couple of things and I feel that accountability is the main thing towards change. If officers are still out there that are causing murders

44:48 and they're still out on the force and they're able to transfer to different forces, then how can the murders stop. You can train someone into your blue in the face but it's like my son. I can teach him and teach him. But if there's no consequences to his behavior the behavior is going to continue.

45:13 And so we see we see a lack of officers being prosecuted and a lack of accountability. Keith asked, can't remember the guy's name but how many Officers were revoked or what were they revoked for. He said for sexual conduct and also in addition to sexual conduct it was

45:44 yes theft theft and sexual conduct, but as we can see there's not many officers being revoked for the killings. But there is obviously we're obviously in a crisis with the killings. So why is it that it's why is the high number you know not in the killings that officers are being revoked.

46:12 So one of the main things is accountability. If there if the officers are still being permitted to be out on the force after they are murdering, then it's just going to continue. You can ttrain them train them train on however much you want but you've got to get the bad ones out. And we are not anti-police, we anti-bad police. Right is right and wrong is wrong.

46:39 And I was a nursing assistant years ago ,I had a co-worker that was a pet nursing assistant. She was treating elderly people wrong. And it was time for her to go. So just you have to get the bad out. We must face the fact that there are biases. So before the St.

46:58 Paul police beat my son's father severely and threw his body in a dumpster, he was pulled over numerous times non-stop. His stepfather who's all white drove the exact same car in the exact same area a black charger with rims on it and would

never get pulled over. Yet this African-American guy drove the exact same vehicle and got pulled over all the time and drove out in that same vehicle in the same area.

- 47:30 So we we have to just face that there are biases that is in our community, and that our black minority men are getting killed in the community and the officers are getting off. And then we talk about how sad it is for the officers and how what they go through and they felt so bad after my son's father was murdered that they sat outside my home with my three year old playing in the yard and his little brothers and sisters they were put in a yard, they felt so bad that they followed and harassed me and they did not cooperate with our family with anything that we were trying to bring forth.
- 48:12 We do not trust the BCA to do investigations. There needs to be created an independent organization to do investigations on officer involved killings because that's like asking me to investigate my cousin on a murder. I'm not going to do it. I work hand-in-hand with this person all the time and we do we talked about that in the last work group meeting is that they worked together hand in hand all the time.
- 48:42 It's asking the police to basically police the police. So that is part of the problem is that we're the community has no faith in the BCA system and how they go about it and how we were treated by the BCA. I'm going to say a few more things amendment my other people here speak. The statute of limitation for wrongful death
- 49:11 It's only three years that needs to change. That needs to change to at least 12 years, once you are not able to get certain records, when they are not following procedure and giving you certain things, you look up in the statute of limitation is almost up and you're not even able to file a suit against the police department. The families first of all you're in shock that your loved one like someone I know was shot 52 times by the or by the police.
- 49:44 So you gotta get past the shock of certain things. In addition to that, the police are not cooperating with you on a lot of things. So the statute of limitations for that needs to change. And most of all what needs to change is also the data needs to come from organizations, the organizations out in the community, the Justice Coalition, the data needs to come from the community.
- 50:14 That is where the answers to a lot of the things that's happening. Get out and ask the community. Exactly. And pay attention to how many murders or is it a certain department that is having or a certain officer that's having the same thing happen repetitively over and over and over again. So that is where the data needs to come from is out in the community like you had last night.
- 50:46 Keith the listening session for the community that's what needs to happen with police involved killings, is that there needs to be a community not just the families, but the whole community because that's what this is affecting. There needs to be a listening section for the community.
- 51:16 [Darris] Just a quick question or comment. Just in terms of. I don't even know about that listen a session last night I wish I would have a to try to know me and Reema was on our way here. So when we went to made it.
- 51:39 OK. This in terms of like a data collection huh. How do you propose that data collection within the community should look, how how would that look?
- [Garroway] So one thing I believe that it would help to see because one thing I talked about is the biases, specifically the community feel that the minority men in specific have been targeting.

52:08 So you pay attention to the killings. You can look through and see the officer encounters. How many of those people were a minority? Also the killings if there you know hopefully not going forward, just you know pay attention to the data of. How many people are minority people? If you connect with certain organizations they have a list of those those encounters that have happened?

52:40 So you can collect your data from that. And that's another thing we would hope for more dialogue from you guys and more questions from you guys as you do with other people that come up to the panels because we don't want to just be the ones speaking we want to be able to ask questions and connect and talk.

53:07 [Ellison] We'd like to say I want you all know I fill this notebook up I've been taking notes and carefully listening to everything you said including your idea by listening session. [Blanche] Hi my name is Shara blanch. What I heard this morning was the epitome of police officers are pulling a system that protects them.

53:39 Mr Gove. I think that's how his last name is pronounced. Who's the executive director of the POST board stated that. Three hundred and seventeen dollars per officer. That's a total budget of three million dollars is a lot of training that's increased training. They require your 48 CE every three years it's 48 hours of training for three years.

54:07 About half of that is specifically mandated. He did say that many officers do complete a lot more training. However, we know that a lot of this training is done on-line and officers can breeze through it. They can be pretending to pay attention. While on Facebook, on who knows what else on their phone. Not actually paying attention to the training that's out there whether that training is sufficient or not. I can't speak to that at this point.

54:37 But we know that they can complete that training on-line. A lot of that training on-line. Which means that they don't have to sit there and pay attention. When he spoke, he was speaking when we walked in and he spoke for about an hour and a half after we got here. He did not address anything about race, equity, or implicit bias, when we know that Nationwide black and brown people are two and a half times more likely to be killed by police.

55:11 I'm not convinced that race equity implicit bias training any of those things would actually work any way seen as *names officer*, one of the officers who murdered Brian King Quinones had implicit bias training just two days before he murdered Brian. He had two courses. Two one hour courses, two days and three days.

55:41 Before he murdered Brian. There's been a lot of conversation about the statistics of police involved shootings. I pulled up the data that the Star Tribune has published and while we may disagree on the accuracy of exactly what those numbers are. What I can tell you is that since 2000 the fewest number of police involved shootings in Minnesota was in 2005, and that was five people.

56:14 The highest number was 13. That was in two and that that occurred in three separate years 2015 2016 and 2018. We are trending up. In the number of police involved shootings. If you would like me to go through year by year I can do that. So it's on the record. OK. Two thousand. There were 7.

56:43 2001, There were 9. 2002 8, 2003 7, 2004 9, 2005 5, 2006 6, 2007 7, 2008 8, 2009 11, 2010 12, 2011 8, 2012 11, 2013 11, 2014 9, 2015 13, 2016 13, 2017 10, 2018 13, and 2019 12 so far.

- 57:47 We still have nearly three months left of this year. We are on track in 2019 for this to be the deadliest year since 2000, despite this increased training that police officers supposedly have. I have a lot of questions after hearing him speak this morning.
- 58:20 Tashira talked about a little bit of this. I want to know how many licenses are revoked each year for reasons other than committing a crime like sexual assault or theft? Why is it not a priority for the state to oversee the licenses of officers? Is there any instance in the state of Minnesota where an officers license has been revoked for something other than theft or some other felony crime?
- 58:51 Why do we trust local agencies to investigate their own officers? We know that they go on fishing trips together, they go hunting together, they have their families all over for barbecues. I know this because I am the daughter of and granddaughter of police officers. How do we know that the standards are the same between police departments? I can tell you that they aren't.
- 59:17 Regarding the investigation of police shootings. One of the first things Drew Evans said mentioned was suicide by cop. This is a narrative that we hear in many cases but how is this possible in no circumstances in Minnesota do we allow professionals within a particular field to assist someone experiencing a health crisis who may want to end their life to do so.
- 59:46 We don't allow licensed professionals in Minnesota who are treating people with cancer or other terminal illnesses to assist their patients in ending their life. Why is this part of the narrative? Why is this.

Transcription details:

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00:00 It isn't a thing. And we talk about how officers have gotten increased mental health training. Why are we seeing increases in officers shooting people experiencing mental health crisis as perceived or real? Why are officers given time before they are interviewed? We know psychology knows and I do have a bachelor's degree in psychology.

00:33 We know. That people remember events best immediately after they happen. Why did they get to review the video. Do I? Is a common resident of the state of Minnesota get to review a video if I'm accused of a crime prior to providing my testimony or my my statements? No I don't.

01:04 When a friend of mine was assaulted this past summer in a bar, I didn't get to review the video when I was giving my statement to police about what I saw. I went home. I got a couple hours of sleep. And within. It was about 10 hours later,

01:30 I was at the Bloomington Police Department giving a statement on what my recollection was, and I will say that my recollection wasn't 100 percent accurate because the officer informed me of things that she saw in the video that she questioned me about. My recollection wasn't accurate because of stress and trauma. So why are we trusting these officers to recall anything.

02:01 I can tell you that it is the perception of myself and many other people that they are given that time to come up with their story of why they feared for their life. We also know that despite them being separated from other officers involved in that particular shooting, they are not separated from other officers.

02:25 The officers who they may be with. Who weren't involved in that particular shooting may have been involved in another shooting and b advising them. I'm aware of at least one case here in Minnesota where that did happen. I'm sure there are others. Why are officers who are under investigation allowed back on the job prior to the investigation being completed?

02:52 The five officers who fired shots at Brian Quinones are all back on the job. Every single one of them. One of these Richfield officers has personally harassed me. Personally. For participating in protected First Amendment free speech from actions that I was involved in two and a half years ago with the Richfield school board.

03:20 I have a 14 year old black son who I believe is sitting behind me right now. And we live a few blocks from the Richfield police station. How am I to feel that my son is safe knowing that these officers already have a target on me and him? These officers who murdered his friend's dad are back on the streets.

03:51 I will also note that I found out from a news reporter, from a news reporter, that four of the five officers were back on the street. The fifth officer at the Richfield chief told

me about in response to a data request. The onus was on me to tell Ashley and the rest of the Quinones his family that the officers who killed their father, Husband, son, brother, Cousin they are back on the street. Why is that my responsibility? Why is that not your responsibility? On a personal note. As I shared my father and grandfather are retired police officers my grandfather passed away in 1985 shortly after he retired. My father is still alive. We don't speak.

04:21

04:47 He probably won't be very happy if he knew he here catches wind of this, but I can say that I do have a unique perspective that other people probably don't have. I see both sides of it. As a child growing up, the impact of the stress of this job of a police officer being a police officer is something that I hear and I understand that's real. As far as I'm aware,

05:15 my father and grandfather were never involved in incidents of deadly force. They never fired their weapons. Thank God. The impact on my dad. It's sad. My dad is not doing well in my opinion. He had all the resources to get the help that he needed. But he didn't. He hasn't. He probably won't. Why is that?

05:46 That's because of a culture of policing. He has family support. He has a brother. He has a sister. He has me. He has a son who I also don't speak to. They don't like that I come and do these things. But that's OK. In fact, he supported me in the past and getting mental health services. Why won't he get them for himself? What is that about? Who was attracted to this job?

06:18 This group is charged with protecting the community. In order to do this, we can not have police policing themselves. It's. It simply isn't possible for police officers to hold each other accountable because I believe the police officers put themselves in the shoes

06:42 of the officer that they're investigating and they wonder what I fear for my life. If I were in that situation that's real. Because I do believe that there are situations where officers feared for their lives. I don't think that that's reasonable in many of the cases where people end up dead. Community Oversight of these investigations and of the post board

07:12 is critical to reducing and holding reducing deaths and holding officers accountable. Thank you.

07:41 [Quinones] Hello I'm Ashley Quinones, the wife of Brian Quinones, who was just murdered on September 7th by five officers in Richfield Minnesota.

A little alarming fact to me is that really there is no support or communications with the family at all after anything happens. We basically have to fight for our basic right to get any information at all even if it is public information and it is our right to have. Our last small little bit of information we actually received was after protesting since his murder.

08:12 They actually gave us the personnel files on the officers at the Edina city hall meeting after previously asking. And having at least four or five different people requesting this information, and then even the mayor himself claiming that it wasn't up to him to decide for us to have this information. One of his one of the people on the council actually stepped in and said absolutely I'll print it for you right now and we left that night with it.

08:44 But the point is, we don't have time to grieve or to focus on our health after these things happen. I have a 12 year old who is Brian's only child and we can't focus on

ourselves because we have to fight for any bit of information so we can even try to wrap our heads around what possibly could have explained what happened that night.

- 09:12 I. I haven't really spoken out about anything because I don't. I want to get a good understanding first on my own feelings which I still I, It's only been five weeks since his murder and I can't say that I do. But today Fred Bruno he specifically said that he has to keep his clients sane. I thought that his clients were the police.
- 09:40 So I was a little concerned with why he would be keeping them sane if they're not sane. Why are they allowed to go back to work? Who is doing the checklist on their return and what qualifies them to be OK to be back on the street? We live in Richfield, Minnesota. Honestly, four blocks away from where my husband was murdered. I don't feel safe.
- 10:08 I'm scared for the day that I get pulled over by the exact people that murdered my husband. What if my son's in the car? It's very hard to re respect authority when there has been zero respect given to us. I mean it's there is many instances where I've been in contact with people and I can honestly say I've received little to no respect at all, or my existence is not even recognized when I'm there.
- 10:43 So I. My question is for some of you guys is who is Internal Affairs? What makes up internal affairs? [Arradondo] And again my condolences to you and your family for your loss. For the Minneapolis Police Department,
- 11:08 we actually have two mechanisms that folks can use so when we do have Minneapolis internal affairs unit and those are sworn officers within the department. We do I certainly look at their personnel file. I look at their their work record just as important their character and their reputation, both within the organization but within the communities.
- 11:33 And so that's very important to me to make sure we have the folks who have integrity, good character, who are fair in these investigations. I should also say that our internal affairs process the investigators once they receive a case they do not provide a recommendation. They just are there to they're fact gatherers. We also have a unique component, in November of 2012 the city of Minneapolis dissolved
- 12:00 what was then called the Civilian Review Authority and they created what is now the Office of Police conduct review which is an arm of the civil rights Minneapolis Civil Rights Division. And those are civilian investigators that also do police investigations police misconduct investigations and they have the full authority to get records, interview officers, bring them in for compelled statements and what have you. So those are those are civilians that are hired through the Civil Rights Department.
- 12:29 But that's kind of our internal mechanism process for complaints OK. [Quinones] And then what about the Bureau of Criminal Apprehension? Who makes up that? [Harrington] The BCA is a state agency.
- 12:46 It's designed to be both the state's crime lab, the state's information pool and place, run all of the State Criminal Justice networks you know NCIC things along that lines. And then it also has a responsibility for doing investigations for small to medium sized agencies across the state within the last about last years an additional duty has been they have been tasked with doing the officer involved shootings for Minneapolis St.
- 13:16 Paul and several of the other major metropolitan agencies. [Quinones] OK. Because my concern is how are they. How are we having cops investigate cops that are directly working with each other.

[Harrington] Historically, that has always just been the practice is that if there was a shooting in a jurisdiction, the local jurisdiction did the investigation. Within the last 10 years community sensibilities said that they wanted somebody other than the local jurisdiction to do the investigation so if there was a shooting in St.

13:50 Paul, they wanted somebody outside of the St. Paul Police Department to do the investigation. The BCA was tasked with that and has been doing St. Paul and Minneapolis as shootings and continue to do the shooting for a greater Minnesota, most of the small departments of one and two man departments that don't have any kind of an investigative unit. The BCA does those and those. So it's been more of an agreement that when requested by a local department to do the investigation, the BCA

14:20 has done them and in other cases where the local sheriff's department has that agreement then the sheriff's department does them right. [Garroway] Isn't it obvious that that's not working? When you have family members coming into the state capitol screaming at the top of their lungs that doesn't mean that it's not working and that the proof is in the pudding. Obviously, there's the what the BCA is bringing forward, they're not investigating these crimes like they say that they are.

14:50 So isn't it obvious that that is not working and that there needs to be different a different source doing the officer specific killings? [Harrington] Well all I can say at this point is well two things. One, if not the BCA, and I would be fine with it not being the BCA, then the question is then who? Because there isn't another organization that is set up to do the investigations that are that isn't the BCA. There has been at least one or two occasions where the FBI has been asked to come in and do an investigation.

15:31 They are set up to do it, but in the state of Minnesota the BCA has been sort of the default. Part of the reason we're having these meetings is because we want to have a conversation to say what's working and what can be improved. And if there are other alternatives that other states or other jurisdictions have looked at, we're open to having that conversation. And that's so that's why this group is been convened is to try and have that conversation but in the in the interim between when we finish our deliberations and get all our testimony.

16:05 The BCA is still the default they are the default. And frankly I'll tell you that when I have conversations in greater Minnesota I had as many families coming to complain. So I think there it's for some folks that yes, the BCA has been not the the organization that they wished it to be. And we are trying to make those adjustments at the BCA. As Drew Evans mentioned, we now have in the process we'll have a family liaison so that we can have those conversations that came up out of the Clarence Castile and Philando Castile family's point.

16:39 So we will have family liaisons we'll be keeping the family informed. We are working with local jurisdictions to make sure video gets out in a timely fashion. So as as points that we can fix or that need to be modified come up. The BCA has been open to those and continues to make those, and at some point if there is a other agency that is designated to do the do this work, then the BCA will hand over that that authority and that responsibility to them at that time.

17:11 [Garroway] You guys I'm just wondering I'm looking to even create that like create a different agency because of course it's not one right now and like you said who so maybe we should be looking into creating that agency to do those investigations. [Quinones] It's just now working alongside there supposed to be investigating they'll work together on a case

and then they're supposed to turn around and be looking at their partner that they just had on a different case.

- 17:46 It doesn't make sense to me that they don't have a working relationship, and that it is unbiased as it should be. [Blanche] My dad retired from the BCA for his final retirement. His best friend was an Edina cop. Imagine if my dad was charged prior to his retirement with investigating Brian Quinones murder. And his best friend was wasn't an Edina cop. How would that go?
- 18:16 I mean I hope that my father would be unbiased. [Harrington] And what I'd hope was your father would disclose that to the visor agents within say that's not an appropriate case for you to be working on and we'll find somebody from Worthington to come up and do that investigation. But those are the kind of points that we need to hear about and through our third hearing.
- 18:39 We have had conversations about the creation of other alternatives, whether it's in an oversight agency or as Judge Kappelhoff has talked about a culture of Justice civil rights type of investigative agency. So it has been discussed. We do we have an answer to that at this stage of the of the process.
- 18:58 I wish I could say yes we do, but we're still we're still just as our third meeting and I think we need to continue to gather as much information about what works so that we can come up with the best recommendations to the legislature and to the governor so that we can make the changes that everyone feels are warranted and to really I like the line from Chief Burbank to end this crisis of legitimacy.
- 19:23 [Garroway] Well the main thing that I reiterate the main thing I want to encourage is you guys speaking with the community that that's where the answers are to all of this and I am speaking for myself in behalf of a lot of families that I work with. There's hundreds of families, we are traumatized from what the police here in Minnesota have done to our loved ones. We are in a great amount of pain and
- 19:56 to have to live with what these people have done. And I would not wish this pain on my worst enemy. Thank you guys for trying. Again I reiterate that. But to have them police each other. That's not working. For there to be a three year statute of limitation for families to even get some level of justice for their loved ones.
- 20:26 That is not fair. To have a three year window when they're not even giving up certain information to the family and they're also following harassing the family in the meantime. All of this is not fair to the families. That's all.
- [Ellison] Well let me just say thank you all for coming again. I know you've been working on this and you know you were there from the beginning and as you can tell that everybody on here is absolutely committed to improving our system as well as we can.
- 21:02 And so that's part of what we're doing, is coming up with the ideas and we've I like I know everybody here is taking notes. And and I know you have been driving what two and a half hours to be here today so we thank you for that. Well do we have any other witnesses today Mr. Chairman? I think we're good. Are there any other folks who came for public commentary. Seeing none.
- 21:31 So January 6 is our next meeting. Have we determined a location?. Oh that's a deliberation. [Harrington] Then no January 6 is the next actual working group meeting and I believe it. We were planning to do that either in the cities or we were hopeful.
- 21:58 No, I don't think Duluth was on our short list and Nicole I stepped out of the room so. But we will we will have that posted with the video and all the rest of the information

that we have that will get posted on the Web site. So we'll make sure that people know.

Blanche] I just want to point out that I had to call on Monday to find out where the hearing was today. It wasn't on your Web site as of last weekend.

22:29

[Harrington] Thank you very much. Well we've had some Web site issues but I will double check to make sure that the information the videos and everything else are going up there.

[Ellison] So I'll move to adjourn.

[Hearing Adjourned]