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Operator: Good day and welcome to the President's Commission on Law Enforcement and the Administration of Justice call. Today's call is being recorded. At this time I like to turn the call over to Director Phil Keith. Please go ahead

Phil Keith: Thank you Cecilia and good afternoon and thank you for joining us today. I call the President's Commission on Law Enforcement and Administration of Justice to order. On behalf of Attorney General Barr, we thank you for joining us today for this important Commission teleconference meeting.

This week marks us significant juncture for this Commission as we conclude the planned panels on Wednesday. Your work as a Commission has truly been remarkable as we have received testimony from more than 160 witnesses in 45 hearing panels.

The work has included 15 working groups involving more than 150 subject matter experts on weekly calls, work sessions, and we have received more than 190 written statements from organizations individuals expressing diverse views and opinions on wide range in topics of this Commission.

On behalf of Attorney General Barr, we thank you for your dedication, commitment, and personal sacrifices to make this historic Commission successful. Attorney General said on the day he sworn all of us in that being in Commission is a privilege and honor that comes with a significant responsibility. Each of you have responsibly excelled in all of your deliberations, considerations,

and discussions to meet the goals of this Commission for which the Attorney General is most grateful and thankful.

The focus of today's panel is respect for law enforcement and the rule of law. Our format today is going to be different from previous hearings as we will have an introduction from a distinguished guest followed by a rule of law panel and then an attorney panel. We will pause for questions after each panel. At this time I would like our Executive Director Dean Kueter to conduct roll call of Commissioners.

Dean Kueter: Thank you Mr. Chairman, and before I call the roll I just like to remind everybody that today's event is open to the press and for any member of the media on the call, if you have any questions or need clarification on anything, please contact Kristina Mastropasqua in the Justice Department's Office in the Public Affairs. And with that I will call the roll. Commissioner Bowdich?

David Bowdich: Here.

Dean Kueter: Commissioner Clemmons? Commissioner Evans?

Christopher Evans: Here.

Dean Kueter: Commissioner Frazier?

Fredrick Frazier: Present.

Dean Kueter: Commissioner Gualtieri?

Robert Gualtieri: I'm here.

Dean Kueter: Commissioner Hawkins?

Gina Hawkins: Present thank you.

Dean Kueter: Commissioner Lombardo?

Regina Lombardo: Here thank you.

Dean Kueter: Commissioner MacDonald?

Erica MacDonald: Good afternoon present.

Dean Kueter: Commissioner Moody?

Ashley Moody: I'm here thank you.

Dean Kueter: Commissioner Parr?

Nancy Parr: I'm here.

Dean Kueter: Commissioner Price?

Craig Price: Good afternoon I'm here.

Dean Kueter: Commissioner Ramsay?

Gordon Ramsay: I'm here.

Dean Kueter: Commissioner Rausch?

David Rausch: I'm here.

Dean Kueter: Commissioner Samaniego?

John Samaniego: I'm here.

Dean Kueter: Commissioner Smallwood?

James Smallwood: I'm here.

Dean Kueter: Vice-Chair Sullivan?

Katharine Sullivan: I'm here thank you.

Dean Kueter: And Commissioner Washington?

Donald Washington: Good afternoon I'm here as well.

Dean Kueter: Mr. Chairman, that completes the roll call.

Phil Keith: Thank you Dean are there any other announcements?

Dean Kueter: No sir, we're good to go.

Phil Keith: Thank you. We again want to acknowledge the continued commitment of the Commissioners, the working groups, witnesses, and certainly federal staff to have meeting the goals of this historic Commission and on behalf of General Barr we thank each of you.

As noted on previous calls, we encourage Commissioners to take notes during the testimonies of the panelists and we'll open up for questions from the Commissioners after each panel today.

I'm honored now to introduce our first speaker for introductory remarks the Honorable Michael Mukasey who served as the 81st Attorney General of United States and as United State District Court Judge for the Southern District of New York.

Judge Mukasey has heard numerous cases including the trial of the so called Blind Sheikh and others convicted of a wide ranging conspiracy that included the 1993 bombing of the World Trade Center and later a plot to blow up New York landmarks.

He is currently in private practice in New York City and we are honored today to have Judge Mukasey with us. Judge Mukasey you are recognized.

Michael Mukasey: Thank you very much Director Keith and I want to thank Katherine McQuay also for her help in facilitating this. Even though this conference is being held by necessity in what we call a virtual environment, the subject of this conference respect for law enforcement and the rule of law and the concerns that are raised by current threats to both of those, those are anything but virtual. They're very real.

For example in the city where I live, New York, a woman who wanted to show her opposition to a march in support of the police struck an officer over the head with a wooden cane and was bailed out the next day. She returned to the illegal encampment outside City Hall from which she had

come and where others had been distributing bats so that they could facilitate acts like the one for which she was arrested.

The police officer she struck didn't leave the hospital until two days later and he left in a wheelchair. In that same city, in response to calls to limit policing, the mayor has directed that the plainclothes unit direct devoted principally to getting illegal guns off the street be disbanded.

Understand that the effect of the kind of enforcement that this unit did was not simply that illegal weapons were seized but also that those who had access to such weapons were less inclined to carry them for fear of arrest with the result that the number of shooting was diminished substantially. Not surprisingly the incidence of shooting has tripled and of course the murder rate has gone up as well.

Simultaneously that same mayor cut the budget for the police department with the result that the next class of potential recruits has been cancelled at a time when retirements are sky rocketing as a result of low morale in a department where officers believe, and I think justifiably, that city's elected officials, including not only the mayor but also district attorneys, do not back them.

This at least suggests the question: how long can a society let that kind of thing go on before it collapses. I have to tell you that I have my own bias on this subject so that you can discount my views by whatever factor you wish. That bias expressed itself, for example, when I was a U.S. District Judge in the Southern District of New York and I was sentencing a defendant on a weapons charge and it came out that that defendant had raised his hand to a police officer trying to arrest him. I told him a sentence to the top of the applicable guideline range would be imposed as a result of his having done that and that I regretted that I could not tack on five years more. That's where I am, as they say, coming from.

That said how did we get to where we are and how can we get to where we belong? It's not that we weren't warned. President Reagan said many years ago that because we are a nation defined entirely by a set of beliefs, in his words and I quote - these were his words "Freedom is never more than one generation away from extinction. We didn't pass it on to our children in the bloodstream. it must be fought for, protected, and handed on for them to do the same. For one day we will spend our sunset years telling our children and our children's children what it was once like in the United States when men were free." unquote. How do we fight for, protect, and hand on to our children the society in which we were raised? In order to do that I think we have to ask ourselves whether it is simply our system of laws that holds us together or whether it is also something else.

I believe that it's possible easily to put more emphasis on this being a nation of laws than is helpful for anyone, specifically for the people of this nation. I think most people go about their daily business and contribute to the general welfare without worrying too darn much about the law and that's a good thing.

Particularly if you stop and consider the places where people do have to keep in mind constantly what the law is and what it requires of them as they go about their daily business and what the law can do to them if they don't meet those requirements.

Then come to realize that countries where people go around like that, constantly looking over their shoulders at the law, are most typical countries like North Korea or Cuba where whether or not you have the law constantly in focus the law has you constantly in focus.

I think it's not really being a nation of laws that actually is supposed to hold us together and that it's not somehow a failure the nation of laws that's pulling us apart.

In fact, when have we ever been more legalistic than we have been in the last several months whether we were discussing the lawfulness of the missile strike by our military that killed Iran's top terrorist organizer Qassem Soleimani or whether a payment to a porn movie star – it seems anyone at a porn movie is star. Have you ever heard of a porn movie extra? – and whether such a payment is a contribution in kind to a political campaign if the payment is in return for her silence, a better relationship with a political candidate, or what the limits are of executive privilege.

When has our political discussion ever been more legalistic that it was during the impeachment proceedings concluded in the past months when we debated what the nature was of a high crime and misdemeanour that warranted removal from office as opposed to a law crime that might warrant simply a term of confinement when the officerholder left office.

I don't think that that kind of legalism is really what holds us together. Put it in the form of a question: If we are a nation simply of laws do you really think that if we took our legal system, our constitution, our laws, and the whole lot and plunked it down in some other country among other people that another United State but suddenly sprout up in that country, among those people, do you really think that? Me neither.

Now I think what historically has held us together and what should hold us together is not simply that we are a nation of laws but rather what Lord Fletcher Moulton in an essay that he wrote in 1924 called "Obedience to the Unenforceable". The unenforceable being one of three domains that he said exists around us.

The other two being the domain of laws and the domain of personal whim, which is whim other than the whim of a ruler, and that's the kind of whim that bears down on us today.

In his 1924 essay Lord Moulton put it this way. He said - and these are his words - he said, "the real greatness of a nation, its true civilization, is measured by the extent of this land of obedience to the unenforceable." It is that territory that measures the extent to which the nation trusts its citizens and its area - that is the area of the land of obedience to the unenforceable - this area testifies to the way they behave in response to that trust. But the expansion and proliferation today of laws - technical rules on the one hand, and there certainly are a lot of them - and the increasing space occupied by the domain of whim, the degree to which personal choice and taste is the defining basis for what we allow ourselves and others to do.

The space occupied by what Lord Moulton said defines the greatness of a nation, the space occupied by obedience to the unenforceable, is getting smaller by the day in this country if not actually by the minute.

I think one reason why this is happening is that personal taste and preference has started to impinge not only on how people behave with respect to themselves and toward one another both in public and in private but also on how people view reality, the degree in which they are willing to accept the fact of our history and the idea of objective truth, particularly to the extent that it may conflict with a belief that they consider important.

An objective truth is something we have to accept if, among other things, our legal system is to function as it should. It's something I submit we should also have to accept if we are able to make important political decisions in a sensible way.

In the real world things happen one way and one way only. But there is an alternative approach that has increasingly caught hold and that I think threatens to overwhelm even how legal disputes get decided but certainly how political disputes get decided. That approach makes facts secondary to narratives. We've seen this not only in fringe broadcasts and publications but also in

mainstream broadcasts and publications, in the halls of Congress, and at times even in the White House.

One way this tendency has manifested itself is the claim that our laws, including the founding document the Constitution, could be read or made to be read to guarantee, not equal rights in the sense of equal treatment or opportunity, but equal rights in the sense of equal outcomes.

Considering the various and increasingly frequent ways that this tendency has been showing itself, I think we are in danger of ceasing to be Western country and starting to become a Middle Eastern one. One that's ruled by narratives rather than objective realities. That trend continues when they eventually hear references to the American street just as we sometimes hear references to the Arab street.

Although the tendency has grown substantially in our own society to prefer narrative to fact when what is at stake is either personal or political preference, it's not inevitable here. It's not deep seated in the culture of this country as it is in the culture of some other countries.

Here it results from a choice, or rather from many choices, but reversing it, if we are of a mind to reverse it, is going to take skills that involve drawing distinctions and reasoning from facts to conclusions rather than the other way around. But it's also going to take commitment to that societal quality that Lord Moulton thought was so important, obedience to the unenforceable, to the necessary norms and the recognition of a common history that define a truly civilized nation.

Norms and historical facts that are accepted generally, not prescribed, and that can't be enforced but only assumed, without which when we may –at times be a nation of laws but not a civilized one. Those are the norms and that is the history that have allowed this country and its citizens to succeed and to prosper beyond anything known in the entire history of the world.

It is important to teach and acknowledge that history and its achievements and to insist that the critics who claim that that history has been one of oppression point to another country in system that has generated more freedom for more people than the United States.

Historical facts are relevant in ways that we often dismiss but in ways whose importance have become more obvious with each passing day as people who deny history appear to gain control in the public agenda. We sometimes use the word history to refer to something or someone that's irrelevant or unimportant as in "he's history" or "that's history" and we mean that whatever or whoever we are talking about is worthless.

However for people involved in law enforcement, our standards and that history and the public order and prosperity they have brought about are vital to our survival. I suggest to you that our success and prosperity exist because our system is governed by obedience to the enforceable because in a system governed by the obedience to the unenforceable people are free to rise or fall in any enterprise or field of effort based largely on their abilities and merit as recognized by common values but of course that assumes that merit, truth in so far as we can discover it rather than narrative, will continue to set the defining standard.

It's not all clear today the truth as opposed to narrative will in fact set the public agenda or the standards for success in this country so it's not clear that we will continue to enforce it, to obey the unenforceable, in ways that makes it possible to maintain a civilized society.

This country as a whole has a lot to lose if we give up on obedience to the enforceable. Unlike other countries, we don't draw our identity to the from blood or land. Germans, Britons, Frenchmen, Spaniards remain Germans, Britons, Frenchmen, and Spaniards. They don't have to rely on some national consensus at any given time about what that means.

But we draw our identity not only from adherence to a system embodied in the law that we call a Constitution but also from a consensus in general terms about what that means. Once that's up for grabs, the whole point of having a country at all as opposed to being just citizen the world at large is up for grabs as well.

Sure, there is mention that there are actually elementary and secondary schools in this country known generally as elite elementary and secondary schools that announce proudly that they are turning out citizens of the world. I think what that means is they are turning out citizen of nowhere in particular and that people - and turning out people who do not share a particular understanding of the norms and the culture that define this nation, that make it different from other nations, that are the unenforceable but very real assumptions we have to live by in this country if this country is to survive.

There are many people who have a lot to lose when and if we give up on obedience to the unenforceable. My own feeling is the people like the people on this call, people with a personal and a professional interest and upholding standards of what is true, what is not, what actually happened and what didn't, have the most to lose from this tendency toward preferring narratives to facts and therefore ought to be doing the most to prevent that tendency from making further inroads.

I'm not saying that every police officer or prosecutor has to be a certified historian, but I am saying that the action of all of us with a stake in the law ought to be informed by a common understanding of who we are and the great path that we come from that will give us the confidence to defend the legal system in which we function.

The mindless attacks by people who are either ignorant of our history or assume that they are talking to an audience that's ignorant of it. We can help do that, we may yet help avoid the fate

that we were warned against by Ronald Reagan, the fate of having to explain to our grandchildren what it's like to be free. Thank you very much for hearing me today.

Phil Keith: Thank you Judge Mukasey for joining us today and certainly for your distinguished service to our country as Attorney General and federal judge.

This time we will open up questions from Commissioners to Judge Mukasey. Just as a reminder to the Commissioners, your mics are hot at all times. Commissioners with questions for Judge Mukasey.

Donald Washington: Phil (inaudible)

Phil Keith: Yes sir you're recognized, Commissioner.

Donald Washington: Good afternoon Judge, it's Don Washington. I served with you when you were the Attorney General as the U.S. Attorney in Western Louisiana. Thank you for being with us today and providing these words of wisdom.

I have a question I'd like you to - if you could delve a little deeply. In a part of your words you indicated that in order for us to reverse this situation where narratives are sometimes referred to - are preferred over facts that, I think you said that would have a particular skill set involving drawing distinctions in going from facts to conclusions. Can you add some meat on that bone a little bit by - I think what we are after here is how do we take these really good ideas and put them into some format that's going to be useful for, you know, those like me who value the rule of law and what we're trying to accomplish in law enforcement as well as just in a nation of laws.

Can you add a little bit more meat around the idea of the skill sets that is going to be required in order to address this concept of preferring narrative over facts?

Michael Mukasey: Well I think that those are, that is generally the skill set that we attribute to lawyers, the ability to make relevant distinctions and to draw conclusions from facts.

We tell juries all the time that they were the finders of the facts but that they had to confine themselves to what they saw in the court room and then the evidence rather than either anything they read on the outside or their own preconceptions.

Here I think the danger is that people bring to bear their preconceptions on the objective facts and we have to do is stress the facts and gather the facts and then draw the conclusions from that rather than start out with a preconception and work towards finding what the facts are.

Donald Washington: Thank you, Your Honor. Do you have any advice as to how we might be able to spread that that ability, you know, outward in terms of training, for example for law enforcement officers or for public affairs officers or for even for our children.

How do we, you know, how do we get that going again because obviously if there is a preference for narratives over facts that somehow or other that whole idea, you know, is sort of carrying the day in many spots around the country so how do we sort of embed this rigor of mind set of examining facts into the population in general?

Michael Mukasey: It's a great question. I think that suggesting readings might help. I hate to fall back on recommending somebody else's work but there is a book by a historian named Wilfred McClay called Land of Hope that if I had the money I would buy a copy for everybody in this country and ask them to read it. It lays out a lot of facts relating to our history that a lot of people think they have trouble keeping straight. I think anybody who reads that can then energized to go out and spread the message.

Donald Washington: Thank you, Your Honor.

Katharine Sullivan: Hi Judge. It's Katie Sullivan. Chairman...

Michael Mukasey: Hi

Katharine Sullivan: ...be recognized.

Phil Keith: Yes ma'am, you're recognized.

Katharine Sullivan: Yes and thank you so much for giving us your time but also that your wisdom I have to say that I just - this is - the words are amazing and I will say that the director of the Marshalls, Director Washington did take my first question exactly verbatim.

But the other question that I have is the theme throughout your written remarks and that is about history. And I'm wondering if you have any kind of observations about - because history is funny right? If you change history or you have a revisionist history and that's what being taught and that is what this next generation knows and so how do we fight back against a revisionist history? How do we make sure that history is being taught accurately? I mean it is not always easy, it's not always pleasant but we do need to have the facts. Do you have any ideas about how we might go about that?

Michael Mukasey: Well other than - other than the book that I recommended I mean, you know... They used to say in the Soviet Union that the future is always the same, it's the past that changes and we have to avoid having that happen in this country.

It's the future that's got to be something that people create and the past that is there for people to see. This is a job of school boards, it's the job of citizens and it's our own job in dealing with our neighbours on a day to day basis.

Katharine Sullivan: Thank you.

Phil Keith: Other question and comments from our Commission to Judge Mukasey? Okay thank you for your questions again. Thank you, Judge Mukasey, for your appearance here today before this President's Commission and we certainly thank you again for your distinguished service for our country.

Michael Mukasey: Thanks very much for having me. Thank you.

Phil Keith: Dean are we ready to move to the next panel? Dennis, are we ready to move to the next panel or do you know?

Dennis Stoika: (Inaudible) everyone is on yet from the next panel. If we could take a just a quick headcount.

Phil Keith: Yes sir.

Dennis Stoika: Is Director Rafael Mangual on the line? Professor Gail Heriot? Professor Turley? Sir, it appears there be a - the second set of speakers today for the rule of law panel are not on yet. We are probably just a little early so then we'll need to pause.

Phil Keith: Okay thank you. Commissioners –let's please stay on the line and we'll pause here for just a minute until we get the next panel lined up and Dean is back in working order now. He had disconnected but is back with us now. Dean, anything to add?

Dean Kueter: No sir I think that's the right call to go into the conference line.

Phil Keith: Okay, thank you, we'll pause just for few minutes and we'll keep you posted here as soon as we are ready to go. Shouldn't be long.

[Hold music]

Female: Go ahead, sir.

Phil Keith: Thank you very much. And before we get started with our next panel, our Executive Director has an announcement.

Dean Kueter: Yes. Just wanted to continue to remind everybody that today's call is open to the press.

Phil Keith: Thank you Dean. Now we'll move to our rule of law panel. We will hear from our witnesses and then entertain questions from Commissioners to our distinguished panellists.

Our first distinguished panellist is Mr. Rafael Mangual, who is a fellow and deputy director of legal policy at the Manhattan Institute. He has authored and co-authored a number of reports and op-eds on issues ranging from urban crime and jail violence to broader matters of criminal and civil justice reform. He has a B.A. degree in Court Communications from City University of New York. He has a JD from DePaul University in Chicago where he was president of the Federal Society and vice president of the appellate moot court team. Thank you, Mr. Mangual for joining us today. We're honored to have you. You're recognized.

Rafael Mangual: Thank you so much Chairman Keith, Commissioners, and distinguished members of the President's Commission on Law Enforcement. My name is Rafael Mangual. As was just said, I'm

a fellow and deputy director of legal policy at the Manhattan Institute for Policy Research, a 501(c)(3) think tank based in New York. We're here to discuss the topic of respect for law enforcement in the rule of law. And that respect is quickly eroding and has been for some time. Now that erosion, I submit, is the product of a false or misleading narrative about incarceration, policing in our criminal justice system more broadly.

Now that in itself is a serious problem. But that problem has been compounded by the fact that the narratives that are informing meaningful political action are also resulting in consequential shifts in public policy on matters of criminal justice. And the stakes involved in pulling criminal justice policy levers are quite high, sometimes life and death. And so it's important that we get these questions right. To that end, I'll spend the next few minutes explaining what the narratives that have animated criminal justice policy have gotten wrong.

And I'll begin with the topic of incarceration. And here I'd like to make two main points. First is that the international comparisons of incarceration that are often cited as *prima facie* evidence that the U.S. over-incarcerates ignore essential differences that take the wind out of the comparisons' rhetorical sails. And second, contrary to conventional wisdom, incarceration is a relatively rare sanction reserved mostly for violent and chronic offenders.

And so I'll start with the first point. One of the most repeated lines at the front end of any argument about so-called mass incarceration is that the United States is home to just 5% of the world's population but houses a whopping 25% of the world's prisoners. Now what those who make this point don't tell you is that this disparity is almost entirely a function of differences which, when controlled for, significantly cushion the rhetorical blow that the comparison is usually intended to have. Now the most obvious of those differences are found in the number and rate of serious crimes most likely to lead to lengthy prison sentences committed here in the U.S.

Now take homicide for instance. In considering the scope of that problem in England and Wales, which is one of the western European democracies to which the United States is often unfavorably compared, now as I recently noted in an essay for *Law and Liberty*, England and Wales have combined population of about 59 million people. They currently see about 726 homicides a year. That's based on the year ending in March of 2018. If you were to compare that with just four contiguous community areas on Chicago's West Side - Humboldt Park, Austin, East Garfield Park, and West Garfield Park - you'd notice that in 2018 those community areas saw 121 homicides or 16% of the total for England and Wales despite housing an estimated population of just 189,000 people, which is about 0.3% of the population of England and Wales.

Now with a murder rate of 63.73 per 100,000, those community areas have a homicide rate that's more than 50 times higher than that of England and Wales. And if you were to add to the mix Baltimore's western and southwestern police districts - which in 2018 saw 100 homicides and had a population of 103,000 - it would mean that just a few subsections of just two American cities see 30% of the homicide seen in the whole of England and Wales despite those subsections having a combined population of just 0.5% of that of England and Wales.

Now the second point here is that, in addition to out of context international comparisons, the mass incarceration mean posits that the U.S. can be aptly described as a draconian carceral state that imprisons far too many people for far too many offenses for far too long. And here again the data don't support this conclusion. The first thing that often gets left out is that the prison sentence isn't exactly a given consequence for a felony conviction. Historically only about 40% of state felony convictions result in a post-prison sentence.

And the median prison sentence in terms of time served is only about 16 months. Moreover the majority of prisoners in the United States - 60% in state prisons - are serving time primarily for one of just five serious offenses: murder, rape or sexual assault, robbery, aggravated or simple assault, and burglary. Now contrary to what many believe, non-violent drug offenders are most

certainly not driving America's incarceration rate. Those serving time primarily for drug offenses constitute less than 15% of state prisoners who account for about 90% of the national prison population.

Moreover, those who are primarily incarcerated for drug offenses tend not to spend much time in prison at all. Just under half - 45% of them - are out within a year. And nearly one in five are out within six months. Nor can drug offenders - who garner a lot of attention and debates about incarceration - be universally regarded as harmless. Three data points illustrates why this is so.

First, according to the Bureau of Justice Statistics, more than three quarters of released drug offenders are eventually re-arrested for a non-drug crime. More than a third of those are re-arrested for a violent crime specifically. And third, in Baltimore, seven in ten homicide suspects in 2017 had at least one prior drug arrest in their criminal histories.

Now the misdirections and obfuscations that I've examined so far do more than just lead voters to support misguided decarceration policies. They also undermine respect for the system that we've designed to address serious law breaking by convincing the public that the system by and large produces results that they would find offensive. And when it comes to policing, we find much of the same.

Now it's important to recognize the context of our current moment here. We're in the wake of violent protests following the extremely disturbing death of George Floyd under the knee of a former Minneapolis police officer. Now everyone should be disturbed by the force exerted by Derek Chauvin against George Floyd. And there's no question that police do sometimes engage in unjustifiable abuses.

However, the fact remains that one of the most pernicious claims advanced about police is illustrated by the oft-repeated claim that Black and Latino parents have to consistently warn their

children about police violence at a young age and coach them through how to minimize their chances of being brutalized. On the whole, however, police use of force is extremely rare. There are still uses of force that are injurious and unwarranted. In 2018, police in the United States discharged their firearms an estimated 3,043 times.

Now while this may sound like a lot, that number has to be contextualized in light of the fact that we have more than 686,000 full time law enforcement officers working across America. They make more than 10.3 million arrests a year and have contacted more than 53 million people, often multiple times with each person. Now if we attribute each of the 3,043 estimated firearm discharges in 2018 to a unique officer, we can infer that at most 0.4% of officers purposely discharged their firearm in 2018. We can observe that at most police applied deadly force with a firearm in just 0.003% of arrests.

And on the question of non-deadly force, a recent study published in the Journal of Trauma and Acute Care Surgery revealed that more than 99% of arrests by police are made without the use of force. And in more than 98% of cases in which force is used, there is no injury or mild injury sustained by the suspect.

Now ignoring these facts has allowed a misperception about police to exist. And that's had real consequences, particularly for the populations most vociferous police critics purport represent. One illustration of those consequences comes from a study published in the American Sociological Review which found that Black residents were particularly and significantly less likely to call 9-1-1 after a controversial police use of force went viral. More evidence of legal cynicism can be found in another Morning Consult poll which found that twice as many Black respondents reported worrying more about those they know becoming victims of police brutality than of gun violence more generally. And that result is at odds with a recent study published by the Proceedings of the National Academy of Sciences which found that the odds of dying at the hands of dying of police are in 1 in 1,000 for Black men.

Now if you contrast that with the odds for all Americans of being killed by gun assault - which according to the National Safety Council is dramatically higher, at 1 in 298 - and you consider the fact that Black men are more than ten times more likely than their White counterparts to be the victims of homicide, you can see that the risk of death at the hands of police is far lower than homicide more generally.

And so I'll conclude by saying that the perpetuation of false narratives about police and incarceration have really emboldened some of the most radical elements of the criminal justice reform movement such that once fringe ideas like the abolition of police and prisons are now dramatically closer to the mainstream than they were even just a year ago. Since the death of George Floyd, we've seen police departments around the country defamed in various ways, emboldening the criminal class whose members have taken advantage of the vacuum created by these reports.

And in my home city, we've seen a troubling uptick of shootings that portends a potential erosion of its nationally renowned success on the crime fighting front. Through July 12, 2020, murders in New York City are up 23% year to date. Shootings are up 61%. This is not a short term blip either. The two-year trends in shootings and homicides show those crimes up 70% and 22% respectively. And that increase is falling disproportionately on the backs of our most vulnerable citizens.

In East Harlem's 23rd precinct, murders are up 500% year to date through July 12. In Harlem's 25th precinct, murders are up 250%. Shootings are up 400%. Now if you look at the Upper East Side's 19th precinct, there's been only one shooting all year. The same goes for the 78th precinct which covers Mayor Bill De Blasio's neighborhood of Parkville, Brooklyn. Now what this should serve as is a reminder that for the extent that radical reforms make life more dangerous, those dangers will disproportionately fall on America's most vulnerable communities.

When I prepared my first draft of remarks for today, our country was at the very beginning of the novel coronavirus pandemic. By April 1, that pandemic had claimed just about 4,400 American lives. And New York State accounted for 44% of those deaths. Now despite New York being the epicenter of the COVID-19 pandemic in early April, police throughout the state continued their service, which by definition involved close contact with potentially infected members of the public. And by April 1, more than 1,000 members of the NYPD had contracted the virus with five losing their lives to it.

Now it's that commitment that's illustrated by that continued service that should be painting the public image of men and women who protect and serve communities across our great nation., That nearly a million officers across our country have taken oaths to risk their lives in service of the law should place that ideal among the most revered in our society. And people of goodwill can certainly disagree about the extent to which our criminal justice system - which is by no means perfect - is flawed. And they can disagree about how to go about improving that system.

But the idea that our criminal justice system is fairly characterized as one that regularly brutalizes disfavored groups via overly draconian sentences and unjustifiably violent policing is nothing short of defamatory. And so to my mind, the best way to restore the respect that this group acknowledges has been lost is to fight innuendo with empiricism, to fight obfuscation with analysis, and to fight lies with truth. Thank you.

Phil Keith: Thank you Mr. Mangual for your valued testimony and your dedication to our criminal justice system. Our next distinguished panellist is Gail Heriot who is Professor of Law at the University of San Diego and is a member of the U.S. Commission of Civil Rights. Her work has appeared in legal journals like the Michigan Law Review and the Texas Journal for Law and Politics. She is a member of the board of directors for the National Association of Scholars and Civil Rights and is

the practice group chair of the Federalist Society for Law and Public Policy. Thank you for joining us today Professor Heriot. You're recognized.

Gail Heriot: Thank you for inviting me to testify today. I dare say this Commission's job has probably gotten a bit more complicated in the last month or so. What I want to caution against is precipitous action. There's been a lot of irrationality out there lately. The "De-fund the Police Movement" is surely its most prominent manifestation. But we all need to stop and take a deep breath. Treating over-the-top demands as serious is not going to enhance respect for the rule of law or for law enforcement.

So I think the first thing policy makers need to do is to refrain from making this situation worse by discouraging the appropriate enforcement of criminal law. Many Americans today have never lived through a period of high crime. They're unfamiliar with what it's like to really feel unsafe. American cities - up until very, very recently - have been enjoying a 30-year period of declining crime. Let's not throw that away. When law-abiding people don't need to be constantly worrying about crime, they can spend their time achieving their own goals instead.

This has benefited everyone, all Americans. But it has especially benefited lower income Americans living in large urban areas. Instead of staying home after dark, they can take a course in accounting at the local community college. Or they can earn money for a down payment on a house by working a part-time job somewhere. Whole neighborhoods blossom when crime goes down. People start to feel more comfortable coming out at night. And once they come out, their presence reduces crime even further. So things get better and better.

So what has paused this decline in crime? As the members of this Commission know - I'm sure - many things. Many things. Some of them policy makers cannot take credit for at all like the aging of our population. But others like higher incarceration rates and concentrating police officers in areas where the crime is, those are deliberate and effective policies. I am certainly not here to tell

you that every innovation that's occurred since the 1980s and 1990s, that they're all sacrosanct and they can't be re-examined. We have newer technology. There may be ways in which we can lighten up slightly on incarceration rates.

But we have to recognize that the incarceration rates that we have today are an important part of the reason why crime is down in the United States of America or was down over several decades, that sending more police officers into the neighborhoods that have higher crime rates, that is also part of authority. Now all of these issues have gotten linked up with race in recent years. So it's important to never let it be forgotten: historically one of the most severe problems faced by African-American communities in the Jim Crow South was that many law enforcement officers during that period just didn't give a damn..

Swedish sociologist and Nobel Laureate Gunnar Myrdal - who is nobody's idea of a conservative - exposed that neglect in his highly influential 1944 book *An American Dilemma: The Negro Problem and Modern Democracy*, which I very much recommend to all of you. In that book, he identified excessive - what he viewed as excessive leniency - toward African-American defendants in cases involving crimes against other African Americans as a serious form of discrimination. He described how African-American victims greatly resented it.

No government function is more important than protecting citizens from violent crime. For law enforcement authorities to have left one part of the population without the full and equal protection of the law was a travesty. After the Civil Rights Era and after particularly the Voting Rights Act, I believe things got better on that consideration, but the problem didn't disappear. In his 2015 book, *Black Silent Majority: the Rockefeller Drug Laws and the Politics of Punishment*, Professor Michael Javen Fortner, discussed how grassroots African-American organizations in New York had to organize in order to get more police protection, not less, during the 1960s, the 70s, and the early 80s. What's interesting is how little the general public knows about this history.

For years, the media narrative has largely been that the criminal justice system works to the disadvantage of African Americans because incarceration rates for African-American men tend to be higher than for other races, but African Americans are also disproportionately victimized by crime, and that part of the story gets left out all too often. The Washington Post also deserves, I think, some credit for running a story - I think it's almost two weeks ago now. The title of it was, "On a DC Street Beset by Violence, Call to Fix Policing, Not Defund It," and they reported a protest in a mainly African-American part of Washington D.C.

Even though it didn't fit that narrative that I just described, these protesters wanted more police protection, not less. An 11-year-old boy there had been killed by a stray bullet, shot by gang members who were trying to chase other gang members from a rival gang out of their area. Black lives mattered to these protesters, but that's why they were concerned that they have not been getting enough police protection. So, we have to be careful about reforms that have the effect of discouraging police officers from doing their jobs.

In my written testimony, I commented on two specific issues - that is cameras and qualified immunity - and also flagged two more - that is civil forfeitures and the perverse incentives that can be created by fines that are used to finance too large a proportion of municipal budgets.

I think I only have time to mention the qualified immunity issue, but what I will say about all of them is that, unlike the defund police demands and a few of the other demands that we're hearing a lot of these days, these are certainly not ridiculous on their face. I have only time for qualified immunity, as I said, so I'll refer you to my written testimony for cameras, which I very much support. Abolishing qualified immunity is a fashionable cause these days. And under current law, as expressed in the Supreme Court case of *Harlow vs. Fitzgerald*, which was a 1992 case, police officers, and also most other government officials who engage in what could be called discretionary functions, they cannot be held personally liable in federal court for violating the rights of others if they can show that their conduct did not violate - and I'm quoting the case here -

“clearly established statutory or Constitutional rights of which a reasonable person would have known.”

And I just want to footnote here, this is a federal case, and state law can be different. And the point I wanted to make was that I would oppose entirely doing away with qualified immunity. I was, in fact, a little surprised to find that that was being taken seriously as a possible change in the law. That doctrine is thought to be important in part because, without it, there is a danger that public officials, including law enforcement officers, will protect themselves by opting for inaction by sitting on their hands. They will not do what needs to be done to protect the public. And this is a greater danger for public officials than it is for private citizens, and that's why you see the difference in the law here. In the private sector, diligence in industries tend to have - not always, but tend to have - a more direct link to reward than they do for public officials, and I gave you a couple of examples in my written testimony.

Here, I'll just say, you know, a salesman who doesn't sell anything, he's not going to earn a commission. That's a direct link to diligence in industry. But when a police officer saves a life, he doesn't get to keep it. He doesn't get a percentage for that. If only his errors, and not his successes will affect his fortunes, then there is going to be a likely reluctance to act. And that's what qualified immunity is supposed to help with. That doesn't mean the doctrine of qualified immunity cannot be refined or improved upon. There are courts that have interpreted *Harlow vs. Fitzgerald* as probably more strictly than I believe it was intended to be. You know, a clarification might be in order here, but doing away with it I think would be a big mistake. So, I suspect my seven minutes are either up or they're very close to being up now, so I think I'll stop there. And, again, thank you for inviting me to testify.

Phil Keith: Thank you, Professor Heriot for joining us today, and certainly your most valued testimony you've given this Commission. Our last distinguished panellist for the rule of law panel is Professor Jonathan Turley, the J.B. and Maurice C. Shapiro Professor of Public Interest Law at

George Washington University Law School. Professor Jonathan Turley is a nationally recognized legal scholar who has written extensively in areas ranging from Constitutional law to legal theory to tort law.

Professor Turley is frequently a witness before the House and Senate on Constitutional and statutory issues, as well as tort reform legislation, including Senate confirmation hearings of Senate members and jurors like Justice Neil Gorsuch. Professor Turley received his BA at the University of Chicago, and his JD at Northwestern University. In 2008, he was given an honorary doctorate of law from the John Marshall Law School for his contribution to civil liberties and public interest. Thank you for joining us today, Professor Turley. You're recognized.

Jonathan Turley: Thank you very much, Chairman Keith, and your fellow Commissioners for inviting me to speak today about the implications of biometric technology and privacy in law enforcement. The recent controversies surrounding the defacing and destruction of statues and memorials has led to a national debate over the rise of mob action. While there are valid arguments for the removal of some statues, the rule of law demands that these decisions are made collectively by society not capriciously by rioters. Some incidents in Washington and Baltimore involved the destruction of statues as police made the, quote, "tactical decision," close quote, not to intervene. The Federal government, on the other hand, launched an extensive effort to identify those who led efforts to destroy statues like the Andrew Jackson statue near the White House.

The same type of effort has unfolded in cities like Portland, where federal officers have reportedly attempted to identify protesters who attacked federal officers or destroyed federal property, including a controversial case where a suspect was detained and then released by officers in an unmarked vehicle. These arrests may or may not have relied upon facial recognition technology, or FRT - one area of biometrics - but they highlight the value and the concerns over the use of biometrics. On one side, there are organized groups who seek to conceal their identity, to engage in mob violence and attacks on police. On the other side, there is a concern over police

identifying people who are engaged in protests against the government, including police abuse. Defending the rule of law in stopping such mob action can be also deterring the exercise of rights guaranteed under the rule of law.

So, that brings us to this issue of how is FRT, and biometrics more generally, to be used by law enforcement, particularly during this rather tumultuous period. The use of FRT raises some well-known and long-standing concerns from works like *1984* to movies like *Total Recall*. Fictitious dystopian futures all have a common feature: this continual omnipresent surveillance of every citizen. The fear of living in a fishbowl society is a shared phobia of all free people. That technology was merely a fiction when Orwell penned *1984* but it now is a reality. Biometric technology does allow for governments to identify, monitor people in real time. That has raised very significant issues, particularly because some countries have gone all in on biometrics. In my testimony, I talk a bit about that in the background section. China is one of the leading countries that has invested in biometrics for all the wrong reasons.

The Chinese government is particularly enthralled with this concept of a fishbowl society. So, what repels civil libertarians is actually attracting authoritarian governments. The government of the United States has also made investments in FRT, from airports to law enforcement. Now, the question that I've grappled with is how we incorporate this technology during periods like the one that we are living through. I am a long-standing advocate of privacy. I'm pretty extreme in my views on privacy. But I also recognize that this is a technology that we can't just simply close our eyes to. It's a technology that we can't pretend is going to go away. It is part of a multibillion-dollar market. People like it. Everyone with an iPhone, with a face unlock, likes it. We are not going to get this cat to walk backwards. We can, however, try to get it to walk forward along a different path.

We also have to recognize that for law enforcement there is some real value here that might actually coincide with values of civil liberties. Take the Boston bombing case. In that case, I felt

that the police took an extraordinary and unconstitutional step in doing a strategic search of whole areas of Boston, going house to house without a warrant. When the two brothers responsible for the bombing were in public, they were, in fact, spotted. The question is, if we had an FRT capability at that time, could we have avoided the more serious deprivation of privacy for everyone in that search area and relied instead on the technology? Another example of that is the Portland controversy. Many protesters have said that they were wrongly picked up. Well, FRT can actually reduce the number of false stops and arrests under *Terry* and other cases.

In Australia, I note there is a study that showed how truly poor, quote, “eyeballing suspects,” is for police officers. If you show a police officer an APB or some type of image and expect them to recognize someone walking on the street, you’re going to have considerable errors. This is a technology that radically improves that prospect. So, we have to recognize that the technology has values, not just to law enforcement, but could very well have values to civil liberties. I know that’s not popular with many of my colleagues in the privacy and civil liberties area, but what I’ve been working on in my research is to find a way for us to deal with this technology, and my concern is that existing case law and approaches to privacy are woefully inadequate in dealing with this new technology. The law has always been a race between privacy and technology, and technology has often won.

And that leads to these sort of traumatic moments where the court makes some adjustment, but we’ve never seen the quantum shift represented by biometrics. So, you have a technology that the public and law enforcement want and need, but the law is well behind that curve. What I suggested is that we are in a moment similar to where we were with Title 3 on electronic surveillance. After the court laid out privacy protections in *Berger vs. New York* and other cases, the Congress took those guidelines and created a comprehensive law governing the use of electronic surveillance. We are now at that moment with biometrics. The problem is that moment is passing in a dangerous way. Congress has largely not regulated biometrics, and instead the

Europeans have enacted sweeping regulations of the area. They are taking the lead in setting the standards and laws governing biometrics.

What I've suggested is a comprehensive act that covers the use of biometrics that can protect privacy, values, and interests. It governs both civil and criminal issues, both government and private uses of biometrics. But, before I leave - and I know I'm over my time - I just want to note one key sort of moment that we have to address, and that is: in my writings, I conclude that privacy is not a particularly useful focus in looking at biometrics, certainly not in its classic form. Instead, I focus on what we are trying to achieve by regulating biometrics. And I connect it to the democratic process, and what I argue with that we need to look as much at anonymity as we do privacy, because the greatest danger of biometrics is to turn us into a fishbowl society.

And the way we can stop that is to create forms of what's called obscurity - this is already done in other areas - to protect people from having their images used and stored in particular ways, to give people the assurance that when they go to a protest they're not going to be recorded and followed and tracked. Their associations and beliefs are not going to be documented or put into a dossier. So, the conclusion that I'm trying to suggest is that any progress on biometric privacy will require a comprehensive re-examination of what interests we are seeking to protect in, not an anonymous world, because it is - we no longer have anonymity in the classic sense, but a nonymous world, a world where we are being seen. We have to find ways to make that obscure. We need to look at traditional definitions and update them to the reality of the age of biometrics. Once again, thank you for the honor of appearing before you, and I'd be happy to answer any questions.

Phil Keith: Thank you, Professor Turley, for your informative testimony, and certainly for your service to our legal system. Commissioners, we are now open for questions for our rule of law panellists. They certainly have provided us a robust range of issues to discuss and interact with them. So, please be forthcoming with your questions. We'll ask the Commissioners with a question to state

your name prior to your question and direct the question to a specific panellist or to all three panellists. This is a reminder to our Commissioners, your mics are hot at all times. With that, Commissioners, we'll entertain questions for our panellists.

Erica McDonald: Phil, this is Erica McDonald. May I ask a question?

Phil Keith: Okay, I recognize Commissioner McDonald.

Erica McDonald: Thank you very much. I appreciate it. Thank you very much to all our panellists. I really appreciate your thoughts and your input and your remarks. I am the U.S. attorney here for Minnesota, the District of Minnesota. And, as you know, we are facing this false narrative about a broken criminal justice system and about police reform and, "defund, dismantle," ideas that are misguided at best, irresponsible at worst, and we are really trying to push back on this false narrative that somehow, because of the actions of some, that the entire system is broke. So, what can we do as community leaders to push back on those narratives and what can we do as the Law Enforcement Commission to push back on that narrative? And I - any of the panellists or all of the panellists. Thank you.

Phil Keith: That question was directed to all of our panellists.

Rafael Mangual: This is Rafael Mangual. I think it's a great question, an important one, and, you know, maybe I'm an irrational optimist here, but I do think that one of the most important things that our leaders can do and that this Commission can do is to forthrightly pound the table with the empirics in a way that pokes holes in that narrative and illustrates the falsehoods that underlie it. You know, I just really can't stress enough how important it is to get these debates right, and I fear that a lot of our institutions have become fearful of the blowback of pushing back and, again, I think an honest look at the data on a lot of these claims, whether we're talking about police use of force, incarceration, so-called coercive plea-bargaining, et cetera, the reality is often a lot less

pernicious than what the trackers of the system claim, and I think a first step has to be an outwardly visible commitment to truth here.

Phil Keith: Thank you.

((Crosstalk))

Jonathan Turley: This is Jonathan Turley.

Phil Keith: Go ahead, Professor Turley.

Jonathan Turley: Oh, thank you. I just want to amplify something that Rafael said, which is that part of the problem in dealing with this issue is a shocking loss of free speech in the United States on our campuses, and even in the media. I've been writing a lot about that. Academics who have voiced many of the views that Rafael voiced have found themselves subject to campaigns to have them fired. Recently, a Harvard professor who raised the possibility that the issue with - that we should be addressing is not necessarily racial, but the overuse of force. He is the subject of a massive campaign to have him removed. The media rarely publishes the type of discussion that we are having today. So, one of the things that I would suggest is to try to create forums for the public to be able to hear both sides of these issues, to hear a frank discussion of what we can do to reform our system because those forums are being lost.

At one time, you would find those at colleges and universities. I'm afraid that's no longer the case. And, so, we may have to start at the most basic response in dealing with the issues that you raised, and that is to create avenues, forums for people to actually share opinions other than the orthodoxy that we're seeing in many, many locations.

Gail Heriot: This is Gail Heriot. Rafael said that he might be an irrational optimist, and I can assure all of you that I am much more likely to be accused of the opposite, being a pessimist. People like to kid me that I'm a Cassandra, and I have to remind them that Cassandra was always right. But, on this issue, I am actually optimistic, and that is I believe that if people talk about the issue enough - and I agree with Professor Turley that we need to create opportunities for that - that this is an issue that I think the public can understand and that real progress can be made here. You know, the rhetoric out there now is so irrational that I don't think it's too difficult a dive to prove things by talking realistically about the need for law enforcement, the fact that - sure, there are problems, there are always problems. Whenever somebody is given the authority to use force, there are going to be problems, but I think this is one where we can make a lot of progress by explaining why things are done the way they are done, how they can be improved, and I think we can certainly increase the public's respect for the rule of law and for law enforcement simply by getting the truth out.

Phil Keith: Thank you, Professor Heriot. I heard another Commissioner with a question.

James Smallwood: Mr. Chair, it's Commissioner Smallwood.

Phil Keith: Yes, Commissioner, you're recognized.

James Smallwood: For Professor Heriot, I've actually got a couple of questions, if you don't mind. You talk about potential refinements being made on qualified immunity and, for the record, I think your testimony was very on point, very much of it was anyway, and I'm just curious, with the last 200 cases only 57 percent of officers were actually granted qualified immunity, and I'm curious to know what your refinement to qualified immunity would be knowing that it's not just a blanket protection, that it actually has a process to go through.

Gail Heriot: Yeah, I feel like I'm probably not good at orderly - you know, giving you the best refinement possible because I've only read, you know, a few cases, and some of the cases have been described to me in ways where I would have thought that it really wasn't a good interpretation of *Harlow*. But, basically, you know, my basic view is that qualified immunity is important and that we need to keep it. We do need to make sure that courts properly interpret *Harlow*, and not too rigidly. And, you know, that's the best I can do at this point.

James Smallwood: Okay. And my second question; as I was reading through your written testimony, I noticed that we had similar opinions, but you think that we may have differing opinions on body cameras. And it's my understanding we've got a little extra time. I would certainly appreciate your perspective. I think a majority of, if not all, rank-and-file officers have come to understand how important body cameras are and have the desire to actually have them equipped on them. So, I'm just curious to know your perspective because you say in your written testimony that most officers don't want them.

Gail Heriot: I don't think I said most officers don't want them.

James Smallwood: I'm sorry; maybe "some," but...

Gail Heriot: Yeah. Yeah, I wouldn't have said that because I think most officers understand that cameras actually are a good thing...

James Smallwood: And we do.

Gail Heriot: ...that they not only, you know, protect the officer in terms of having a record of what happened, but they also - they're also good it just making people behave. And, you know, if somebody is pulled over on the highway and they know they're on camera because they know that that's what police officers do - you know, they have such cameras - they're going to be better

behaved too, and I think that's a good thing. But no, I - if I wrote that most officers are against them, that was an error on my part. I don't think I wrote that.

James Smallwood: It may have...

((Crosstalk))

Gail Heriot: ...(inaudible) that is...

James Smallwood: ...been, "some"...

Gail Heriot: ... Something that I have...

((Crosstalk))

James Smallwood: ...(inaudible) may be (inaudible).

((Crosstalk))

James Smallwood: Yeah, you may have written, "some". That may be an error on my part. Do you - you write in there how important it is to be able to review. Do you also support giving officers the ability to review those videos in use of force instances?

Gail Heriot: You know, I don't have an opinion on that. I know that there are differing opinions on at what point should the officer be able to look back and then there's obviously arguments on both sides of that. And, you know, to some extent, you know, we've all been through situations where we would have a difficult time stating exactly what happened. They often do this as an exercise in law school, where a criminal procedure teacher will have someone burst into the room and do

something strange, and then students will be asked, you know, "What happened?" And they all saw it, but they don't all describe it the same way, and nobody ever ends up describing it correctly.

And you can certainly sympathize with the police officers who are saying, "Look, that will help me, you know, recall what happened as well," and I definitely sympathize on that side. I can also see the argument on the other side, so, I am - I'm going to duck that one too, okay? I don't have an opinion.

James Smallwood: Okay. I appreciate your testimony, and I just want to reiterate I really appreciate a lot of what you said in your testimony, and agree with most of it. So, thank you.

Phil Keith: And, for our panellists, I'd like to give Professor Turley and Professor Mangual an opportunity to respond to Commissioner Smallwood's question.

Jonathan Turley: This is Jonathan Turley. I don't have anything more to add. I thought that covered the waterfront.

Rafael Mangual: This is Rafael Mangual. I will add a couple of things, particularly on the question of qualified immunity. While I do agree that it is necessary to retain at least some of the immunity offered to police officers by that doctrine, I think one interesting way to think about drawing the line and setting out a middle ground here would be to think about the sort of cases that often draw a lot of the criticism that qualified immunity doctrine has become susceptible to, and those cases often turn on the clearly established prong in the analysis. And what happens is, I think a lot of courts, as Professor Heriot said, you know, sort of misinterpret what the rule is supposed to be and make these kinds of idiosyncratic factual distinctions to allow officers to proceed with immunity, and that understandably upsets a lot of people. I think a better way to think about drawing a reform would be to sort of carve out immunity and restrict it to spaces in which courts

are actually making a real shift in the law or actually expanding on the legal doctrine in question, right?

If you take, for example, a case like *Miranda*, I don't think that, in 1964, it would've been foreseeable by any police officer on the force that they would have to read a kind of prophylactic statement of rights to every arrestee before they could ask any questions, yet once *Miranda* was decided and that imposition came down from the court, there would have been cases where - that were still within the statute of limitations in which officers could be sued, and I don't think that many people would agree that it would be fair to subject officers to liability or behavior that they could not have foreseen would be ruled unconstitutional because the case that ruled it unconstitutional represented an actual shift in the law or an expansion of legal doctrine.

And, so, yeah, I think it would be really important to understand that, but also I think it's important to understand that qualified immunity is not exactly the shield of liability that many people make it out to be. And, so, I think that both sides tend to overstate their case here. If you look at, for example, the study by Professor Janice Schwartz at UCLA, she looked at over 1,100 cases filed against state and local law enforcement officers under 1983. Qualified immunity could be raised as a defense in 979 of those cases, yet in just 3.9 percent of the cases in her study was qualified immunity the basis for either dismissal or a grant of summary judgment.

And, in most cases, 99.8 percent of all dollars recovered by plaintiffs against police officers are indemnified, that is to say that they're paid by the municipality. And, so, you know, there is, I think, room for reform here. I do think we have to keep some of what that doctrine offers, but I also think that a lot of the fallout from that kind of reform is likely to be overstated, given the empirics.

James Smallwood: Mr. Chair, it's Commissioner Smallwood.

Phil Keith: Yes, sir. You're recognized, Commissioner.

James Smallwood: Based on that response, I'm just curious; it sounds - unless I misunderstood, it sounds like, especially in that recent study, very few officers pursued and were granted qualified immunity. Can you give specific examples of where qualified immunity has been granted but has failed to actually be a good situation? It seems like were talking about refinements and I am generally curious where qualified immunity has not acted in the manner it was intended to be when it was implemented.

Rafael Mangual: Sure. I mean, I'm trying to think of the case off the top of my head here, but I think, on the one side, you have a case like, you know, *Miranda*, which I think, you know, represents a real shift in the law that could not have been foreseen by officers. And so it makes sense to apply the same kind of ex post facto protection that, you know, we recognize in our Constitution, First Article. But maybe take a case like *Corbitt vs. Vickers*, really, any case in which the clearly established prong analysis is turning on a factual distinction, as opposed to a legal one.

And I know that's kind of a sort of - somewhat of a vague concept to put a finger on, but if, for example, you have, you know, an officer who uses excessive force by tasing someone seven times and, you know, that case is ruled a violation of the Constitution, and then you have another case in which, you know, two years later an officer tases someone six times, drawing the distinction between six or seven, you know, is really kind of a sort of factual distinction that I don't think it makes a ton of sense because I think there, at least you have a legal principle that is much clearer to officers in the field.

But, again, I do agree with Professor Heriot that, where it really makes sense to retain a lot of these protections are in cases, you know, where rights are actually being expanded, where there are real shifts in the law. You know, police officers are not trained jurists, and I don't think it's fair

to hold them accountable for violations that they could not have known would be violations at the time.

James Smallwood: Thank you. I appreciate your perspective.

Phil Keith: Other questions from our Commissioners?

Katharine Sullivan: Hi, Mr. Chairman. This is Vice-Chair Sullivan.

Phil Keith: Yes, ma'am. You're recognized.

Katharine Sullivan: Thank you. This is for Professor Turley, but would love to hear Rafael, from you or Professor Heriot, as well. Professor Turley, in talking about your privacy protection act, you talk about an anonymous society, and you mentioned the importance of supporting First Amendment on our college campuses, and I guess this may be just way too theoretical, but I'm - how much do you think - first of all, how do we protect First Amendment rights on college campuses and elsewhere? I'm thinking about First Amendment rights, you know, most recently, say, with Goya products where, you know, the consumer could exercise their First Amendment right in that way, but how do we protect those First Amendment rights, and how much does this concept of a nonymous - not anonymous, but a nonymous society, play into either a difficult - with the difficulty of upholding someone's First Amendment rights?

I just happen to believe that technology has created an environment where we just don't feel accountable to other people and we can say whatever we want because it's - you know, it's on social media or it's behind a veil or something like that. I don't know if you have thoughts about that or if you think it pertains to what's happening with the rule of law or the civil unrest that's going on now.

Jonathan Turley: Thank you for that question. The - it's really a couple of questions folded in and I'd like to parse them out. Starting with the anonymous issue, it is certainly true that anonymity can produce negative as well as positive conduct, and I talked about that in my study. It's coming out at Boston University. We see that with the internet, where people who are given anonymity engage in truly vile, racist, and obnoxious types of commentary. So, it can produce very negative consequences. But anonymity is very important to the democratic process. It's important for people to feel that they can go to a protest, to associate with people, to see what a group or a person has to say.

And if they believe that they are being surveilled, it will chill that type of conduct. There's a term for it. It's called the Hawthorne effect. It's named after a factory, actually, in Chicago, that, in 1924, the factory wanted to see, if they increased the lighting of the factory floor, if it would change productivity. But what the study actually found is that people read - had a change in how they related to each other. It had a pronounced behavioral impact because people were now visible to the management and to other people. And the Hawthorne effect is a real deep concern for privacy advocates. So, it is true that anonymity has both of these impacts. What I tried to do is to thread this needle in the study by suggesting that we no longer have a truly anonymous society when it comes to public movements, and it's going to become less likely with biometrics.

We have to also recognize that there is some valid need for biometrics, as we've seen in the identification of people trying to destroy statues and public buildings. And, so, instead I suggest that we obscure certain types of data held by the government and by private sources, so that people can feel assured that they - this type of information is not being logged and preserved.

The second question dealt with - on free speech, I also appreciate. It's something I'm grappling with as an academic. In 30 years as a law professor, I have never seen the level of fear and intimidation that I am seeing now on college campuses from law professors and students that have dissenting views of these protests or their underlying causes.

I never thought I would see the day where academics by the hundreds with signed petitions to have colleagues fired because they happened to disagree with aspects of Black Lives - movement - the movement, not the cause, but the organization - or some of the aspects of the protests. It is, to me, an existential threat for this country. I am an enormous advocate of free speech. It is what defines us as a people, and many of our other rights mean nothing if we cannot draw the line around free speech and protect it. And, so, I really do believe it is connected. We can't deal with these important issues unless people feel free to discuss them. And, as my two colleagues on the panel show, there are brilliant minds that can be brought to bear on these issues, but they won't because now it takes a huge amount of courage to be able to say the things that have been said in this hearing.

And I don't believe I'm exaggerating this issue. If you go to my blog, you will find case after case of academics who have been investigated or fired. We have academics who have had to be put under police protection because they bucked this orthodoxy that has taken hold. It is something that needs a priority from the government, from academia, and from people of good faith, and I don't believe that we will be able to resolve rule of law issues until we are able to talk about them.

Katharine Sullivan: Thank you.

Gina Hawkins: Director, this is Gina Hawkins. Commissioner, it's Gina Hawkins. Can you hear me?

Phil Keith: Yes, Commissioner, you're recognized.

Gina Hawkins: Thank you. One, I want to thank - for everyone who has provided testimony. I think the last statement that the professor just discussed extensively of being able to have freedom of speech, being able to express different points of view, being able to listen, and being able to not be in fear of threat, it - I believe - need to take note that it ties into many different things in this

time in our history. It ties into the question of what we're talking about today, the respect for law enforcement. And being an officer in an organization strong enough to be able to speak up when things are not right and not be ostracized is one foundational issue that needs to be protected so, to that point, I understand that.

And, in the same essence of society not taking input from others who have different opinions that they believe is another issue that is - like you said, is being coming out right now, but history has shown us - history has shown us, when that has occurred, there has been prior episodes of oppression, episodes of issues that is now coming up to things that - they didn't have it back in decades of history and now it's coming, but now it's almost like who is - who is the oppressor at this point?

But, nonetheless, your point is well taken that everyone should be listening to all different aspects without retribution, without retaliation, to evaluate data and facts from all sources, and to listen so that we can start taking steps together, and not one side is better than the other, but to listen as a Commission and as a society to where we go to now. So, although it is actually occurring now where people are in fear, maybe, of speaking up and saying how they feel, the question should also come up, "Why is that?" And is there some self-reflection to how individuals feel? Do I need to self reflect on my opinion, and am I looking at everyone's data?

So, I just wanted to make those comments, as everyone's discussed different freedoms that we all believe in, different rights that we all believe in and make it relative to ourselves, our society, and our topic, which is respect for law enforcement, and how do we evolve from the - and it is not an issue of, a myth of the thin blue line hiding something. It is an evolution.

You have to speak up and intervene on behalf of our profession and on behalf of society. That's the only comment that I wanted to make. Thank you.

Phil Keith: Thank you, Commissioner. Other Commissioners with questions for our panellists? Other Commissioners with questions for our panellists? Hearing no further questions from Commissioners, we want to thank our distinguished panellists for joining us today and providing such valuable testimony, as well as responses to the questions from our Commissioners. This has been a truly robust discussion and we certainly appreciate the panellists for their commitment to testify before this Commission today.

Jonathan Turley: Thank you.

Gail Heriot: Thank you.

Rafael Mangual: Thank you. Thank you so much.

Phil Keith: Thank you, again. Commissioners, we will now focus our discussion on our attorney panel. Our first panellist today is Mr. William McSwain, who is the United States Attorney for the Eastern District of Pennsylvania, which is one of our nation's most populous district, with over 5 million people residing within its nine counties. Prior to his appointment as U.S. Attorney, he was a partner in a law firm specializing in white color criminal matters, as well as conflict business litigation. He served as an Assistant U.S. Attorney in the criminal division of the U.S. Attorney's Office in the Eastern District of Pennsylvania from 2003 to 2006. U.S. Attorney McSwain earned his BA degree in economics with honors from Yale University in 1991, and he earned his JD from Harvard Law School in 2000, where he served as an editor of the Harvard Law Review. Thank you for joining us today, Mr. McSwain. You're recognized.

William McSwain: Thank you, and good afternoon. I am Bill McSwain, U.S. Attorney for Eastern District of Pennsylvania, and you provided a little information about our district. It is a very diverse district. It has lots of cities in it, and of course, it's dominated by the city of Philadelphia. We also have suburban areas surrounding Philadelphia, and we have a lot of rural areas in our district as well.

So, I think we see the gamut of crime problems in our district. I want to talk a little bit about how I think that the rule of law and law enforcement officers are currently under attack, and particularly that's happening in Philadelphia, is where it's most prominent in my district. And we have a so-called progressive prosecutor in Philadelphia, as the district attorney, and this is an area that I study closely, as it has taken root in different areas of the country.

And to sort of summarize one of the problems, I think, with some of the progressive prosecutors and their agenda is that they literally have an agenda of saying "We need to have X people in jail. We need to reduce the jail population by X amount," instead of thinking about, "Okay, what are the reasonable incremental reforms that we can put into place that will protect public safety that may lead to reduced incarceration?" Instead, they literally come out and put the cart before the horse and say, "We've got to get this number down to whatever," and then they take what other steps they think they need to take to hit that number, and oftentimes that has really unfortunate consequences for public safety.

And Philadelphia, I think, in many ways is ground zero in this experiment. We've seen this experiment play out in real time, and what my office has tried to do is to in some ways be a counterweight to some of the worst excesses of that movement. And hopefully some of the things that we've done can be a model for other districts who are facing what I think are predictable results, specifically a rise in crime and a rise in chaos that can result from what I'll call radical reform policies. It doesn't mean that we're not in favor of, like I said, incremental and reasonable reform, and there certainly has been, I think, meaningful reform on the federal level, for example, the First Step Act, which we've been implementing and dealing with during 2020.

But it's the radical reform, the type of attitude that says, "Well, we need to get the jail population down to a certain arbitrary number, and we're going to take whatever steps are necessary," that, I think, is dangerous. So, we have seen what I'll describe as a staggering rise in serious violent crime in the past two years in Philadelphia, the most serious crime being homicides and

shootings. In 2019, we had the highest number of homicides we've had in a dozen years, and in 2020, the numbers are on track to be even worse. In 2020, we've already had over 225 homicides, and we're barely halfway through the year, which is a 28 percent increase from last year. We've also had nearly 1,600 shooting incidents, which is a 55 percent increase from last year.

And, just to give you a flavor - a snapshot - a couple weekends ago on Sunday, July 6, we had 23 people shot in the city in just one afternoon, the most in a single day in years, and six of those people died, unfortunately, including a six-year-old boy. And I think that one of the root causes is that criminals are emboldened in Philadelphia for a couple reasons. First, they think that, even if they get caught, that the local criminal justice system isn't going to hold them fully accountable. And then, secondly, they think that they might not get caught at all because the message to the community is that the police are the enemy too often in our city and that encourages witnesses to keep to themselves, discourages them from coming forward and cooperating with law enforcement, so, crimes don't get solved, so then criminals get away with the crimes, which just continues the downward cycle where more crimes get committed.

And we've seen the culture of disrespect for law enforcement on display in our city in a couple of really high-profile incidents last summer, towards the end of the summer. For example, an individual was - Maurice Hill was - involved in a shootout with police. It left six officers wounded when they were serving a search warrant. We also saw a Philadelphia police officer murdered in March of 2020 when he was trying to arrest a suspect, and someone who, frankly, I think should have been in jail at the time. And I, at the time, issued public statements about that sort of pushing back on explaining the dangerousness of having people on the street who shouldn't be there in the first place, especially when they're murdering police officers. And then we also had several - and we've had about 27 officers who were injured during the violence and rioting and looting that swept across Philadelphia at the end of May and the beginning of June.

So, we have taken, I think, an aggressive response to the rise in crime that we've seen, and there's basically three main areas that we focused on, again, to try to be a counterweight to the worst excesses of the progressive prosecution movement. First, we've put a lot of resources into violent crime prosecutions. We have to do everything else that federal prosecutors normally do - all the white-collar crime, the national security work, the political corruption work, the fraud work - all that stuff has to be done in our office because if we don't do it, nobody's going to do it. But we've also had to sort of fill the gap, the void that's been left by the locals.

And we have increased our violent crime prosecutions year to year in the past year by about 53 percent, and then we've also focused on particularly the Project Safe Neighborhood target areas, where we've increased our prosecution even more than that. We've had about a 72 percent increase in the last year and about 112 percent increase in the number of defendants that we've charged. So, 72 percent increase in cases and 112 percent increase in the number of defendants. And we've also tried to take on what I'll call high-impact cases that have a lot of deterrents that will get a lot of public notice. We've done that in the criminal area and also in the civil area, but in the criminal area, we've taken some cases where the locals actually have a conviction, but we feel like the sentencing in the case was inappropriate. So, we've gotten the waiver that we've needed from main Justice to come in and prosecute the case federally.

And the one that got the most attention was a defendant named Jovaun Patterson who shot and nearly killed a Cambodian store owner in South Philadelphia with an AK-47 rifle. And under the local sentence, he was going to serve us little as three and a half years in prison. And, so, we took that case over and Mr. Patterson is going to be facing a much longer mandatory minimum sentence in the federal system because of that very violent crime. We also recently charged an individual for setting fire to two police cars in broad daylight in front of City Hall during the riots in Philadelphia at the end of May, and we're currently fighting over detention for that individual because we think that she should be detained, based on the violence involved in that case, and that case has gotten a lot of notoriety.

And then, on the civil side, we have been fighting the so-called Safe Injection Site case. We brought a civil case to try to prevent a heroin injection site from opening in Philadelphia, which would be the first site in the United States. We actually have that case on appeal right now. The District Court disagreed with us, but we feel very strongly that we are correct in that case, and so we have now briefed it in the Third Circuit, and we're probably going to argue it in the fall, and I expect a decision by the end of the year, and we're very confident about our legal position in that case. And then, thirdly, we've done everything we can to communicate support for the police and to share our message with the public. We founded a new office when I first began as U.S. Attorney, the Office of Public Affairs and External Engagement to try to be as transparent as possible with the public about our efforts.

And, so, we've spent a lot of time engaging with the community. And, in fact, in the last couple weeks we've been doing an anti-violence campaign with the hashtag, "fed crime gets fed time," again, pushing back against some of the worst excesses we've seen in the local system where, in response to the rising homicides, the rising shooting rate, the rising violent crime in Philadelphia, which has also been, I think, exacerbated by the civil unrest, we're pushing back with a message to try to reduce the gun crime in the city, which is really at epidemic proportions. So, those are the three things that we've been doing, and I think that we as U.S. Attorneys have a really important platform and a voice to stand up for the rule of law and respect for law enforcement which the two of those go hand-in-hand. And, like I said, I think that we can be a counterweight to some of the radical reform policies, and we should use our platform responsibly and forcefully. So, thank you very much.

Phil Keith: Thank you, Mr. McSwain, for your valued testimony here today, and certainly for your service to our country. Our next...

William McSwain: Thank you.

Phil Keith: ... distinguished panellist is Mr. - thank you. Our next distinguished panellist is Mr. McGregor Scott, who was a United States Attorney for the Eastern District of California from 1989 to 1997. He served as Deputy District Attorney in the Contra Costa County, California, before serving as an elected District Attorney in Shasta County, California from 1997 to 2003. Mr. Scott is focused on environmental devastation caused by the cartel of marijuana growers in our national forest, as well as keeping guns out of the hands of violent criminals, human trafficking, and working with community leaders to establish a federal halfway house in Sacramento. U.S. Attorney Scott retired from the U.S. Army Reserves as a Lieutenant Colonel after 23 years of service to our country. He received his BA degree from Santa Clara University in 1985 and his JD degree from Hastings College of Law in 1989. Thank you for joining us today, Mr. Scott. You are now recognized.

McGregor Scott: Well, Mr. Chairman, thank you very much. I am very grateful for this opportunity. Frankly, much of what Bill McSwain just touched on, I will touch on as well, maybe with a slightly different perspective. As I indicated in my written testimony to the committee, I appeared as part of a panel at a symposium in February of this year at Hastings College of Law, and the topic essentially was progressive prosecution and the carceral state. And I must admit I had to look up the word carceral in a dictionary when I first saw the title of the symposium. I was the only person in any way questioning the fundamental concepts of the commonly held views of progressive prosecutors in that daylong event, and my fundamental issues in questioning progressive prosecutors were and are fourfold.

Before I get into the particulars of that, I should pause for just a moment and orient you to the piece of ground that the Eastern District of California serves. If you think of the Great Central Valley of California and the Sierra Nevada mountain counties along the Nevada border stretching from Oregon to the north Los Angeles County line, that's the Eastern District of California. We have about 55 percent of the landmass of the state of California, and we serve over 8 million

people in this district. We have major metropolitan areas in Sacramento and Fresno and Bakersfield, as well as massive amounts of rural country: agriculture, livestock, those kinds of things as well. I come to the panel today - as you mentioned, sir, I was a deputy district attorney, I was an elected district attorney, and I am now in my second tenure as a United States Attorney, having previously served in the Bush 43 administration, as well as the Trump administration.

So, this is a topic which is near and dear to my heart. As a deputy district attorney, it was ingrained in me that all we did in that capacity was to seek justice and enforce the rule of law. It is not up to us to impose our own judgments or opinions or ethics or morals on what the legislature and the governor had set out to be the law of the land in the state of California.

And to return to the concept of progressive prosecutors, I think the fundamental concept that tied directly into the topic of today's discussion is that progressive prosecutors do, in fact, do exactly what I just said we were taught not to do, and that is to impose their own views, their own morals, their own ethics, their own opinions, as opposed to enforcing the law as it has been crafted by the legislature and the governor. And when they do that, when they announce that they will no longer wholesale enforce entire categories of crimes that have been created by the legislature, they are, in fact, undermining the rule of law because they are usurping the constitutional role of the legislative branch. It is not the role of the local district attorney to do that. If you want to change the law, run for the state legislature; don't run for district attorney.

The second fundamental problem with progressive prosecution is that they seem all too concerned, especially - and maybe foremost Mr. McSwain's district attorney there in Philadelphia - of doing everything they can to safeguard the rights and interests of a criminal defendant while forgetting that their role is, in fact, to represent the people.

And I note in my written testimony that that point is borne out by the fact that, in the state of California, the caption on a criminal case is The People of the State of California vs. the

Defendant. So, there's a fundamental misunderstanding of the proper role of the county prosecutor by these progressive prosecutors as they carry out these policies. Third - and Mr. McSwain touched on this - all too often, in jurisdictions which have progressive prosecutors, the violent crime rates have gone up dramatically.

And Bill mentioned specifically Philadelphia, with the increase there. In Baltimore, each year since 2015 when the present state's attorney took office, the homicide rate has increased to the point where, last year, in 2019, it was the highest per capita homicide rate ever in the city of Baltimore, and it's worse thus far in 2020. And then the corollary to that is that, all too often, it is just standard that when the crime - when the violent crime rates go up, it is minorities who are disproportionately affected.

And, by way of example, again, to touch on Philadelphia, in 2018, 92 percent of the homicide victims were either African American or Hispanic American. In Baltimore, in 2018, 93 percent of the homicide victims were African Americans. So, this direct connection - and I should mention, by the way, over the weekend there was an article in the *San Francisco Chronicle* discussing the rise in homicides in the nine San Francisco Bay area counties for the first six months of 2020, and what stood out was San Francisco, which has seen a dramatic increase in the number of homicides. And, lo and behold, in last year's election, San Francisco elected one of these progressive prosecutors. So, in the first six months of his watch, the homicide rate has gone up significantly in that county.

So, the point of all this is to say that, at a fundamental level, progressive prosecutors absolutely undermine the rule of law because they do not stay in their lane, which is to enforce the law under our constitutional system as crafted by the legislature and the governor of each respective state. And we are seeing this playing out really, largely, in the coastal major cities of this country, Chicago perhaps being the exception to the geography of that. And it's a fundamental problem as

we go forward, because if we don't enforce the laws equally, which is the sworn duty of all of us as prosecutors, then people lose respect for the system. People lose respect for the rule of law.

We've had a number of instances here, under our present governor, where he has simply done whatever he wanted to do. And I'm not talking about the COVID situation but on law enforcement related matters, he's just done whatever he wanted to do, and the law didn't really seem to matter. And, so, what you lose is faith by people in our system, by undermining the rule of law. Now, again, I'm going to touch on some of the things that Bill mentioned in terms of what we do about that. I will tell you one quick story. When I was the United States Attorney here during the Bush 43 administration, I had a very difficult time getting the local district attorneys to work with me on essentially felon with a gun cases - violent crime cases - because they had it. They could handle it. They could deal with it.

In my second stretch here as the U.S. Attorney, there isn't a week that goes by that I don't give a call from one of my district attorneys asking us to take a case because people are not being held accountable for their crimes, the things they have chosen to do, the criminal acts they have chosen to do, by the state system. So, we have, in many respects, essentially become a second district attorney's office for the Eastern District. And what we have done to try to do that and meet that role is, we have prioritized the sixth-largest by population counties in our district, and my prosecutors sit down with deputy district attorneys on a weekly or biweekly basis, and they go through the cases; "Who should take this person? Who should take that person?" So, we work collaboratively to do all that we can to ensure the safety of our communities.

And it's a very different role. I think that historically has been the case for United States Attorneys. And I think many of our colleagues around the nation are in very much the same situation, having to essentially serve as a backup district attorney's office. I have made the comment publicly in the past that, when I had this job the first time, I sort of viewed us as the free safety on the football defensive side of the ball. Now we're more like the middle linebacker because the rule of law has

been undercut at so many different levels that people are not being held accountable, crime rates are going up, and our communities are suffering. And we as prosecutors can't just stand by and let that happen. We've got to do everything that we can to step up and fill that gap. So, I do want to be mindful of time, so, I will conclude my remarks and I will very much look forward to your questions. Thank you very much.

Phil Keith: Thank you, Mr. Scott, for your testimony and, most certainly, for your valued service to our country.

McGregor Scott: Thank you, sir.

Phil Keith: Our last distinguished panellists today is Mr. Nick Trutanich, who is a United States Attorney for the District of Nevada. He contributes to several leadership roles in the Department of Justice, including serving on the Attorney General's advisory committee and as a working group chair for this Commission. He previously served the U.S. Attorney - Assistant U.S. Attorney in the Central District of California where he handled complex grand jury investigations, criminal prosecutions including mortgage fraud, money laundering, identity theft, tax fraud, and national security. He received his undergraduate degree from the University of California at Davis, and his JD degree from Georgetown University Law Center. Thank you for joining us, Mr. Trutanich. You're recognized. Mr. Trutanich?

Katharine Sullivan: Nick are you still on?

Phil Keith: Okay. Dean, if we could get somebody to reach out to him, he may have gotten disconnected.

Dean Kueter: Yes, we're working on it right now.

Phil Keith: Thank you. If our panellists and Commissioners can pause just for a minute, give us a second to touch base with the U.S. Attorney. Our panel and Commissioners will bear with us just another minute.

Robert Chapman: Director, U.S. Attorney Trutanich is on, but he's not able to be heard. Can we get the operator to repeat the un-muting instructions and see if that works?

Operator: Sir, please press star 0 at this time, so I can identify your line and unmute you from there. Again, that's star 0. Stand by. And your line is open, sir.

Nicholas Trutanich: Good afternoon. Sorry about that. I thought my mic was hot earlier, so I thought we were good to go. But can the Commission hear me now?

Phil Keith: Yes, sir, we can hear you.

Nicholas Trutanich: Good afternoon, Commissioner Keith, and Vice-Chair Sullivan, and ladies and gentlemen of the Commission. My name is Nick Trutanich, and I'm privileged to serve as the U.S. Attorney for the District of Nevada. Thank you for the honor of sharing my thoughts and experiences about promoting a strong rule of law. As you may have seen from my written testimony, I've made three recommendations to strengthen and defend the rule of law in our country for the Commission's consideration. Before getting to the substance of those recommendations, I'd like to start by summarizing my experiences that have shaped my views about rule of law as the linchpin of our Constitutional system. When I served on assignment in the Office of Rule of Law Coordinator as the Deputy Justice Attaché in Iraq, when I worked as a Line Assistant U.S. Attorney prosecuting predatory organized crime, and in my current position.

My time in Iraq taught me that the fear of violence, which was primarily sectarian violence, paralyzes and oppresses the citizenry. There cannot be freedom - true freedom - when citizens,

for example, are afraid of attacks on markets, religious services, or schools. I also learned that, while serving on that assignment, that another kind of fear, the type of fear that is imposed on citizens when laws are either arbitrarily enforced or not enforced at all, promotes distrust in prosecutors and the justice system. As a line prosecutor, I saw how holding violent offenders accountable vindicates victims' faith in the justice system, brings them closure, and reinforces the community's trust in law enforcement. When violent crimes committed by gangs, for example, go unsolved or not accounted for, gang members, violent offenders, grow more emboldened while the community suffers.

And, in my current position, I am very grateful for how our local, state, and federal law enforcement partners and have forged lasting partnerships throughout Nevada with our communities. These partnerships reinforce the community's trust in law enforcement and at the same time improve cooperation between the community and law enforcement, enhancing the rule of law. My recommendations for the Commission's consideration are closely tied to those experiences and lessons. The first recommendation is, not surprisingly, that the community's leaders and law enforcement should consider forming partnerships through regular meetings to build and maintain trust. Here in Las Vegas, we do that monthly. Those meetings are a good opportunity for law enforcement to solicit feedback about what they're doing well and what the community's concerns are. Executive level officers attend those meetings to reinforce the importance of partnerships and the community's views.

To stop the fear of violence from oppressing our communities, the second recommendation is that, to the extent law enforcement agencies may be asked to shift priorities in today's difficult environment, I continue to believe that law enforcement must provide a baseline of security for our communities, meaning that we should sufficiently resource law enforcement to adequately stem violent crimes and make our neighborhoods safe.

Lastly, prosecutors need to do their jobs. To address the issue of arbitrary enforcement or non-enforcement, my third recommendation for the Commission's consideration is that prosecutors not allow personal or political agendas to interfere with their oath to uphold the law. Obviously, if a prosecutor disagrees with the law, she or he, like any other citizen, should work with the legislative branch to change it. Accounting for individual discretion and resourcing, prosecutors should be discouraged from non-enforcement of broad categories of crimes, and when they do, they should be held accountable. Thank you for allowing me to share my thoughts, and I look forward to the questions that the Commission might have.

Phil Keith: Thank you, Mr. Trutanich, for your testimony, and certainly for your service to our country. Commissioners, we are once again open for questions for our attorney panellists. Commissioners with questions, please state your name prior to your question and direct the question to a specific panellist or to all panellists. And, just as a reminder, Commissioners, your mics are hot. With that, we'll entertain questions from our Commissioners to our panellists.

Erica McDonald: Phil, this is Commissioner McDonald. May I speak?

Phil Keith: Yes, ma'am, you're recognized.

Erica McDonald: Thank you. And, first of all, thank you guys for your testimony here today. I really appreciate it. It's been an honor of a lifetime to serve with you as United States Attorney. I really greatly appreciate your thoughts. Here's my question for all three of you. You know, this - these reports that we are doing and the testimony that we're taking - ultimately we're going to be making recommendations to our boss, who's then going to pass his recommendations on to the President. How do we course correct on the progressive prosecutor position that we've all been wrangling with? We have limited resources, as we know, and to take on that role as also being the local DA is just not going to be a long-term solution. So, what specific concrete recommendations shall we make to our boss?

Nicholas Trutanich: Thank you, Commissioner McDonald. This is Nick Trutanich. You know, this is a relatively new phenomenon, and it's a separation of powers issue. Generally speaking, legislators make the laws, prosecutors enforce them, and courts - judges decide whether they're Constitutional. If everyone in the system gets to decide what's enforced and what's not, they become the law unto themselves. So, prosecutors are accountable, really, to their oaths, to the Constitution, and ultimately, the people. So, really, I see two options for those of us who have sworn an oath to uphold the law, and that is, one, step up our own enforcement, as you've heard on the call, and highlight the non-enforcement of individual prosecutors that are refusing to prosecute broad categories of crimes. And then, second, reserve the right to appropriately call out the potential dangers of non-enforcement.

For instance, the fact that we are enforcing street-level crime, for instance, in a particular office, will take away from resources of larger enterprise investigations. Those are - in thinking about that question before today's hearing, those are the two recommendations that I thought the Commission might consider.

William McSwain: This is Bill McSwain. I've got some thoughts on that too. It's a great question. I'm going to approach it from a little bit of a different perspective. I think that one thing we can do is really focus on our public messaging. I mean, obviously we have to take care of our internal house and we got to get our case numbers up and we have to do great investigations and get the results we want in court, but so much of this is about public messaging and sort of winning almost like the culture battle. And I feel like when we do that in the Eastern District of Pennsylvania, when we get out there and we try to lead the public discussion - and we've done that through the office that I mentioned before, the Office of Public affairs and External Engagement, and we put more employees into that area, and I have some of my most senior and important advisors in the office in that area - that the public really appreciates it, and it's about educating the public because we have the facts on our side.

We have the facts about the crime rates on our side. We have the facts about the impact to the community on our side. And so many people in the community are served by what we do and don't necessarily agree with some of the other narratives that are in the media that seem to serve the progressive prosecutors. So, I think one recommendation you could make to the senior folks at DOJ is to essentially turn your U.S. Attorneys loose. I mean, the U.S. Attorney community are folks that I think are very good with public messaging and, you know, traditionally U.S. Attorneys sometimes think of themselves as sort of being above the fray. We need to get into the fray and we need to communicate with the public as much as possible, and I think we are very effective at it.

And D.C. is very good at it because they have all - and there's a lot of support mechanisms there and it's traditionally a role where folks in D.C. are very vocal about things. And, of course, people look to D.C. for leadership. But the individual U.S. Attorneys, I think, need to take an active, proactive role of getting out there and using their bully pulpit and using their megaphone and being supported and encouraged by D.C. to do that, and D.C. should not be sort of pulling on the reins to try to hold us back. Instead, they should be sort of shoving us out there and saying, look, you've got to get out there and get that message to the public because this battle is not just won in the courtroom. This battle is won, you know, via public opinion. So, that would be one of my recommendations.

Erica McDonald: You know, along those lines, again, if you could - all of you guys take this into consideration and give me some advice. You know, as Nick and I sit in the AGAC meetings, what we hear from the smaller districts, they just don't have funding for having somebody in a PIO position or something like that. Do you think it would be a wise recommendation that we recommend that each of the 93 offices, or 93 U.S. Attorneys - 94 offices - have specific funding so that we have people that can work on our social media and our messaging, as opposed to having to try to find those resources from what we currently have?

William McSwain: I think that's a great idea, and I think that's really a minimum of what every office needs, is a funded, competent, useful PIO, and we've gone beyond that in our office to actually put some of our more senior leaders in our Office of Public Affairs, so - and I think it's paid great dividends. We have the luxury of a little bit more funding than some of the smaller districts because of the size of our district, but I've even heard stories about that in some of the bigger districts, not even having, really, the - you know, a PIO that they can rely on because of budgetary restraints or just issues with the position. So, I think that's a very practical, specific thing that you could recommend that would really help with the fight.

McGregor Scott: So, this is McGregor Scott. Commissioner McDonald, just to go back to your first question, I think a couple points I would make there. Number one is that I agree completely with Bill that we have to engage in an effective campaign to win the hearts and minds of the public. And, you know, from the first day I was an elected district attorney, part of my fundamental plan was we have to be accountable by explaining to the public why we do - what we do and why we do it. And if we do that, then people are going to support what we do. Now, I want to switch a little bit off of the media aspect of it, though, and also talk about engagement with diverse communities that we serve, because I think all of us, as U.S. Attorneys, would be well served, if not already doing so, to reaching out to diverse communities to again, explain what we do and why we do it.

And I'll give you a perfect example of that. Here in Sacramento, we have what's called the Sacramento - Greater Sacramento Area Hate Crimes Task Force, which has been in existence since 1999 when there were a series of horrific events which occurred here. The summer of hate, it's collectively known as here in Sacramento. And, in March 2018, there was a shooting by the Sacramento Police Department of a young African-American male. They thought he had a gun. It turned out he had a cell phone. And that sparked widespread unrest, protests, marches. It just really put this community on edge. And, through the Hate Crimes Task Force, we, the U.S. Attorney's Office, convened it, and we invited the county district attorney to come in and explain,

"This is the process. This is the law. This is how this works." So that people would be better educated to understand what the rules of the road were, legally, for the prosecutor in that setting.

I can't tell you that everybody loved to get that message that was in attendance that day, but at least they were better educated and understood what was happening and why it was happening. And we asked those people to be ambassadors back into their own communities to talk about facts and law, not hyperbole and emotion. And, so, I use that as an example of something that I think U.S. Attorneys could really be encouraged to do as a best practice, which is to really fashion a way to reach into these communities very directly and establish relations. And one of the themes I have adopted here is, the first time I am calling the head of the Jewish Federation or the first time I'm calling the head of the NAACP better not be after something bad has already happened, because that relationship should already be established. And I think all that will do is to help increase the level of understanding and therefore support for law enforcement and prosecutors going forward.

Erica McDonald: Great point. Great point. Thank you.

Phil Keith: Other Commissioners with questions?

David Rausch: David Rausch.

Phil Keith: Commissioner Rausch, you're recognized.

David Rausch: Thank you. Thanks for the panel for your testimony and insight. I'm curious, with the challenge of the misguided prosecutorial discretion that we've recently seen, I'm curious, is there a thought on the process of putting these prosecutors in place? I mean - so, is it - is the politics involved in it because they are elected officials, and should they be - you know, and I would even

take that up to the judicial branch at times. Is that a - is that a detriment to our system or is that a necessary piece of it? Just curious - from each of the panellists.

Phil Keith: Thank you, Commissioner. We'll start with U.S. Attorney McSwain.

William McSwain: Sure. Well, I think that it's a delicate balancing act, and we have a situation in Philadelphia where we have a district attorney and a mayor and a city largely of one political party, and then we have federal law enforcement of another political party. But what I've always tried to stress is the apolitical nature of what we are doing, and there's always going to be people who are going to find their political narrative no matter what, but I think it's very important that we unapologetically enforce federal law, even if that may at times bring us into conflict with what the locals are trying to accomplish.

And I think that maybe the best example of I can think of off the top of my head for that right now is the injection site case that I mentioned in my testimony, where the locals clearly want there to be heroin injection sites in the city, and they made it a priority, and they want to be the first in the country to do it, and they have a very aggressive nonprofit who wants to do it, and the DA has - the DA even came out and led - I don't know if I'd call them protests, but just gatherings in front of the federal courthouse on some of the days that we had hearings in the District Court. And, so, he's been very political about his approach to the issue, and we've said, "Well, you know, that doesn't - just because you have one view of the issue doesn't mean that we as federal law enforcement officers are going to ignore our duty to enforce federal law."

So, that's what we feel like we're doing. And another interesting wrinkle about this is that sometimes public opinion surprises you because you would think from reading the newspapers or paying attention to the media in Philadelphia, there might be widespread support for this, but when they actually try to couple months ago, or a few months ago, before the pandemic, to establish one of these sites, the city, like, literally exploded. It was almost universal condemnation

of this idea. There was protest, there was a press conference that the nonprofit held to announce that they were going to establish one of these sites in South Philadelphia where the leaders, which included a former governor of Pennsylvania, Governor Ed Rendell, were literally shouted down by the neighborhood residents.

The landlord who was going to give the nonprofit the space to open up the injection site backed out. Council, which is almost all Democrats, universally condemned the idea and was drafting legislation to make injection sites impossible in the city in the future, as did the - as did several state legislators in Philadelphia - started drafting up state legislation about that, and then the pandemic hit and everything kind of stopped. And then, also, the District Court granted a stay of its decision, meaning that it - there couldn't be one that would be opened, pending appeal. But it was interesting how the sort of politics played out there where, if we steadfastly and apolitically stick with enforcing federal law in a neutral, nonpartisan manner, I think there's a lot of public support for that. So, I don't know if that exactly gets to the nature of your question, but that's sort of the guiding principle we've been trying to follow.

Phil Keith: Thank you. And we'll go to Mr. Scott and then Mr. Trutanich.

McGregor Scott: Thank you. It is a - it's a good question. It's an interesting question because it really - at the end of the day, almost without exception, the county prosecutors, whether they're states attorneys or district attorneys, are elected, and so many of them do fit the politics of the cities and counties that they have been elected to serve in. And, so, it does come back to that. You know, we all talk in our political system about the pendulum going back and forth, and the same thing happens with criminal justice. And, having started as a Deputy District Attorney in 1989 when we were coming off of essentially the Jerry Brown years as governor in California the first time and dealing with massive upticks in crime.

And then the changes that were implemented under Governor Deukmejian and then Governor Wilson and the massive decline in crime overall and violent crime in particular that took place. You know, that was a massive swing of the pendulum from soft on crime to strong on crime.

And I have often said many times that we who have dedicated our careers to public service and being prosecutors. We are the victims of our own success to a certain extent in the times that we live in now. Because we won, we won the war on crime in general and violent crime in particular in this country with the dramatic decreases from the late 70s into the 2000s that took place. And the number of homicide victims that never became a homicide victim. The number of rape victims that never became a rape victim because of our successes. But because of that success, criminal justice no longer was a front-burner political issue.

And having, you know, being born and raised in California. I mean for multiple governor elections in a row, the first issue of public debate was criminal justice and public safety. That doesn't happen at all anymore.

So this is a long way of saying, unfortunately, I think that that pendulum that has now swung all the back to the left again, we are going to have see horrific crime rates and bad things happen for that political pendulum to start to swing back.

Now, that having been said and to restate something that I touched on earlier, these progressive prosecutors are really limited to certain jurisdictions in the country. Almost all of them touch them either the Atlantic or the Pacific Ocean with the exception of Chicago.

So they are really, really in very narrow areas. And, you know, one of the - perhaps the 800-pound gorilla in the room that no one has mentioned yet on this topic is that George Soros has

chosen to fund these progressive prosecutors in their elections for district attorney in many locations around the country.

He figured out to his credit that the local district attorney would have a huge ability to impact these issues in individual communities. And in the last election cycle here in California he funded several candidates in Sacramento, San Diego, Los Angeles, you name it.

And for the most part, those candidates lost because the positions that they were advancing were so far outside the mainstream that the public rejected it. And so even though they have been able to establish some beachheads in places like San Francisco and Philadelphia and Baltimore, it is really constrained. So the vast swath of the country is not subjected to this concept yet and hopefully will not be.

Phil Keith: Thank you. The floor to Mr. Trutanich.

Nicholas Trutanich: Thank you Commissioner Keith or Chairman Keith. I will just add to the specific point elected or appointed when it comes to county district attorneys. I do put my faith in the people as both U.S. Attorney McSwain and U.S. Attorney Scott mentioned.

If they are accountable to the people and their oath that they have taken to uphold the law, though it may slide one way or the other for a period of time. If us as U.S. attorneys are stepping up our enforcement and talking about potential dangers of non-enforcement of areas of crime and the rising crimes as a result. I think that can help stem the rising tide of this particular idea of non-enforcement by district attorneys. Thank you.

Phil Keith: Thank you. Other Commissioners with questions? The Chair has a question for the three panellists. What is noticeably vacant from this conversation is victims. It seems that victims have

been lost in these discussions with progressive prosecutors. Whether it is a small business owner who is the victim of repeated break-ins or shoplifting to sexual assault victims.

How do we reengage this conversation to where victims resurface in the discussion and are who we defend?

McGregor Scott: Well this McGregor Scott. I could not agree more with that statement. And I actually referenced that in my remarks earlier that we've got a group of district attorneys who think their job is to look after the best interest of the criminal defendant who has committed this horrendous act rather than the victim of that horrendous act.

And you know I think many states have essentially a victims' bill of rights. And many courts have found that victims have standing to assert those rights including here in California on a death penalty case that was pending for the state supreme court, whether the surviving family members of the victim had standing to try to cause the execution to take place.

And so I think the overwhelming majority of prosecutors offices in this country do the very best that they can to look out for victims, to ensure that their rights are protected in the system. But in those circumstances where they are not, and I know Bill has got some excellent examples of this, you know, victims should not hesitate to speak up and assert their rights.

And you know we have talked here just a few moments ago about the fact that these county prosecutors are almost all elected. And people should not be afraid to speak up and make their voices heard when elected officials are not doing their jobs. Because that is one thing that they are all terrified of is bad press. Thank you.

Phil Keith: Thank you. Other panellists?

William McSwain: Yes this is Bill McSwain. I agree with that and it has been part of our strategy to really speak up strategically. And I would just say that sometimes I mean we always want to deal in data. We always want to deal in making sure that we are covering things thoroughly and we always want to make sure we have the facts on our side. And I think we do when we speak up.

But also, there is also power in anecdotes sometimes. There is power in individual cases. And sometimes if you want to make a point about a larger data-driven phenomenon, it is great to just be strategic about picking that one case or that handful of cases that can represent your point and symbolize your point.

And it really resonated I think with the community that is concerned about victims being overlooked when we did that Patterson case that I mentioned in my testimony. Where if you have somebody who is an immigrant shop owner and they are literally almost murdered, rendered in a wheelchair and in a coma for weeks which is what happened with this individual when he defended his shop against a robbery with his children and his wife inside.

And then almost in like a secret type local court hearing that wasn't advertised in any way, the defendant is given three and a half years on the low end of the sentence. I mean that is just outrageous.

So we seized on that case. We charged it ourselves. Even though there was already a conviction below. And that became like sort of a rallying cry for the victim community. And we tried to publicize it and make it part of our message.

So I think that is one way that we can be effective and that we can look for those examples, those excesses that result from some of the progressive prosecution priorities where they prioritize

essentially looking out for violent defendants instead of looking out for the victims who are victimized by the violence, and really get out in front.

And like I said before, get into the fray and educate the public about what is going on. And the public needs to hear that because, I mean, the segment of the public where the crime comes right to their door, well, they know it, and they are on our side.

But for those who are fortunate enough that the crime is not at their doorstep, you know, they need to hear what is happening to other people and how people are being victimized and they need to know what side that we stand on.

Phil Keith: Thank you.

Gina Hawkins: Chairman Keith.

Phil Keith: Yes Commissioner, you're recognized.

Gina Hawkins: I just wanted - this is Gina Hawkins - I just wanted to know it is hard to have all the different panels and the different discussions. But just in our working group of victim services, it is an entire chapter for the Commission that there were many victims presented and a lot of discussions had regarding it. So they have not been forgotten. Just wanted to share that reflection on that aspect.

Nicholas Trutanich: And Chairman Keith this is Nick Trutanich. May I be recognized?

Phil Keith: Yes sir, you are recognized.

Nicholas Trutanich: Thank you and I wanted to thank the Commission for its work already on victims' rights. Unlike gangs or other criminal enterprises, victims are sort of a dispersed group. That could be a nine-year old that is accidentally shot on the playground or a shop owner as U.S. Attorney McSwain mentioned earlier in his testimony.

And in my written testimony I tell a story of an individual where I was Counsel for the United States Attorney's Office where an unsolved attempted murder was prosecuted in a federal RICO case that I participated in. And that victim made a statement. Up until that RICO indictment that case was unsolved for a number of years.

And that victim made a statement about how his faith in the justice system had been breathed life into it. And so it is incumbent on us to tell those stories. But I also think it is incumbent on the Department of Justice to give victims a voice by perhaps through funding victims' rights groups through the justice grants program. So I will leave it at that, Commissioner Keith.

Phil Keith: Thank you. Other Commissioners with questions for our panellists?

((Crosstalk))

Katharine Sullivan: Oh I have to. It's Katie. Sorry. may I be recognized? Sorry, I know everybody has spent a long afternoon. But I just have to ask.

Phil Keith: Yes madam chair, you are recognized.

Katharine Sullivan: I think this probably goes to U.S. Attorney Scott maybe most directly because you are dealing with all of it. But I am wondering - so in Colorado pursuant to a referendum they legalized marijuana. And I was on the bench at the time.

McGregor Scott: Yes.

Katharine Sullivan: And, you know, that puts you as a lawmaker in a very odd position with state and local right? Because you swear to uphold all laws. And I don't want to talk about marijuana specifically and this Commission hasn't really taken that up. But I am wondering and I did - and I have thought is there a correlation to - is there a difference if something is passed by initiative in referendum versus say just a sanctuary city?

Or do we say well we elected those policymakers who then declared or governor who declared this a sanctuary state? I have wondered how much the state legalization at different levels of, you know, a federally illegal controlled substance led to the almost acceptance of the sanctuary city status?

So I don't know if you have any thoughts about that? If any of the U.S. attorneys do? And honestly, U.S. Attorney McSwain I am sorry I don't know what this - I do know in Nevada you guys overtook marijuana. I mean I know you guys are legal. I don't know in Pennsylvania if it is or not.

But U.S. Attorney Scott, I think you deal with both issues for sure.

McGregor Scott: Do we have the rest of the afternoon to talk about it?

Katharine Sullivan: I know that is why I was balking but...

McGregor Scott: It is hard. I have been dealing with this issue since I was an elected district attorney almost 20 years ago because we had the "medical marijuana" law that was passed in California with absolutely zero guardrails around it. It was just, it was nonsensical. But it was passed.

And, you know, your question in analogizing between - so what we would have in California is the medical marijuana law. The now legal marijuana law were both passed by a statewide vote of the people. So that is a statewide law that is in effect.

The sanctuary cities at least here in California what we see is the city council will pass a resolution. You know the city and county of San Francisco Board of Supervisors will pass a resolution saying we are a sanctuary city. And that only impacts or only affects law enforcement and other governmental agencies within that limited jurisdiction as opposed to the entire state. I am not aware of a governor being able to unilaterally declare a city or a state to be a sanctuary state.

We also, unfortunately in California have the dubious distinction to the best of my knowledge of being the only sanctuary state in the union. And that was passed by a vote of the state legislature signed into law by Governor Jerry Brown.

I am not sure I am answering your question directly but what we try to do in working through this contradiction between state and federal law both - well specifically on marijuana - is to focus on what we consider to be the classic federal marijuana cases and that largely is interstate trafficking of marijuana.

In my district we have millions and millions of acres of national Forest Service land. National parks like Yosemite and Kings Canyon. And so we focus on marijuana groves that are on federal land. But the street-level types of things we just don't get involved in that because we don't have the resources to do that.

The sanctuary state, the sanctuary city issue is one that we have been struggling with manifestly over the last couple of years. And it is absolutely disheartening to be out trying to launch a major

gang takedown operation for example against MS-13 which we did in the southern part of my district approximately two years ago.

And this was an MS-13 gang that had killed something like 14 people in a town of 10,000 people in one year. So it was like Chicago per capita homicide rate. And the state agencies they wouldn't touch it.

They wouldn't come anywhere near it because ICE was part of the enforcement operation which is just crazy. It is crazy that we let these politics get in the way of good law enforcement and community safety. That is a long winded answer to your question and I am not sure I have answered it but those are my thoughts.

Katharine Sullivan: No that is perfect. Thank you.

Phil Keith: Other panellists' response?

Nicholas Trutanich: This is Nick Trutanich. Thanks for the questions. In Nevada we have legalized marijuana at the state level and we view that as - there is a federalism in the mix and so much like U.S. Attorney Scott we focused on the heartland of what would be federal cases, illegal federal marijuana groves and other cases with nexus to cartels and violent crime.

We are fortunate in Nevada that that has not led to what I think the question implies. That the next step in the road is, for instance, a sanctuary city or state. In fact our state legislature had a bill up I think last legislative session that did not - that was going to potentially make the state a sanctuary state. It did not even reach committee for discussion or vote if my memory serves me correctly.

William McSwain: This is Bill McSwain I could offer a couple of comments if there is time.

Phil Keith: Yes sir, please.

William McSwain: We don't have quite the same situation in Pennsylvania because we don't have recreational marijuana legalized in the state. We just have medical marijuana legalized. We don't have quite the clash between state and federal law that you have with the other examples.

But when it comes to sanctuary cities we definitely have seen that clash. Although the clash is more about sort of respect for the law as opposed to, you know, a blatant violation of the law. It is a situation where the locals are not really cooperating with us and not communicating with us and not doing the things that we think they should be doing if they respected federal law and respected the rule of law.

There are - it is more of that sort of conflict as opposed to blatantly violating the law. There have been some times where we for example not just filed detainers with the local prison system but filed actual arrest warrants that have been ignored.

But the city has always said that that was a mistake. It wasn't intentional. It happens more than it should. But again it doesn't quite set up - it is not quite an apples to apples comparison like in a situation where you have legalized recreational marijuana, where you have state and federal law directly conflicting.

But it definitely is an issue where we've tried to preach respect for the rule of law which includes respect for our democratically enacted immigration laws. And we have been a strong partner with ICE and have done everything we can, you know, to support their mission.

Phil Keith: Thank you. Other Commissioners with questions? Other Commissioners with questions?

Hearing no further questions let me close by thanking our panels once again for your time and most valuable testimony and responses to questions from our Commissioners.

On behalf of the Attorney General and his leadership team of Rachel Bissex and Jeff Favitta, and all the Commissioners, your contributions provided today are most sincerely appreciated and will assist this Commission in their deliberations and work.

Also let me advise you please check with the President's Commission page for additional updates or documents and information on the main Justice website. We will update regularly when information is made available.

We want to once again thank the FBI for the use of their teleconference network and all the support they provide for the Commission hearings. I would also like to thank our federal program staff for their tireless efforts to support this Commission.

Just as a reminder, the Commission call will begin at 1 o'clock tomorrow Eastern Standard Time. Are there any questions or comments from Commissioners? If there is no further business before us today, The President's Commission is adjourned. Thank you again, Commissioners, for your continued dedication and commitment to the work of this Commission.

Male: Thank you Mr. Chairman.

Male: Thank you Phil.

Operator: And again this does conclude today's call. We appreciate everyone's participation today. You may now disconnect.

Male: Thanks, Phil. Thanks, everybody.