
Kerry Abrams: I am pleased to be able to offer today's program: Policing in America: How Did We Get Here? And Where Do We Go?

Kerry Abrams: Joining us today are members of the entire Duke Law community, including, our students, many of whom are incoming first year students, to whom we offer a special welcome. We are so pleased to have you joining with us today and in the fall.

Kerry Abrams: Our alumni, a vibrant and engaged group that sustains the Duke Law community. And of course, to members of our faculty and our staff.

Kerry Abrams: Duke Law’s mission goes beyond simply educating students for responsible lives in the law, in service to their clients and to their communities. Our mission is also to enhance the understanding of law and to improve the law.

Kerry Abrams: Our faculty’s work informs legal systems and institutions nationally and internationally through research and scholarship of the highest caliber. Their work draws on the past, responds to the present, and informs our future.

Kerry Abrams: Today's program, on areas of critical national importance, unites these timeframes. While the issues around policing have taken on more urgency in the last few months,

Kerry Abrams: these issues are not new. Our program highlights the history of policing and related laws to help us understand how we got to this place,

Kerry Abrams: notes the legal recourse intended to protect rights and provide remedies when things go wrong, and discusses how change is made through new laws, internal policies, cultural shifts, and when necessary, citizen protests.

Kerry Abrams: The program is but a small part of the broader mission of these faculty members and our institution. The law school and university have hosted related programs in recent years, including a day long provost’s forum on policing.
Kerry Abrams: We will continue to bring the best scholars together to address the challenges faced by communities around the country.

Kerry Abrams: In the meantime, our aim is to contribute critical voices and understanding to the dialogue.

Kerry Abrams: We hope you will find the program helpful. We are recording it and we'll make it available on our website and our YouTube channel.

Kerry Abrams: You will be able to submit questions through the Q & A links at the bottom of your screen. And, we will leave time at the end to address as many of these questions as we can.

Kerry Abrams: Before the beginning of the program. I want to thank several people who helped to make this happen.

Kerry Abrams: Thank you to Rachel Greeson, Bethan Eynon, Miguel Bordo and Caitlin Shaw for their work in planning the program.

Kerry Abrams: And a special thanks to Stella Boswell, assistant dean for public interest and pro bono, who did much of the conceptual labor of designing this program, choosing panelists, and shaping the scope of our conversation.

Kerry Abrams: Thank you so much, Dean Boswell for your vision and dedication to these important issues.

Kerry Abrams: Now, I would like to welcome today's moderator. J. Hamilton McCoy, II, known to friends and colleagues as Jesse.

Kerry Abrams: Professor McCoy is a senior lecturing fellow at Duke Law School and serves as the supervising attorney in our Civil Justice Clinic.

Kerry Abrams: His work focuses on housing inequality and eviction issues, which are social issues that also fall underneath the umbrella of civil rights.

Kerry Abrams: Professor McCoy is a passionate teacher and actively engaged in the community. As a member of our clinical faculty, he supervises students as they provide critical legal assistance to clients who cannot afford to hire a lawyer.

Kerry Abrams: He also co-teaches a Social Justice Lawyering class and draws on his personal experiences growing up in Durham to inform his teaching. We are fortunate to have him as our moderator today. Welcome, Professor McCoy.
Jesse McCoy II, J.D.: Thank you, Dean Abrams. I'm so glad to be a part of today's program. These issues are critical.

Jesse McCoy II, J.D.: They have personally impacted me and other members of the Duke Law community. So, if they resonate with you, know that you are not alone.

Jesse McCoy II, J.D.: I'm also aware that our students and our alumni have engaged on all sides of these issues in classes, internships, courtrooms, and in some very recent events in the streets protesting.

Jesse McCoy II, J.D.: Today's program allows us to frame those thoughts through the lens of the law and through our collective history.

Jesse McCoy II, J.D.: I hope it will allow each of us to contribute to greater dialogue and understanding around these topics, as well as address some of the ways in which the law may be insufficient or the legal process may be inadequate.

Jesse McCoy II, J.D.: I'm going to do a brief introduction so that we can jump right into the conversation and leave time for questions and discussion at the end. So let's meet our panel.

Jesse McCoy II, J.D.: First, we have Professor Brandon L. Garrett. He is the L. Neil Williams Professor of Law at Duke University School of Law, where he has taught since 2018.

Jesse McCoy II, J.D.: He is the founder and faculty director of the Center for Science and Justice here at Duke, which does research and policy work to reform the criminal system.

Jesse McCoy II, J.D.: Before he became a law professor, he was a civil rights lawyer focusing on police misconduct cases. More recently, he has been an American Law Institute reporter on the Principles of Policing Project and with his colleagues on that project, released a report on how to reform police.

Jesse McCoy II, J.D.: Professor Lisa Kern Griffin is the Candace M Carol and Leonard Simon Professor of Law. Professor Griffin’s scholarship focuses on evidence theory,

Jesse McCoy II, J.D.: constitutional criminal procedure, and federal criminal justice. Her recent work concerns the status and significance of silence in criminal investigations,

Jesse McCoy II, J.D.: the relationship between constructing narratives and achieving factual accuracy in the courtroom, and the criminalization of dishonesty in legal institutions and the political process,

Jesse McCoy II, J.D.: as well as the impact of popular culture about the criminal justice system.

Jesse McCoy II, J.D.: Next, we have Professor H. Timothy Lovelace, a noted legal historian of the civil rights movement. He recently joined the Duke law faculty.

Jesse McCoy II, J.D.: Professor Lovelace teaches American legal history, constitutional law, and race and the law. His work examines how the Civil Rights Movement in the United States helped to shape international human rights law.


Jesse McCoy II, J.D.: Professor Darrell A. H. Miller is the Melvin G. Shimm Professor of Law. Professor Miller writes and teaches in the areas of civil rights, constitutional law,

Jesse McCoy II, J.D.: civil procedure, state and local government law, and legal history.

Jesse McCoy II, J.D.: Professor Miller’s scholarship on the 2nd and 13th Amendments has been published in leading law reviews and has been cited by the Supreme Court of the United States,


Jesse McCoy II, J.D.: Thank you all for participating in this panel and for making time to address what is currently such an important and socially relevant issue.

Jesse McCoy II, J.D.: Given the breadth of your expertise, I know that we may not answer all the questions that people may have, but we will do our best to address as much as we can in the time allotted.

Jesse McCoy II, J.D.: We know that many attendees will have to sign off at one o'clock, but we are open to continuing until 1:30.

Jesse McCoy II, J.D.: if the questions continue. Attendees can submit their questions via the question and answer feature on Zoom and we will get to as many questions as we can, at the end of this program.
Jesse McCoy II, J.D.: I was wondering if each of you could start by giving us a brief understanding of your scholarship and teaching.

Jesse McCoy II, J.D.: to frame our conversation and to note what has failed and brought us to this moment in time. So, beginning with Professor Lovelace,

Jesse McCoy II, J.D.: what is your expertise in the civil rights movement, particularly of those movements in the 1960s? And how have the social movements of the 1960s influenced where we are as a society today?

H. Timothy Lovelace Jr: So, thank you so much for the introductions. I'm very grateful to

H. Timothy Lovelace Jr: the organizers of this event and my fellow panelists. I'm a legal historian of the civil rights movement and

H. Timothy Lovelace Jr: we're having this conversation today because a social movement is forcing Americans, and indeed many people across the world, to rethink policing.

H. Timothy Lovelace Jr: This is a fascinating time for me as a legal historian because activists are using history to frame contemporary debates around law and policy.

H. Timothy Lovelace Jr: People are in the streets asking their friends, their supporters, even those that they oppose, what side of history will you be on?

H. Timothy Lovelace Jr: And, how will history judge your actions? Remembering the past has transformed into a way to spur Americans into doing something that they might not ordinarily do, protest police violence during a pandemic.

H. Timothy Lovelace Jr: And so today's activists often see themselves as heirs of a social movement that occurred during the 1960s.

H. Timothy Lovelace Jr: Their movement repertoire draws heavily from the civil rights movement, in particular, the signs that they carry, the t-shirts that they wear,

H. Timothy Lovelace Jr: the freedom songs that they sing, all draw from the civil rights movement.

H. Timothy Lovelace Jr: They study, the organizers study, organizational models and leadership styles of the 1960s. They, for example, draw from people like Ella Baker, who helped to found the Student Nonviolent Coordinating Committee 60 years ago in Raleigh, North Carolina at Shaw University.
H. Timothy Lovelace Jr: SNCC, as you may know, was headed by John Lewis and they had these very robust ideas about participatory democracy. Black Lives Matter, no doubt, draws from SNCC.

H. Timothy Lovelace Jr: Today's activists, also like those in the past, are really interested in using media and using new media to shape public perceptions around police violence and more broadly, systemic racism.

H. Timothy Lovelace Jr: In the 1950s and 1960s, the AP wire, the UPI wire, they were crisscrossing the world. TV in the 1950s and 60s was new media and so activists like Dr. King and members of SNCC skillfully mobilized the new media of their time to dramatize their plight. Today's activists are taking a page from the civil rights movement.

H. Timothy Lovelace Jr: so they are using new media, Twitter, Facebook, Instagram, their cell phones, to circulate images of police brutality and then of protest. But more so than anything else, and I think that this is a really critical point for our discussions today,

H. Timothy Lovelace Jr: today's protesters, like those of the past, have a profound understanding of the relationship between law and social movements, that protests have the power to help remake law.

H. Timothy Lovelace Jr: And so for the protesters today, they look back at the 1960s and they see that protest helped to create the political context for social change, legal change, political change.

H. Timothy Lovelace Jr: And that these activists during the 1960s were incredibly frustrated with the slow pace of racial reform and the promises of racial reform that never materialized. And so when

H. Timothy Lovelace Jr: the traditional forms of redress were ineffective, they turned to the streets. They sought redress in the streets. They protested in places like Birmingham and Atlanta and that helped to create the political context for

H. Timothy Lovelace Jr: passing the Civil Rights Act of 1964. They protested in Selma, Alabama, and that helped to create the political context for passing the Voting Rights Act of 1965.

H. Timothy Lovelace Jr: They protested after the assassination of Dr. King and that helped to create the political context for the passage of the Fair Housing Act of 1968. And so people in 2020

H. Timothy Lovelace Jr: have turned to the streets
H. Timothy Lovelace Jr: because they are too frustrated with seeing video after video

H. Timothy Lovelace Jr: of police brutality. They're frustrated by police reforms that never materialized and that there's a slow pace of change. Bias trainings have not been enough to end police brutality and racial profiling.

H. Timothy Lovelace Jr: Calls for increased police discipline have often been ineffective.

H. Timothy Lovelace Jr: Lawsuits and settlements for cases of police misconduct have been unable to end police violence. And, in fact, settlements have often become a budget line for many police departments.

H. Timothy Lovelace Jr: And when officers face credible accusations of unlawful conduct, these officers are regularly not indicted, and even when they are tried, they are rarely convicted.

H. Timothy Lovelace Jr: This is the last point that I’ll emphasize here as I think about the relationships between the past and the present. The past is not always so far away.

H. Timothy Lovelace Jr: Nearly four years ago to the day, we were having a similar kind of conversation.

H. Timothy Lovelace Jr: about policing. In policing, we've talked about George Floyd in Minnesota. We have to remember Philando Castile,

H. Timothy Lovelace Jr: right, who was shot by officers in front of his partner and four year old daughter. Activists are

H. Timothy Lovelace Jr: tired of story after story, video after video, discussing reforms through traditional modes of change. And so they take it to the streets, like people in the 1960s. So they have deep frustration, but they also have an abiding hope that America can indeed become a better place.

Jesse McCoy II, J.D.: Thank you for that.

Jesse McCoy II, J.D.: Professor Miller, one of your areas of expertise is policing and related civil rights litigation. How did policing in the United States begin? And what role has race and civil litigation played in addressing police misconduct?

Darrell Miller: Thanks Professor McCoy and thanks again to the organizers for this. So when I think about this issue, I make a distinction between “the police” and “policing.” The police,

Darrell Miller: the idea of a professionalized, politically accountable, trained force that is dedicated to enforcing the law and
Darrell Miller: keeping the peace is really a mid-19th century invention. There was no such thing, prior to the mid-19th century and America.

Darrell Miller: Instead, “policing,” the activity of law enforcement and keeping the peace, is much, much older and actually comes from Europe,

Darrell Miller: mostly England. From the colonial days to the mid-19th century,

Darrell Miller: “policing” was a kind of community based activity. And I say “community” in the very loose sense because the people that did the policing were predominantly, if not overwhelmingly, just white men.

Darrell Miller: And so in this period of policing, what you would have if there was a suspected crime,

Darrell Miller: somebody would go to the sheriff, or the local magistrate

Darrell Miller: in the city and they would literally form a posse; the thing that you hear about on TV or in movies about forming a posse is a real thing, a real way about how law was enforced prior to the professionalization of the police department. People would be called out

Darrell Miller: with their own private arms, private citizens in the community. They would be deputized by some kind of action of law and they would go and hunt down

Darrell Miller: the suspected perpetrators. Now, you can imagine, surprisingly, then this way of policing is

Darrell Miller: subject to being a tool of racist oppression against persons of color. And I think

Darrell Miller: it's possible that this, and it's proven that this happened in two ways, the ways that oppressors always use law enforcement as a tool of oppression.

Darrell Miller: They either punish the innocent or they protect the guilty. So punishing the innocent,

Darrell Miller: anybody that is even passively familiar with the history of lynching and vigilante violence in America would know,

Darrell Miller: that if in fact a posse got together and there was a suspect of some actual or pretended crime committed by an African American,
Darrell Miller: then if the posse didn't find the actual suspect any old black person in the community would do because the purpose was not to punish the guilty, it was really about control of the black populace within the vicinity.

Darrell Miller: The second way again, that law enforcement can be used and has been used as a tool of oppression is to protect

Darrell Miller: the guilty. So the white mill owner who is upset about having a competitor in the black mill owner in the vicinity, gets all his employees and buddies to go and burn the place down.

Darrell Miller: The African American says, “You know, I know exactly who did it.” And there is no law enforcement apparatus either professionalized or public that is willing to actually punish the guilty. And so,

Darrell Miller: we have to recognize that the tool of oppression here is both partial enforcement and partial lack of enforcement of the law. Now, two things during Reconstruction were supposed to resolve this.

Darrell Miller: One was the passage of the 14th amendment which expressly has an equal protection clause, it's equal protection of the law.

Darrell Miller: And the second was a piece of legislation during Reconstruction that was meant to enforce the 14th Amendment, it is called the Ku Klux Klan Act.

Darrell Miller: It was passed in 1871 and it is the direct progenitor of our modern tool, 42 USC section 1983, that's used to bring private litigation against police departments and against cities and against individual police officers when they commit police misconduct or police violence.

Darrell Miller: Now this has not been as effective a tool as it could be for I think at least four reasons. The first is something peculiar to 1983 itself, which is unlike other forms of torts,

Darrell Miller: there is not what's known as vicarious or respondeat superior liability. So if you are a hit by a Coca Cola truck driver, you can sue Coca Cola for the actions of the driver of the Coca Cola truck.

Darrell Miller: 1983 does not work that way. You can't sue the city for the actions of the individual police officer and this creates a disincentive, at least directly, for the city,

Darrell Miller: to make sure that its police department is behaving properly. The second problem is something called qualified immunity. So even if you sue the officer directly, qualified immunity
Darrell Miller: is sometimes an insuperable barrier to relief for persons that are victims of police violence.

Darrell Miller: What started out as a sort of good faith exception, that is trying to give police officers a break when they make a reasonable mistake, has expanded

Darrell Miller: so that in some jurisdictions it is known as “unqualified immunity.” No matter how egregious the conduct, no matter how wicked the behavior, the police officer is not found to be liable.

Darrell Miller: The third impediment to using 1983, this Ku Klux Klan Act, is certain kinds of procedural challenges in litigation. It's very hard to do structural litigation against police departments in a case by case basis. It can happen,

Darrell Miller: the success of litigation against stop and frisk in New York City is an example, but it's an example that kind of proves the rule of how difficult it is to use case by case litigation to actually administer

Darrell Miller: justice in terms of reforming police departments. And the fourth thing is that private litigation is really bad at this other kind of problem of

Darrell Miller: using law enforcement to protect the guilty. Just this week, an African American woman and her daughter

Darrell Miller: in Raleigh were threatened by two white men with a private firearm in a truck and

Darrell Miller: they called the police. And there really is not a mechanism in 1983 if the police just never decide to show up because, for whatever reason, to actually address that kind of oppression.

Darrell Miller: So today what we have is a law enforcement system that is very, very disturbing, very troubled, and the tools of private litigation that are used to make law enforcement do what it's supposed to do, which is to punish the guilty and protect the innocent, are not working as they should.

Jesse McCoy II, J.D.: Thank you for that.

Jesse McCoy II, J.D.: Professor Griffin, one of your areas of expertise is constitutional criminal procedure. How does the law influence police interactions with citizens and communities, especially as it relates to communities of color?
Lisa Kern Griffin: Thank you and welcome everyone. I’m glad to have the chance to talk to you about this urgent topic, and the answer to your question is that the law leaves communities of color exposed to police violence.

Lisa Kern Griffin: Police force is state sanctioned violence. It's the most threatening and damaging thing that the government has the power to do to citizens.

Lisa Kern Griffin: But constitutional regulation of the police is very attenuated and lately has been very ineffectual. The early Supreme Court decisions,

Lisa Kern Griffin: expanding criminal procedure protections, are civil rights cases. Many of them were inspired by the need to discipline the southern states for racialized brutality by the police and for gross inequities in the criminal courts.

Lisa Kern Griffin: But since then, there has been very little evolution in these rights and in fact significant contraction of them, which means that what the law is doing is creating permission structures for police officers which become pathways to violence.

Lisa Kern Griffin: George Floyd's murder is a crime by the police. But I want to talk for a minute about legal police violence.

Lisa Kern Griffin: There are a lot of steps in these encounters before the knee is on the victim's neck.

Lisa Kern Griffin: Why were they there in the first place? What about the legal discrimination that is taking place in police forces and what I've sometimes called procedural violence?

Lisa Kern Griffin: Criminal procedure sets the boundaries for when police can stop people, search them, arrest them, and that's where the opportunity for violence comes from.

Lisa Kern Griffin: That's why citizens don't feel safe just moving freely through the world.

Lisa Kern Griffin: There are about 1000 police killings every year, but there are 10s of millions of police citizen encounters that give rise to those incidents.

Lisa Kern Griffin: And it turns out that police can stop people for almost any reason at all because of the deep unexamined discretion that officers have to profile and pull people over or otherwise detain them,

Lisa Kern Griffin: because of the shallow suspicion that's required to conduct frisks and car searches when they do, and because of the incredible speed with which encounters can escalate because officers decide to make an arrest based on some outstanding warrant for a minor offense.
Lisa Kern Griffin: I'll give you two examples of the enormity of this problem that also point to some potential for change.

Lisa Kern Griffin: Traffic stops are the most common police citizen encounter.

Lisa Kern Griffin: There are 250 million cars in this country. There are 50,000 drivers who are pulled over every day, 20 million a year, half of all the encounters that citizens have with police officers.

Lisa Kern Griffin: In fewer than 10% of those stops is any sort of evidence or contraband observed and fewer than 1% of them lead to arrest, but they're the moments when these encounters begin.

Lisa Kern Griffin: For example, there are 11 million suspended licenses for things like unpaid debts around traffic tickets. So there's a good chance that whenever law enforcement is curious about a driver, for any reason, they can pull them over.

Lisa Kern Griffin: And the Supreme Court has ignored the fact that this is racially biased decision making by the police.

Lisa Kern Griffin: Even if a stop is actually motivated by stereotypes, the Supreme Court has expressly said that it will ask no questions, as long as there is some later claim that there might have been another reason. The 1996 Whren case prevents litigation about the actual motivations of police officers. And one of the simplest and easiest things that we could do to put a stop to that is to disaggregate traffic safety from drug interdiction.

Lisa Kern Griffin: Most of these stops, almost all of these stops, have nothing to do with the safety of the roads. They are investigative activity by law enforcement and there's no need for those two things to be happening at the same time.

Lisa Kern Griffin: The second example is pedestrian stops and frisks, what are sometimes known as Terry stops.

Lisa Kern Griffin: Professor Miller mentioned the litigation, the class action litigation surrounding the use of these stops in New York City. At the height of this practice around 2011, there were 700,000 of these stops a year and in many districts 90% of those stops were of Blacks and Latinos.

Lisa Kern Griffin: After the litigation, when they cut down substantially on the number of stops and frisks that they were doing, there was zero increase in crime in New York City.
Lisa Kern Griffin: And the reason that these stops were occurring and persist across the country is because they only have to be based, according to the Terry doctrine, on reasonable suspicion,

Lisa Kern Griffin: and reasonable suspicion is a racialized standard. It allows police officers to account for things like the way people are dressed, the neighborhood in which they are found,

Lisa Kern Griffin: what they presume to be drug activity, or the perception that someone is trying to evade the police. It's just based on common sense and what the police consider their common sense is often race based.

Jesse McCoy II, J.D.: Thank you for that.

Jesse McCoy II, J.D.: Professor Garrett. What accounts for long standing racial disparities in policing?

Brandon Garrett: Hello, everyone. Thank you Dean Abrams. Thank you, Professor McCoy. Thank you, Assistant Dean Boswell, and my colleagues on this panel.

Brandon Garrett: It's wonderful to have a chance to discuss these urgent pressing questions with all of you and our Duke Law community. And thank you in advance for your questions, I see several have been posted already.

Brandon Garrett: I want to echo what my colleagues have said. Today's activists, lawyers, policymakers and also our policing leaders understand well that the problem of policing in America, and the problem of racial bias and policing in America is deep rooted and legal recourse is lacking.

Brandon Garrett: Police in America have incredibly broad discretion to stop people, to make arrests, and to use deadly force. About 1000 people are killed each year by police.

Brandon Garrett: And it's remarkable that police violence is a leading cause of death for black men in particular; this is a public health and a civil rights crisis as much as it is a policing crisis.

Brandon Garrett: As Jesse mentioned, I became a civil rights lawyer because I wanted to work on policing cases, and many of those cases were not just cases involving deadly force used against civilians, that's just the tip of the iceberg.

Brandon Garrett: And one case that went to trial, it was a black police officer who was shot while intervening at a scene, shot by fellow officers.

Brandon Garrett: In another case, a young man who was punched repeatedly in the eye because of a dispute in line at the post office with a police officer.
Brandon Garrett: In another case, a young man was shot and suffered previous non-fatal injuries while being dragged by an officer through the window of a cruiser.

Brandon Garrett: One of the things that made me want to be a lawyer, as a law student I worked on the class action litigation against the street crimes unit of the NYPD to the stop and frisks of millions of young minority New Yorkers that Professor Griffin just mentioned.

Brandon Garrett: I also worked on a series of suits that were not about force, but about wrongful convictions, which are also highly racially disparate. The vast majority of those who have been exonerated by DNA testing are Black and Latino men.

Brandon Garrett: Last fall, we launched the new Center for Science and Justice at Duke with a former client of mine, Yusef Salaam, who is one of the Exonerated Five. This case was featured in “When They See Us,”

Brandon Garrett: the Netflix documentary. Some of these lawsuits were successful, but by no means all of them, and even the ones that were took a very, very long time in the federal courts.

Brandon Garrett: You know back when I was a law student, I worked on the stop and frisk class action litigation that was 1998 and 1999.

Brandon Garrett: That litigation went on until 2005 and then the lawsuit was resurrected with a second class action, the Floyd case, because the practices continued. And the Floyd litigation is ongoing to this day.

Brandon Garrett: There are more recent, motion practice regarding disparate enforcement under COVID by the New York City Police Department.

Brandon Garrett: The Exonerated Five wrongful conviction lawsuit, I worked on it back in 2002 before I was a law professor, it didn't settle until 2014.

Brandon Garrett: Apart from these delays, the law is unfavorable. I wanted to talk

Brandon Garrett: not about qualified immunity and the civil rights statutes themselves, but about Fourth Amendment law. So the US Supreme Court, and it's 1989 ruling in Graham v. Connor,

Brandon Garrett: has said that officers may react to potentially deadly threats basically based on what seems reasonable in the moment.

Brandon Garrett: Officers then benefit from a second layer of court made deference in the form of qualified immunity. I also teach habeas corpus and the Supreme Court has said similar things regarding deference when cases are challenged after a criminal conviction.
Brandon Garrett: What this endorses is multiple, multiple layers of reasonableness based deference to discretionary decisions by law enforcement.

Brandon Garrett: This shoot from the hip approach endorsed by the Supreme Court has led to black suspects being far more likely to be killed by police, but also wrongly convicted and arrested.

Brandon Garrett: Officers lack of familiarity with the community or their cognitive biases may cause them to jump to deadly and wrong conclusions. We saw that in the case of George Floyd who posed no risk to anyone.

Brandon Garrett: We saw that in the case of Tamir Rice, who had a toy gun when shot in Cleveland. But this problem extends more broadly to policing agencies as institutions

Brandon Garrett: and it extends to what we ask police to do, which is not just on the police, but it's on us in our communities and our leaders. It extends to decisions that we ask police to make, whether to stop, arrest, respond to community calls.

Brandon Garrett: At our Center for Science and Justice, we've documented racial disparities and things like life sentences, death sentences, use of force, but also use of traffic tickets,

Brandon Garrett: which like Professor Griffin mentioned, is the number one source for interaction between police and the community. Traffic enforcement. Criminal debt in a range of petty cases.

Brandon Garrett: And

Brandon Garrett: this is not just a policing problem. We should not be asking police to use their tools, which are blunt and can come with force, stops, frisks, arrests,

Brandon Garrett: to respond to public health, behavioral health, to the current pandemic, to poverty and homelessness. Wholesale change is long overdue and it must begin with our conception of what work we want police to do in the community.

Thank you for that.

Jesse McCoy II, J.D.: Across the nation and even across the globe, people have taken to the streets to protest policing policies through the Black Lives Matter movement and numerous other community based social justice organizations.

Jesse McCoy II, J.D.: Professor Lovelace, how is the current movement unique? What can the movement do to create significant and lasting change? And how should the success of this social justice movement be measured?
H. Timothy Lovelace Jr: So one of the things that's really striking about this particular moment, and why it is unique, just simply the scope and the scale of these protests.

H. Timothy Lovelace Jr: Literally 10s of millions of Americans have participated in these protests and they've participated in these protests every day since George Flyod's murder.

H. Timothy Lovelace Jr: And the protests have occurred in places like New York, Chicago, in LA, places that you might think of as places for protests, outside of Minneapolis.

H. Timothy Lovelace Jr: But these protests have also occurred in suburbia, in rural areas, and that should give us a lot of hope about change for the future. And the leadership and the participation in these movements is also just something very different than what we've seen in the past.

H. Timothy Lovelace Jr: Black Lives Matter was founded by Black women and Black women serve as leaders in many of the local movements. There are very large numbers of participants in these marches who are not African American.

H. Timothy Lovelace Jr: This is something very different than what we saw in the 1950s and 60s. Here we have the ability to form a multiracial coalition around anti-Black racism. This is hope, this gives me hope, for great change.

H. Timothy Lovelace Jr: Social media. Right. So I talked a bit about media in the past but social media has really just changed the dynamics around the police, and to Professor Miller's point, policing. So

H. Timothy Lovelace Jr: individuals are able to film police interactions far more frequently and then to record those who are citizens who are participating in a policing function.

H. Timothy Lovelace Jr: and in a discriminatory fashion. The political context for these protests have changed. I think that while there are a number of

H. Timothy Lovelace Jr: local and state officials that have been instrumental for pushing forth the conversation. At the federal level, in particular, we see great changes,

H. Timothy Lovelace Jr: and changes from the context that we saw that inspired the passage of the Civil Rights Act of ‘64, the Voting Rights Act of ‘65, and the Fair Housing Act in ‘68.

H. Timothy Lovelace Jr: Just plainly, we have a white nationalist who is our President, and Congress is more polarized, than perhaps, then definitely in the 1960s.

H. Timothy Lovelace Jr: People are also protesting during the pandemic. On one hand there's great peril here. People are literally risking their lives for the cause of social justice.
H. Timothy Lovelace Jr: And this too, gives me, in many ways, great hope that it means so much to everyday citizens to get out in the streets that they would put their bodies on the line to advance the cause of justice. The reforms themselves are also different. The word abolitionism as it relates at least to policing, was not in the vocabulary of many Americans before a couple of weeks ago. Same with the term “defunding” the police. And this is what social movements do, they give us a new vocabulary to talk about legal and social change.

H. Timothy Lovelace Jr: I'll take the last two portions of your question together. How do we think about and measure success? And then, how do we enact long standing change?

H. Timothy Lovelace Jr: The first part of that question, I think that we should measure success from a social movement perspective. You have people who are protesting, who are transforming their lives for themselves. They're not waiting for a racial savior, a King, right, to come in and save the day.

H. Timothy Lovelace Jr: They're getting out in the streets. They're protesting. They're starting new organizations. They're joining old organizations and revitalizing those organizations.

H. Timothy Lovelace Jr: Their rights’ consciousness has also changed. We started this conversation around policing. We've now broadened the conversation to talk about systemic racism, again another term that many Americans were not using a couple of weeks ago.

H. Timothy Lovelace Jr: The final point is this, we can measure success through lasting change in law and in politics. It's imperative to vote and to participate in the political process, not simply at the federal level, but also at the local level and at the state level. And there must be new pushes for new legislation around policing, in particular, that we might also, in this process, you know, think about state government and local governments as sites for change. And policing goes directly to this point;

H. Timothy Lovelace Jr: much of policing is controlled by state and local government. And so, I think that there is a great hope for change. I'm hopeful. And I think that if we put our faith to work, it can be done.
Jesse McCoy II, J.D.: Professor Miller, what do you see as being the most significant issues in policing and private policing today? And what can be done to address those issues?

Darrell Miller: So building on the themes from my previous remarks, I think that when we think about the problem of racial injustice, we need to think beyond just the police and think about the activity of policing.

Darrell Miller: So George Floyd and Ahmaud Arbery were both killed by racist policing within a few weeks of each other, but only one was killed by the police.

Darrell Miller: Arbery was killed, just like like Trayvon Martin many years ago, was killed by a private citizen who had been empowered by state law to take deadly weapons and take it upon themselves to perform a policing function. So if we think about this as only a problem with the police, we're only addressing half the picture here, and we're potentially leaving unaddressed a vast and potentially explosive problem when we think of it as just a police problem, as opposed to a policing problem. There are 300 million guns in private hands in the United States. Half the states allow individuals to carry these weapons with absolutely no training on how to use them.

Darrell Miller: A majority of states have what are known as stand your ground laws that allow individuals who feel threatened based on their own threat assessments, which we know to be racially inflected, to take deadly aim at individuals and kill them. And in states like Florida, the presumption is that the killing was lawful unless it's proved that it's not.

Darrell Miller: This is a part of an entire spectrum of what we might think of as policing. And so when I think about this issue,

Darrell Miller: what I really think is we have to think about it globally, not as a problem just with the police, but a problem with policing.

Darrell Miller: That is, we need to make all use of force by individuals who feel empowered to do law enforcement, to do it in such a way that it is safer, more equitable, less racist and better for all communities.

Jesse McCoy II, J.D.: Professor Griffin. What are the most significant legal issues that contribute to escalation in interactions? What would you suggest for reform?

Lisa Kern Griffin: So there are two things. One, that seems small but is enormous and one that is undoubtedly enormous but that we all have to confront.
Lisa Kern Griffin: The first, the thing that seems small, is the proliferation of justifications for stopping people and for making arrests.

Lisa Kern Griffin: This is an area of the law that can change. It's an act of utter hopelessness to suggest that it just has to be this way. We don't have to have pretextual traffic stops and unsubstantiated suspicion

Lisa Kern Griffin: and broad authority to make arrests. We don't have to have no-knock warrants either. These are things that are mutable and that can be addressed.

Lisa Kern Griffin: For example, the proliferation of misdemeanors, the explosion in misdemeanor offenses, including fine only misdemeanor offenses, like a seatbelt violation in one

Lisa Kern Griffin: well known case called Atwater, is allowing police to make arrests, which then often escalate encounters into violence.

Lisa Kern Griffin: Police can make arrests for this category of offenses that is sometimes referred to as “contempt of cop” and it has to do with obstruction, resisting.

Lisa Kern Griffin: In theory, individuals are free to challenge police without risking arrest. The Supreme Court has overturned ordinances that criminalize things like swearing at the police on First Amendment grounds.

Lisa Kern Griffin: But none of that law helps very much when the court is not willing to examine the real reasons why police are stopping and arresting people and the existence of good or bad faith.

Lisa Kern Griffin: And the other proliferation problem is warrants.

Lisa Kern Griffin: There are millions, 8 million outstanding warrants, and every single one of them justifies a traffic stop and ultimately the arrest often of someone the police choose to encounter. So even if a

Lisa Kern Griffin: stop is bad, under these very low standards that I described earlier, since the 2016 case called Utah versus Strieff the police can cure a bad stop if they later discover an outstanding warrant.

Lisa Kern Griffin: But in some communities, there are as many outstanding warrants as there are adult residents.

Lisa Kern Griffin: And this led Justice Sotomayor in her dissent in that case
Lisa Kern Griffin: to say that the mere existence of a warrant gives an officer legal cause to arrest and search a person and forgives an officer who, with no knowledge of the warrant at all, unlawfully stops a person on a whim, or a hunch.

Lisa Kern Griffin: As she concluded in her breathtaking dissent in that case, everyone is now not a citizen of a democracy, but the subject of a carceral state just waiting to be catalogued.

Lisa Kern Griffin: And the enormous and difficult thing that I referenced is that the courts are going to have to be willing to do the same thing that our community and every institution has to do, which is be willing to explicitly identify the connections between race and violence.

Lisa Kern Griffin: The police are a mirror in some respects of other social and political problems. But when the courts talk about the police, they never, ever, talk about race.

Lisa Kern Griffin: In all of the Supreme Court decisions about criminal procedure, there is a footnote in the Terry opinion. There's one majority opinion that addresses, at all, the issue of race.

Lisa Kern Griffin: The justice’s live in a world in which black males who are stopped on the street can decline to answer, can go on their way, if they choose to do that.

Lisa Kern Griffin: They've repeatedly said that people are free to disregard the police and go about their business and there is what Justice Souter once called “an air of unreality” about all of that.

Lisa Kern Griffin: And so I think that the courts are going to have to be willing to do the hard work of seeing the connections that I've been talking about today. And there is one justice who has been doing so consistently and that is, Justice Sotomayor. And so I want to just say what she said

Lisa Kern Griffin: in her dissent in the Strieff case, which is “that it is no secret that people of color are disproportionate victims of this type of scrutiny

Lisa Kern Griffin: and we must not pretend that the countless people who are routinely targeted by police are isolated.

Lisa Kern Griffin: They are the canaries in the coal mine, whose deaths civil and literal, warn us that no one can breathe in this atmosphere.
Lisa Kern Griffin: They are the ones who recognize that unlawful police stops corrode all of our civil liberties and threaten all of our lives. And until their voices matter too, our justice system will continue to be anything but.”

Great quote

Jesse McCoy II, J.D.: Professor Garrett, what is happening with the efforts to reform how law enforcement works and what is most promising?

Brandon Garrett: Thank you all so much. I wanted to end by talking a little bit about where we go from here. Traditionally, we've been really reluctant to regulate police as institutions in any meaningful way. There are very few laws that regulate police.

Brandon Garrett: If you look at state codes, often they just generically define broad police powers but there are very few laws that specify rules that police need to follow. With one exception, often DUI often

Brandon Garrett: has detailed rules

Brandon Garrett: because in that area of plenty of wealthy middle class people get stopped and assert their rights. Instead, police have their own policies

Brandon Garrett: and patrol guides and the like, which are often not public and traditionally not based on any community or expert input. The exceptions around the country have been agencies sued by the Department of Justice where you can have elaborate consent decrees, monitoring, and oversight.

Brandon Garrett: However, those consent decrees have been wound down and new consent decrees have not been entered by the Justice Department under the current administration.

Brandon Garrett: And there are only so many agencies that the Department of Justice can get involved in around the country. And, you know, we have many, many thousands of policing agencies in this country. We've had many dozens subjected to these detailed consent decrees.

Brandon Garrett: No healthy arm of government or of industry works that way, where something of immense public importance, an entity that engages with so many people on topics that intersect so powerfully with our liberty and our civil rights and our health and safety is so almost entirely unregulated.

Brandon Garrett: Furthermore, although we've talked about how, to what degree the Supreme Court has given just blanket discretion to police officers, how deregulatory the Constitution has been in terms of criminal procedure, whether we're talking about arrests or deadly force,
Brandon Garrett: police, just like any government agency, can do more and must do more than the bare minimum that the Constitution requires.

Brandon Garrett: Police can themselves define what force is reasonable or permissible. They don't have to just adopt the bare minimum Supreme Court endorsed standard.

Brandon Garrett: And to do that, officers need a new toolkit. It's not fair to police officers to tell them to just go out in the community armed,

Brandon Garrett: potentially confronting armed people, and just go with their gut and react in the moment. Doing so endangers the lives of members of the public and endangers their lives too.

Brandon Garrett: Nor are written policies enough. There's been much discussion of “eight can't wait” or other elements of a good use of force policy, but everyone acknowledges

Brandon Garrett: in the policing community and activist community that a paper policy is not enough. It's important to change the culture in policing and to do that you need to change training and you need to change supervision.

Brandon Garrett: Part of supervision is internal discipline. Will officers get disciplined, potentially even fired, for egregiously violating policies?

Brandon Garrett: This has to change.

Brandon Garrett: And what makes this an exciting time is that

Brandon Garrett: in part because of the incredible work that activists and protesters have done, these protest movements are the largest in our history.

Brandon Garrett: There is an enormous momentum behind change.

Brandon Garrett: There's great work for law students to do. Law students at my center have been tracking legislation. There are over 60 bills regulating policing that have been introduced

Brandon Garrett: at the state and federal level in this country, most of which were introduced post Floyd, just in the last month or so.

Brandon Garrett: And that's remarkable. I mean, traditionally in state houses it was understood that you just don't introduce legislation about policing; that any bill having to do with police would be a dead letter.

Brandon Garrett: A joint statement by our center at Duke and with others, including collaborators on the American Law Institute
Brandon Garrett: Project, Principles of Policing, set out a “Changing the Law to Change Policing” report and we outline a range of changes that are important.

Brandon Garrett: Some of them are federal level changes and the federal government does a lot of funding

Brandon Garrett: that goes to police departments that can improve best practices. The federal government can play an important role in setting standards. There are no national use of force standards.

Brandon Garrett: There are consent decrees here and there that the Department of Justice has entered, but there’s no national accreditation, there are no national standards. It’s left to individual agencies to come up with their own rules.

Brandon Garrett: You need national data collection on topics like police misconduct, like decertification if you have an officer that is fired for serious misconduct.

Brandon Garrett: What record is there of that when they seek to apply for a job at another agency down the road or in another state?

Brandon Garrett: As our colleague, Ben Grunwald has written, there's a serious problem of wandering officers that can easily be rehired because there's no centralized place to record that they were decertified or engaged in this conduct.

Brandon Garrett: There has been very little role traditionally for regulation at the state and local level, and given how decentralized policing is in this country, there's a lot of work to do in everyone's community and in everyone’s state.

Brandon Garrett: A lot of the reform lawsuits have been filed in federal court and by the Department of Justice. We need to empower state attorneys general to take action.

Brandon Garrett: And we need states to step in and make sure that use of force policies and practices are public, and are sound, and follow best practices. We need states to track police use of force, and not just deadly force.

Brandon Garrett: We need states to track information about arrests, about fines and fees, traffic stops, all of this low level enforcement, which

Brandon Garrett: has an enormous impact on people's lives. So little in policing is meaningfully tracked. But once it's tracked, then there's a role for us to step in and say
Brandon Garrett: these levels of activity are not okay, these impacts on communities are not okay, this is what we want police to be doing. And, you know, policing organizations are hierarchical and professional and, you know, respond to rules and to instructions.

Brandon Garrett: We need to be defining what role we want police to fill and providing better practices, better guidance, and a clear role for policing. It is important for police officers to succeed. We need to define the terms of their success.

Brandon Garrett: Again, this is an incredibly exciting moment in our country, with protest movements that have been the largest in our history, and they're not going to stop because the problem isn't going away.

Brandon Garrett: To make this reform movement lasting, there's equally important and exciting work for lawyers to do, and I hope that all of you have taken from this conversation ideas, plans for what you might do potentially in your careers and to contribute to this movement and contribute to the lawmaking that can really reshape the future of policing in this country.

Brandon Garrett: Thank you so much. I look forward to your questions and look forward to continuing these conversations in the months ahead.

Jesse McCoy II, J.D.: Alright, so during registration for this event and during this recording, we've allowed the audience to submit questions.

Jesse McCoy II, J.D.: What we received ran the spectrum from questions that were rooted in legal analysis as well as more practical concerns that some of our students have given past negative experiences with policing.

Jesse McCoy II, J.D.: So I'd like to ask the panel a few of these questions and whoever is most comfortable addressing the question, please feel free to provide your answer.

Jesse McCoy II, J.D.: It looks like the first question submitted by the audience is, “how do we not lose police safety protection in all of this, which all communities, especially impoverished communities need?”

Jesse McCoy II, J.D.: Anybody taking a crack at that one?

Darrell Miller: Brandon, do you want to try?

Brandon Garrett: I wasn't sure who wanted to go first and since I was just talking, I didn't want to jump in right away, but the
Brandon Garrett: intersection between policing, race and poverty has been long standing in this country and,

Brandon Garrett: you know, we've never asked police to think about what impact are they having on poverty? What impact are they having on people's economic, social, well being?

Brandon Garrett: We've talked a little bit today about the impact of fines and fees and debt that comes out of policing. We haven't talked about bail. But, you know, we have

Brandon Garrett: enormous numbers of people in this country who are in jail. And now that's a potentially deadly situation, given the spread of COVID, because they lack the financial means to pay cash bail.

Brandon Garrett: It's important to recognize that some of these economic impacts are not fully within the control of police and we need to not be placing police in the position of debt collectors.

Brandon Garrett: Police may issue a traffic ticket because they believe someone was violating traffic laws.

Brandon Garrett: They may themselves not fully realize that that ticket is not set at a level that a person can pay, that a judge may not be able to excuse the cost of the ticket just because the person is

Brandon Garrett: indigent and that the result may be that the person loses their license, loses their employment with rippling economic effects. That the person may then be subject to arrest and jail time

Brandon Garrett: because of driving with a suspended license. All those additional economic consequences may be out of the control of

Brandon Garrett: the police officer that thinks that they're just issuing a ticket.

Brandon Garrett: And same thing with an arrest they made. The police officer has no control over the fact that the person may subsequently spend weeks in jail because they can't make cash bail.

Brandon Garrett: That system in the courts, maybe very much out of the control of police and in the past they often didn't take into account these follow on economic consequences when they made their policing decisions and that's changed.

Brandon Garrett: There's now an economic justice conversation around why we do policing the way we do.
Brandon Garrett: But we know lawmakers have increasingly relied on police as a revenue source, and the most regressive revenue source possible. And, you know, police

Brandon Garrett: need to stand up, we all need to stand up to make sure that we don't place either our police officers or courts in the position of being debt collectors.

Darrell Miller: So I just want to, I'll just briefly chime in on what Brandon said so, you know, I think the premise here is that what we want is, we want the

Darrell Miller: police to be not a threat to the community, but responsive to the community. That they want to be an asset to the community, you know, not an impediment to that community’s development, growth,

Darrell Miller: and sense of safety. And so, you know, the question is really about, you know, how do we not lose hope? At least, I don't think it's a binary, I think the premise here is that we want to make policing,

Darrell Miller: you know, less lethal and more about the purpose of professionalizing police services, which was as public service.

H. Timothy Lovelace Jr: I'll tag in, just very briefly,

H. Timothy Lovelace Jr: my comments. I agree with Professor Miller and Professor Garrett here. All Americans really do want public safety.

H. Timothy Lovelace Jr: I think part of the issue is that we're asking, actually, police officers to do too much, right, that police officers are being asked to deal with issues like homelessness and there might be experts who are better positioned to deal with issues of homelessness or mental illness, etc.

H. Timothy Lovelace Jr: I think that part of the other issue is that can we imagine a world where we are less reliant on police as we think about them now?

H. Timothy Lovelace Jr: What systems would we need in place to prevent so much contact with police? Right. So how might we think about education, just very differently?

H. Timothy Lovelace Jr: And police officers within schools? How might we think about issues of poverty or mental health so that people don't get into the criminal justice system? And so I think that that's part of the kind of social imagination that you see emerging from these protests.

Jesse McCoy II, J.D.: And just a point for the audience, I understand that some people will have to leave at one o'clock. We plan to continue the recording up until 1:30 and we're going to provide that recording link
Jesse McCoy II, J.D.: so don't feel like you've missed anything if you have to go. We're going to make sure that you get it.

Jesse McCoy II, J.D.: The next question I wanted to ask, is to all the panelists. What do you feel is the best recourse for ultimately addressing and ending police brutality? And how can law students and lawyers engage in these efforts?

Lisa Kern Griffin: I'll start. And because I want to say, especially to the students, that though this is a time of grief and trauma and frustration,

Lisa Kern Griffin: I hope some of the things that we've said suggest as well that it is an optimistic moment because of the convergence of willingness, of urgency, because

Lisa Kern Griffin: finally, many of these issues are coming to the fore. There's even sort of bipartisan consensus on some of the most important issues.

Lisa Kern Griffin: So the things that matter, the things that you can do, are in two categories, as citizens and as lawyers.

Lisa Kern Griffin: As citizens, I think Professor Lovelace has made it very clear, protests matter. Taking to the streets makes a huge difference. That's what moved the needle here and

Lisa Kern Griffin: what impacted Justice Sotomayor, to say what she said in the opinion that I read, was Ferguson. She got those ideas from the Ferguson Report.

Lisa Kern Griffin: So sometimes these things evolve over a period of time, but they do penetrate.

Lisa Kern Griffin: A lot of the progressive prosecutors who've been elected in recent years, were arrested sort of in the wake of Ferguson and the original Black Lives Matter protests and so

Lisa Kern Griffin: these movements matter. And the citizenry matters. And politics matter as well.

Lisa Kern Griffin: As Professor Garrett's been saying, there are 18,000 law enforcement agencies, not enough centralized oversight or even data

Lisa Kern Griffin: about them. There hasn't been any meaningful police reform since the 1990s. And part of that is politics.

Lisa Kern Griffin: And the last few administration's there were 69 different pattern and practice investigations by the Justice Department
Lisa Kern Griffin: leading to 40 settlements or consent decrees. In the entirety of the current administration, there has been one

Lisa Kern Griffin: such investigation. The results were actually published yesterday and they determine there's been gross abuse by Massachusetts's narcotics officers.

Lisa Kern Griffin: But the Justice Department has completely ceased to engage on these issues. And that's politics, and that touches U.S. citizens, I think.

Lisa Kern Griffin: As lawyers, litigation matters, and criminal procedure, that often means defense lawyering, and the issues that you fight for for one client

Lisa Kern Griffin: having an impact on those millions of people who are encountering law enforcement officers and later encounters.

Lisa Kern Griffin: It also means that prosecutors have to make choices about when the conduct of police officers should be defended by the government and what rules and advantages are worth pressing.

Lisa Kern Griffin: And as I've been saying, litigation is the way to close off a lot of these pathways to violence and there's a huge role for lawyers on both sides in the criminal justice system in addressing those issues.

Darrell Miller: So you know, thanks for the questions,

Darrell Miller: Professor McCoy. I'll say, you know, sort of a personal point of view. This is the second time that in my career here at Duke alone that I've been on a panel like this.

Darrell Miller: We had a panel shortly after Ferguson,

Darrell Miller: like this. And this issue,

Darrell Miller: like for a lot of you, a lot of us, has sort of punctuated my life. So, Malice Green was killed by the Detroit Police when I was 10.

Darrell Miller: I was, I think, in college,

Darrell Miller: when Rodney King was beaten by the LAPD. I was in law school, when Amadou Diallo was shot by the New York Police Department.

Darrell Miller: And it just goes on and on and on as Professor Lovelace has said. And so, you know, from a personal point of view, it's hard not to be on a panel like this or see these stories and not think about
Darrell Miller: encounters I've had with police myself, which is if I had just moved a little differently, a little too fast or a little too slow. Right, looked a little different, right. Had said something just a different way, how that would have turned out.

Darrell Miller: That's just by way of saying that, you know, expressing I think, my sense of the community sense, and maybe even the nation's sense, that we're just tired of this, just tired of this happening again and again, which is why the Black Lives Matter protests have been so significant.

Darrell Miller: And I think in terms of your question, I'll just echo exactly what Professor Lovelace said, which is the best mechanism is the expression of these kinds of,

Darrell Miller: of the desire for change, to come through political participation and political power.

Darrell Miller: The March on Washington is an incredible event, but it's just a snapshot in Life magazine without the Civil Rights Act of 1964. The march across Edmund Pettus Bridge in Selma, Alabama, is a shocking image on a screen or in a magazine without the Voting Rights Act of 1965.

Darrell Miller: A few years ago, I wrote an op ed and I think it still resonates today, which is the real monuments to these kinds of movements aren't

Darrell Miller: the placards, you know, at the corners of streets or street signs. They are the laws that come as a process of translating movements into political power and political change that makes it better structurally for everyone on this issue.

Brandon Garrett: I'll just add that laws have now been introduced in dozens of states and will be introduced in dozens of others. Every single one of these legislative efforts, and there's been federal legislation that isn't moving quickly, but good.

Brandon Garrett: Every single one of these legal battles will be hard fought in the legislatures. They will be needing to hear from lawyers. They will be needing to hear from experts and they'll be need to hear

Brandon Garrett: from activists. Lawyers have a role to play, though, in drafting these laws and in turning them into a real policy and making sure that they're followed.

Brandon Garrett: Lawyers will be needed to pursue civil rights litigation, like we have for decades and decades, sometimes with real effect, sometimes without.
Brandon Garrett: We need to move the law in this area and it takes different types of lawyers, doing different types of work.

Brandon Garrett: It's going to take work to rethink police budgeting.

Brandon Garrett: It's going to take, you know, a financial look at what do we fund and what do we not fund in terms of public safety?

Brandon Garrett: It's going to take empirically minded lawyers to look at what kind of databases can we assemble to track officer misconduct. We can pass laws requiring it but we actually have to do it.

Brandon Garrett: There's going to be incredible work to do, involving really different types of skills, and whether it's tracking legislation, testifying and forming legislation, activism to highlight stories to push the need for passing these statutes,

Brandon Garrett: implementing, working with local leaders to think about everything from budgets to training to, you know, training, whether it's bias training, whether it's upstander training,

Brandon Garrett: whether it's use of force training? There's going to be really interesting work. And so, as lawyers whether your skill set is

Brandon Garrett: improving organizational culture,

Brandon Garrett: defending or prosecuting criminal cases,

Brandon Garrett: finance, thinking about budgets, municipal budgeting,

Brandon Garrett: or getting involved in the lawmaking process. Lawyers have all different types of skills and interests and can play a role in this powerful movement, and I hope that some of you decide to do that as law students, or in your pro bono practices or in your careers.

H. Timothy Lovelace Jr: Yeah, I think that lawyers just have a really unique ability to help to create the kind of change that many people are looking for.

H. Timothy Lovelace Jr: Lawyers on multiple sides of this issue must engage courts in ways in which

H. Timothy Lovelace Jr: my colleagues have talked about. Lawyers can help demonstrations by serving as legal observers. Law students can participate here as well.
H. Timothy Lovelace Jr: And the question becomes for someone who's interested really in social movements, what do you do between marches, or what do you do while constitutional litigation or civil litigation is just pending?

H. Timothy Lovelace Jr: Join an organization, right. So I think that just participating in civic life is important for lawyers. I mean, in particular for law students. Law students are very involved in affinity groups or other organizations in the law school.

H. Timothy Lovelace Jr: When you graduate, don't forget about your participation in law school and how active you were in these organizations. And so it's important to join organizations that are interested in both legal and social change. And then again, to echo some of the earlier points about participating actively in the political process,

H. Timothy Lovelace Jr: whether this means tracking bills or drafting legislation. I think that part of the challenge for this moment because policy windows are often very narrow is to have a larger conversation,

H. Timothy Lovelace Jr: not simply about the police formally but more to Professor Miller’s point about policing writ large. And then all the other systems going to that first question that we had.

H. Timothy Lovelace Jr: that contribute to a system where many people think that we need police. So talking about systemic racism, whether it's in health care, whether it's in employment and definitely as it relates to voting.

Jesse McCoy II, J.D.: So as I move about the community, there are a lot of people who are confused about this concept of what it means to “defund” the police.

Jesse McCoy II, J.D.: We know that police respond oftentimes to situations that are not necessarily criminal. We've seen in cases like Atatiana Jefferson where it was simple wellness checks that went wrong.

Jesse McCoy II, J.D.: Why can't we divert those funds into social services agencies for the provision of services, for the provision of wellness checks, as opposed to always deferring to a police presence? So I wanted to first kind of get your explanation on what it means to “defund” the police and secondarily, if you think that it's something that will be beneficial to reducing police brutality, or not.

Brandon Garrett: I'll just note that if we want real social services to replace intervention by armed police officers, we need real social services.
Brandon Garrett: One of the reasons why we have police intervening in lots of places where they would prefer not to be, and many would prefer them not to be,

Brandon Garrett: has been because we don't have the resources in our schools. We de-institutionalized and do not have adequate housing or care for people with serious behavioral health needs.

Brandon Garrett: And we do not have adequate housing for people with low incomes and therefore we have people who are homeless and then they're interacting with police.

Brandon Garrett: You know, enormous cuts to to the the safety net, whether it's the unemployed or for

Brandon Garrett: families with low incomes.

Brandon Garrett: We have inadequate health care. You know what one of the most important reasons why people file civil rights lawsuits after police use deadly force, turning back to deadly force and shootings, it's because many people don't have health care when they get injured by the police.

Brandon Garrett: And

Brandon Garrett: so, you know, we can't solve the policing problem

Brandon Garrett: purely by

Brandon Garrett: limiting the types of things that police can do because there are real needs and those needs are not being met. And the conversation is turning and should turn

Brandon Garrett: from policing towards what are the social services, what are the safety nets that we really need? How can we have

Brandon Garrett: people who can provide support

Brandon Garrett: to address needs in communities who don't wear a badge, so that we can use people who wear badges to address the public safety needs that we think are most important?

Brandon Garrett: That's a big conversation and it's going to require undoing you know 30 plus years of cuts to the safety net and custom social services across our country.

Darrell Miller: I'll just echo what Professor Garrett said, you know, one of the one of the issues here, and he mentioned it that I've often thought about in terms of sort of defund the police
Darrell Miller: is the phenomenon what happened in the 60s, with the de-institutionalizing of the mentally ill.

Darrell Miller: The sort of throwing open

Darrell Miller: the doors of the mental institutions was easy. The hard part, which never got done, was supplying the social services necessary to help people who

Darrell Miller: are mentally ill and could not take care of themselves. And that part was totally forgotten. So I think a really important part of this conversation that Professor Garrett has quite rightly said, is

Darrell Miller: you know, the sort of taking the money away is easy, or it's easier now I should say,

Darrell Miller: the important part is, you know, supplying the alternatives of what the kind of social services that we’re demanding police now to provide that they’re not in a position to provide very effectively.

Jesse McCoy II, J.D.: Now I want to shift the attention a little bit. One of the things that we saw, particularly after the Rayshard Brooks murder, was body cam footage that actually showed when the officer who

Jesse McCoy II, J.D.: engaged in the shooting went to talk to another officer. He was instructed, “call your union rep.” So this concept of police unions, what do they do and how do we deal with the police unions in trying to achieve justice?

Brandon Garrett: Some of the litigation I worked on as young civil rights lawyer involved

Brandon Garrett: cases just like that, where you'd have union reps and lawyers shuttle officers from the scene of a shooting and basically get them together, prep them to get their stories straight,

Brandon Garrett: making it very difficult to do meaningful investigation into what happened. Body cams have changed that.

Brandon Garrett: It was harder when you were depending on the word of the survivors of an incident to find out what really happened and whether discipline or liability should result.

Brandon Garrett: Interestingly though, I mean, lawyers played an important role in some of that. There was

Brandon Garrett: litigation naming the police unions in New York City as civil rights conspirators for promoting a wall of silence that made it difficult to investigate police misconduct.
Brandon Garrett: And so important reforms were obtained by actually naming police unions under the Ku Klux Klan statutes, which was remarkable and creative lawyering.

Brandon Garrett: But you know, all too often police reform has been stymied because of contracts that cities have been willing to enter with police unions. They don't have to enter those contracts, all right. They can insist that the conditions governing employment of police officers be fair, but also reflect the public's need for transparency and for the protection of civil rights and for information about what police officers do, including police misconduct.

Brandon Garrett: And I think that, that's going to start happening as these laws are introduced to say, look, we need to certify police officers, we need to collect information about non-deadly use of force, not just deadly use of force. We need prompt investigation within police departments firsthand.

Brandon Garrett: We can't rely on informal back room type of discussions to resolve the most serious allegations of misconduct that we have in this country.

Brandon Garrett: I think it's unfortunate that there has been this tradition of deference to this in a form where we'll work things out between the union lawyers and the policing top brass in the past.

Brandon Garrett: But that has to end. And I think because of public pressure, because of the protests, that role is gradually being eroded.

Jesse McCoy II, J.D.: So it looks like we are running short of time. I wanted to make the floor available for all of you to give a one minute closing statement about kind of what you feel about what should be done moving forward.

H. Timothy Lovelace Jr: This is an incredible moment, really just unprecedented in all of our lifetimes. I think that, you know, when you look at the history of racial reform in America. Again, these windows are very small, right. So after reconstruction,
H. Timothy Lovelace Jr: redemption happens soon thereafter. If you have something like Brown versus Board of Education, massive resistance sets in.

H. Timothy Lovelace Jr: That even if you think about the you know, 2008 election, and then the 2016 election, right, we have to understand the rise of Donald Trump in many ways as backlash to at least perceived racial justice with President Obama.

H. Timothy Lovelace Jr: We have many interests converging right now at this point in time. And so, seize the day.

Brandon Garrett: I just wanted to briefly emphasize, great questions.

Brandon Garrett: that we can’t answer all of

Brandon Garrett: that some of these deep changes that are contemplated to policing are important both to protect people’s civil rights and for fairness, but also to accomplish public safety.

Brandon Garrett: That more and more research has been done to document what people have long known, that a lot of this low level enforcement

Brandon Garrett: engenders crime. It's actually criminogenic. We've seen that in the area, that holding people in jail so that people lose their jobs, lose their income, lose their housing,

Brandon Garrett: causes crime. It does not protect public safety. That imposing burdensome debt on people, even for petty offenses, harms communities,

Brandon Garrett: causes crime, does not protect public safety. And so we can protect public safety and improve policing in this country. We can improve the jobs of police officers and improve policing in this country.

Brandon Garrett: I think that's one of the reasons that this has become a bipartisan issue. There's broader understanding that

Brandon Garrett: throwing police at social problems, throwing people into cells

Brandon Garrett: to solve social problems, is not a solution. That doesn't accomplish public safety. It's expensive. It horribly damages communities, harms people's rights.

Brandon Garrett: There are good solutions that there's been some experimentation with, but there has not been broad adoption.

Brandon Garrett: Because of protest, because of social movement, because of so many years of struggle,
Brandon Garrett: we really are, I think, at a tipping point. And this is an incredibly exciting time to be a lawyer and to be working on these issues and to care about these issues. So really excited to see what comes out of this incredible moment in our history.

Lisa Kern Griffin: I want to agree with what Professor Garrett said about the harm to public safety from a lot of our policing.

Lisa Kern Griffin: And you know, when it comes to defunding police, there are a lot more nuanced ways that you could say that. But there's no question that we can be spending less on public safety that is not working,

Lisa Kern Griffin: and more on social services that are sorely needed and that is one obvious place to start.

Lisa Kern Griffin: The place where this all started in some respects, I mean obviously it started hundreds of years ago, but what brought us here today, I think, in many respects, is the raw savagery

Lisa Kern Griffin: and the sheer inhumanity of the murder of George Floyd it. It's definitely changed the conversation. It's increased momentum on all of these things that we've been talking about.

Lisa Kern Griffin: And when you think about that incident and other incidents like it, and there have been far too many, it's easy to say nothing is going to fix this, that it is broken beyond repair.

Lisa Kern Griffin: And I think that's true with respect to some of the violence that has occurred, but I don't think that it is true with respect to the entire system

Lisa Kern Griffin: that we have. Many, many things that are broken. Policing, yes, first and foremost, because it leads to this kind of brutality. But also housing and jobs and health care and education and voting rights.

Lisa Kern Griffin: But all of these episodes and instances of structural inequality that come to the fore give us opportunities as lawyers to try

Lisa Kern Griffin: to address them. And I think that lawyers have an obligation to do that. And so, some things are broken and can't be fixed, and need to end, and that includes significant aspects of the kind of policing that we have now.

Lisa Kern Griffin: But some things can be fixed. And I think the most important takeaway from what I've been hearing from my colleagues today and been thinking about and preparing for talking with you
Lisa Kern Griffin: is that I really want to convey that it does not have to be this way. We don't have to just throw up our hands and say, this is how policing has always been.

Lisa Kern Griffin: We do need to excise the parts of it that are damaged and no amount of training will ever fix.

Lisa Kern Griffin: But there are parts of it that we can address as lawyers. We can change these rules. We can change the standards. And we can insist on a more just system. And it seems more within grasp right now, and I like Professor Miller, have been on many of these panels over a decade,

Lisa Kern Griffin: but at this moment, it seems more within grasp that it ever has before, even though it's an incredibly painful moment. And there's a lot that we have to face and understand in order to get there.

Darrell Miller: So I think I would just sort of

Darrell Miller: talk about, reiterate sort of, what I've said with this edition, which is all social movements throughout American history have always sort of run on at least two tracks. There's the social activism track, there is the legislative policy making track. And then there is the sort of

Darrell Miller: purely legal constitutional track. Whether we are looking at things like rights for same sex marriage or we're looking at the civil rights era in the 1960s. I think understanding that there are sort of lanes and these lanes influencing each other is an important component that lawyers in particular can understand.

Darrell Miller: Before the 1980s, in some jurisdictions, it was still lawful to shoot fleeing felons in the back. Small changes and police departments changing their rules ended up influencing Supreme Court practice and Supreme Court law on the Fourth Amendment on that issue. Now that is not constitutionally allowed. It happens, but as a constitutional matter, it's a potential source of liability and therefore

Darrell Miller: the constitutional norm is that is not acceptable behavior. And if we see these things as interrelated as we're running in different lanes, but interacting,
Darrell Miller: and if we seize the moment with coalitions, with political participation, with making sure we get out and vote, we can really see change happen as we've seen before.

Jesse McCoy II, J.D.: We can have this conversation going forever. I think the one thing that I do want to echo is there is a large portion of our student base and faculty who not only can discuss and talk about issues of police brutality but who have also personally lived through police brutality. So I don't want any of our students who have been through that to ever feel like you're alone.

Jesse McCoy II, J.D.: As always, I am in room 1173, if we ever get back to campus. Please feel free to stop by and we can certainly talk about that.

Jesse McCoy II, J.D.: We've reached the end of our program, I would like to thank Dean Abrams for hosting this program.

Jesse McCoy II, J.D.: Stella Boswell, the assistant dean of public interest and pro bono for her efforts in organizing the program, and most importantly, our outstanding panelists for sharing with us their expertise.

Jesse McCoy II, J.D.: Finally, I would like to thank all of the attendees who joined us today.

Jesse McCoy II, J.D.: I hope that we were able to address and explain at least some of the issues that you've been seeing on your nightly news. I apologize if there were questions that we just couldn't get to.

Jesse McCoy II, J.D.: just due to time constraints but please note that we will be posting links with additional resources and information that you can view at your leisure. So I just want to thank you once again for joining us. Thank you again panelists and everybody. Have a great afternoon.