

REMARKS AT THE SOUTHERN ILLINOIS UNIVERSITY SCHOOL OF LAW AND SCHOOL OF MEDICINE SYMPOSIUM: THE PRESIDENT'S TASK FORCE ON 21ST CENTURY POLICING: PROCEDURAL JUSTICE, POLICING, AND PUBLIC HEALTH

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Good morning. And thank you. I have never listened to Robette Dias speak before. I think her framing remarks are critical and so important to what we need to talk about today. As I was listening, I thought, “You know, I am going to change what I am going to say.” I just did, so we will see how this works. The reason I wanted to change my remarks is that I want to connect what Ms. Dias spoke about to Director Davis’s remarks—the idea of understanding public safety in the context of seeking justice. My jumping off point is found on the back of your report. President Obama said, “When any part of the American family does not feel like it is being treated fairly, that’s a problem for all of us. It means that we are not as strong as a country as we can be, and when applied to the criminal justice system, it means that we are not as effective in fighting crime as we could be.”¹

This initial panel is about understanding the relationship between trust and legitimacy and policing public health and the criminal justice system. You will notice if you take a look at the Final Report of the President’s Task Force on 21st Century Policing that our very first pillar is about precisely that—building trust and legitimacy. I was going to talk a little bit about what the research suggests about that, and then I decided not to spend as much time about that, in part because there is going to be a later panel—I think Charlene Moe is going to talk more specifically about the particulars of procedural justice and the like. So, I will say just a little bit about that now. What I would really like to do now is to highlight the idea that policing in particular and the criminal justice system in general is losing its way with respect to the public safety narrative. I want to emphasize the

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 - 1. PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, WASHINGTON DC OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING IMPLEMENTATION GUIDE: MOVING FROM RECOMMENDATIONS TO ACTION, at 27 (2015), http://www.cops.usdoj.gov/pdf/taskforce/Implementation_Guide.pdf.

idea that crime reduction cannot be its own warrant. Crime reduction is not self-justifying. It is a mistake to think that the benefits of incredibly aggressive policing can be balanced against the benefits of crime reduction, assuming that crime reduction follows from aggressive policing. That perspective does not account for the costs to public trust of aggressive policing. This is true whether we are thinking of policing as a gateway to mass incarceration, or whether we are simply thinking of aggressive policing as leading to more and more arrests. Those who promote aggressive policing in the name of crime reduction do not understand the ways in which compliance with the law, citizen engagement and cooperation are intimately connected to public trust in legal authority and the ways in which aggressive policing can undermine that trust. This is an idea that we on the Task Force tried to articulate in the report.

We know that crime has declined dramatically all across the country over the last few decades. What is interesting is that we acknowledge that policing has played a role in this decline. This was not always true. In fact, policing researchers used to think that police played very little role in producing crime reduction. As Director Davis said, the crime decline is a great testament to the hard work that many police officers and policing agencies have done over the last few decades.

It is also true, which we note in the President's Task Force Report, that survey assessments of public trust in policing during the time in which crime declined dramatically, remained basically flat. Those assessments did not change during the crime decline. Not only that, there is a vast gap between the levels of trust in police that white Americans register, compared to people of color. How could that be? How could it be that the people who presumably are benefitting the most from the massive crime reduction over the last thirty years have not had a change in the level of trust they hold in police? These paradoxical numbers—decreasing crime and no change in confidence—suggest that it is not police effectiveness primarily that promotes how people think about what they want in policing; it must be something else.

We know, from the path-breaking research of Tom Tyler and others, that how people assess the fairness of policing and other components of the criminal justice system and government agencies in general such as Social Security agencies, public schools and the like, is how they are treated by representatives of these important agencies, more so than the outcomes that these agencies produce for them. The Task Force's Report summarizes some of this research. People care about four things in particular: (1) people care about having an opportunity to tell their side of the story and an opportunity to participate in the articulation of strategies and policies that an agency will carry out. We call this "voice." (2) People care about being treated with dignity and respect for their rights. (3) People care about being

able to assess the extent to which decisions that are made that concern them are fair. They want them to be neutral. They want them to be transparent. They want them to be based in fact. (4) People care about being able to expect to be treated benevolently in the future. We call this motive-based trust.

The history that Ms. Dias spoke about is really critical to understanding the extent to which people are able to expect to be treated benevolently by government authorities. When government representatives treat your parents or grandparents or even your friends and siblings in ways that do not seem fair to you, why would you expect them to treat you fairly in the future? This is why agency acknowledgment of past mistreatment and discrimination is so critical, which is one of the Task Force's recommendations. It is Recommendation 1.2 for those of you who are following along.

Importantly, I am focusing on the agencies themselves. Procedural justice is not just about how police officers on the street or agency leaders in their organizations treat people externally. In order for officers to do this, they must be able to expect procedural justice and legitimacy within their own workplace. That is why another one of our critical recommendations in the first pillar is that law enforcement agencies should promote legitimacy internally, within the organization, by applying the principles of procedural justice. This is a critical and important task. When agencies begin to be committed to procedural justice inside and outside of the organization, those agencies will understand, of course, that there needs to be a different way of doing business. This way of doing business cannot be just public safety, public safety, public safety, crime reduction.

I had the opportunity to speak about this last week at the University of Chicago where my fellow alum of the University of Chicago Law School, FBI Director Jim Comey, had spoken just a few days earlier. The provocative title of my talk was "Against Public Safety and For Public Security." Maybe public security is not the right term. But the idea is that we have to take into account not only concern about crime in communities. We must also be concerned about the security that people have in their communities against the ways in which representatives of law enforcement in particular treat them. Community residents also need to feel safe in the presence of legal agents. We can address both private violence in communities and public violence from police against individuals simultaneously if we take these ideas of procedural justice and legitimacy seriously and infuse them in our organizations from top to bottom, not only in the way in which our organizations are set up, and not only in the ways in which our policies are articulated, but the way in which we work together to co-produce safety and security.

The bottom line of procedural justice is that in order to assess whether they are being treated fairly, people simply want to be treated as if they COUNT. So if I am a member of the public and Ron Davis is my police chief, I want to be able to, in my dealings with Ron, to believe by the way he treats me, that I count. And when I feel that way, I will be more willing to obey the law voluntarily; I will be more willing to cooperate with the kinds of things that the agency would like me to do; I will be more willing to engage the members of my policing agency. It turns out that people who perceive legitimacy and procedural justice in the communities in which they live are even more likely to vote and to spend money in their communities. Legitimacy is actually the precursor to democratic society.

And so, I am going to shift to the real treat of this panel, our final speaker, Bryan Stevenson. Before I end, I want to emphasize one more aspect of procedural justice. It is good for the cops on the street. Policing is an incredibly stressful job. We will talk more about that later. Cops have high rates of suicide, cops have high rates of heart disease, alcoholism, drug abuse. The job is stressful and there are all sorts of ways in which people who are hurting resort to different strategies. But we know that when procedural justice is infused within agencies, these kinds of negative consequences can be averted.

I said something about the importance of public security for the people in the communities that worry about the crime that they experience but also the potential for violence in interactions with police. I want to say something about that in the context of this last point that I made, about it being good for cops on the street. I had many, many conversations with police officers who say that the most important thing for them is to get home safe. I get that. That makes a lot of sense to me. Here is the thing: Getting home safe is not just about going home without a bullet in your arm or chest. Getting home safe is about being whole mentally, emotionally and physically. We all need that. Cops need that, and people in their communities need it. So public safety I think should be the new narrative for everyone, so that we can all be safe and whole. Thank you.