

**CRITICAL TOPICS CONCERNING POLICE AND
POLICING – PANEL DISCUSSION FROM FOURTH
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FEATURING MICHAEL BANERJEE, MICHAEL Z. GREEN, ALEXIS KARTERON, AND JI
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Professor Michael Z. Green is a member of the Texas A&M University School of Law faculty. Professor Green's scholarship focuses on workplace disputes and the intersection of race and alternatives to the court resolution process. He previously served on the faculty of Texas Wesleyan University School of Law where in June 2008 he was appointed to the inaugural position of Associate Dean for Faculty Research & Development. As the Dean for Faculty Research & Development, he highlighted the significant accomplishments of the faculty while continuing to nourish and support the development and success of faculty members as scholars and teachers. Among his many other professional activities, Professor Green is a labor and employment mediator and arbitrator who serves as a member of the American Arbitration Association's National Labor Arbitration panel, the Federal Mediation and Conciliation Service Labor Panel, and as a hearing officer for the Dallas Area Rapid Transit Trial Board. He served as Secretary of the American Bar Association's Labor and Employment Section in 2014-15. Professor Green holds a LL.M. from the University of Wisconsin School of Law, a J.D., cum laude, and an M.S. in Human Resources and Industrial and Labor Relations from Loyola Chicago, an M.B.A. from California Lutheran, and a B.S. in Electrical Engineering from the University of Southern California.

Professor Alexis Karteron is the Director of the Rutgers Constitutional Rights Clinic. Prior to joining Rutgers in September 2016, Professor Karteron was a senior attorney at the New York Civil Liberties Union. At the NYCLU, she litigated complex constitutional cases involving police reform, the school-to-prison pipeline, the First Amendment, and voting rights. While at the NYCLU, Prof. Karteron served as lead counsel in one of three cases challenging the NYPD's stop-and-frisk practices. Prior to joining the NYCLU, Prof. Karteron served as White House Associate Staff Secretary from 2009 to 2010. From 2007 to 2009, she was an assistant counsel at the NAACP Legal Defense & Educational Fund, where she litigated voting rights cases in the federal courts, including the Supreme Court. Prof. Karteron earned her J.D., with distinction, from Stanford Law School and her B.A., magna cum laude, from Harvard University. After clerking for Judge Marsha S. Berzon of the U.S. Court of Appeals for the Ninth Circuit, she was a litigation associate at the New York law firm of Fried, Frank, Harris, Shriver & Jacobson, LLP, as a recipient of the Fried Frank/LDF fellowship.

Ji Seon Song is currently the Thomas C. Grey Fellow and Lecturer in Law at Stanford Law School. Her scholarship focuses on criminal and juvenile law; in particular, her research explores the intersection of the criminal and juvenile justice systems and different institutions and areas of law. Her current project examines policing in hospitals. She teaches Federal Litigation in a Global Context and Legal Research and Writing at Stanford law School. Ji Seon received her JD from Columbia Law School and an LLM in Trial Advocacy from Georgetown University Law Center. Ji Seon holds a BA in East Asian Language and Cultures with a Minor in Music from Columbia College, Columbia University. Ji Seon was a founding member of the Asian American Criminal Trial Lawyers Association and the Bay Area Public Defenders for Racial Justice. She currently serves on the Executive Board of the Pacific Juvenile Defender Center.

[Alexis Karteron]: All right, so it seems like we're running a few minutes behind, maybe it's a good time to get started. Welcome everyone, my name is Alexis Karteron. I'm an Assistant Professor at Rutgers Law School in Newark, and I have been drafted to moderate this panel, and we're lucky to have some really interesting papers and topics up for discussion. So I'm going to provide brief bios and then everyone's going to take about 10 minutes to make their presentations, and then we'll have Q and A at the end. So starting on my left is Professor Michael Z. Green, who's a full professor at Texas A&M University. Professor Green is an accomplished scholar. He's authored more than two dozen scholarly law journal articles and book chapters. In 2013, he received the Fredrick White Scholarship Award, as his law school's most outstanding tenured scholar. He's an expert in workplace law, which he's going to talk about today from an angle that we don't usually think about when it comes to police matters, talking about black police officers and their unique perspectives, and some of the unique issues they face. To my immediate right is Ji Seon Song who is the Thomas C. Grey Fellow and Lecturer in Law at Stanford Law School. Her scholarship focuses on institutions and legal systems impacting those in the criminal and delinquency systems. Prior to the fellowship, she was a public defender in California and Washington D.C., representing both youth and adults, with a particular focus on post-disposition practices and youths charged in adult court. She's also been a Prettyman Fellow at Georgetown, and worked as a senior policy advocate for juvenile defender centers. All the way to my right is Mike Banerjee, who's a 3L at Harvard Law School. He's the Editor in Chief of the Harvard BlackLetter Law Journal. I've just learned that he's going to be starting PhD program in jurisprudence at UC Berkeley in the fall, and at Harvard he is a student fellow in the Criminal Justice Policy Program, and a student attorney in the Harvard Legal Aid Bureau. He's a graduate of Penn State University. So I think we're actually going to start with Mike. Please take it away.

[Mike Banerjee] Okay, thank you for that introduction. Good afternoon.

[Audience] Good afternoon.

[Mike Banerjee] Can you all hear me? Cool. It's a great privilege to be here with y'all today. First, I'd like to acknowledge the conference organizers for making this all possible. Those facilities workers who have kept this place so neat and clean for us, my fellow panelists, in advance, for what I'm sure will be scintillating presentations, and you all for engaging with us. I'd also like to recognize those whose work is more difficult to see in spaces like this one. I like to recognize those engaging in struggle every day against lethal police violence done unto black people, especially those black organizers here in D.C., who work with organizations such as BYP100. I hope that this work and this discussion is useful to them.

Last week, Professors Carol and Jordan Steiker wrote in the pages of *The Atlantic* about what they see as the waning American death penalty, in response to

California Governor Gavin Newsom's announcement of a moratorium on the California death penalty.¹ I should mention parenthetically that Carol Steiker is technically my boss at Harvard Law School's Criminal Justice Policy Program, I should also mention that I have benefited greatly from her work, and the work that she's done in conjunction with her brother. The Steikers saw Governor Newsom's announcement as quote "a harbinger of further to come, and perhaps even abolition of the American death penalty." Where some see a harbinger that foretells further decline, I see an omen that foreshadows further depredation. In Governor Newsom's declaration, I further see hypocrisy that demands protestation, rather than praise. This hypocrisy finds pellucid enunciation in the fact that as of today, March 22, the *Washington Post* has documented 209 fatal police shootings since January 1st of this year, 29 of which took place in the state of California.² Governor Newsom's moratorium notwithstanding, the death toll continues to rise.

Thus, unlike the Steikers, I see not one American death penalty in decline, but two equally, deadly, but unequally distributed versions of the American death penalty. And while one may well be in decline, the other shows no signs of declension. According to the Death Penalty Information Center, only 30 states in the Federal Government have the death penalty on the books, with 20 other states having done away with the practice.³ In actuality, all 50 states administer the death penalty, and all but eight states have executed at least one person thus far in 2019, including, as I just mentioned, Governor Newsom's state of California.

Most people living in the U.S. will be familiar with the formal death penalty, what I call the post-trial execution. This is an execution that follows an arrest, trial, conviction, sentencing, and usually very lengthy appeals. It's also administered by state officials in private death chambers. Most people in the U.S. will also be familiar with the informal death penalty, what I call the no-trial execution. The no-trial execution is an execution that follows no due process whatsoever, and is administered in public by local, county, state, and federal police officers. Due process protections attach in the case of the post-trial execution, but do not attach in the much more common case of the no-trial execution.

In 2018 alone, the state executed 25 people via the former mechanism, and over 1,000 people via the latter mechanism. And this is according to the best estimates that we can make, with the limited data that are available. Professor Frank Zimring, in his 2017 book, *When Police Kill*, estimated that between 929 and 1,217 no-trial executions take place every year in the U.S., in any given year, that is. While the no-trial execution continues to claim approximately 50 times more human life than the post-trial execution does, students of U.S. death penalty regimes continue to ignore the no-trial execution. Against this backdrop, Governor Newsom's declaration begins to look less like a final nail in the death penalty's coffin, and more like naiveté.

¹ See Carol S. Steiker & Jordan M. Steiker, *Will the U.S. Finally End the Death Penalty?*, ATLANTIC (Mar. 15, 2019), [<https://perma.cc/DLW3-YMJA>].

² See *Fatal Force*, WASH. POST, [<https://perma.cc/9APF-23CY>] (last updated Jan. 22, 2020).

³ See *Number of Executions Since 1976: 1499*, DEATH PENALTY INFORMATION CTR. (May 31, 2019), [<https://perma.cc/U92A-YLF9>] (the reader will note that the tally of death penalty states fell by one after New Hampshire repealed the death penalty in May, and now stands at 29).

The terms no-trial execution and post-trial execution were inspired by the work of Professors Lawrence Sherman and Jelani Jefferson Exum. Nearly 40 years ago, Professor Sherman wrote about the penal nature of police killings in a seminal article on the subject, entitled “Execution Without Trial.”⁴ Decades later, Professor Jefferson Exum wrote powerfully on the penal implications of police killings in an article that was published in 2015 entitled, “The Death Penalty on the Streets.”⁵ These important interventions aside, few in the legal academy have interrogated the penal dimensions of police killings. Neither Professor Sherman nor Professor Jefferson Exum have argued for a radical reinvention of the law governing police violence, and it is in the spirit of radical reinvention that I would like to intervene.

Unlike both Professor Sherman and Professor Jefferson Exum, I argue for the legal relocation of police killings to the death penalty context, which would trigger an Eighth Amendment analysis, rather than a Fourth Amendment analysis, when claims are raised in courts. In the Eighth Amendment context, a subjective, rather than an objective test, governs, and humanity and dignity, rather than reasonableness or reasonability, prevails. Such a relocation would ultimately bring about more coherent constitutional law, and much more importantly, fewer killings at the hands of the police. The central issue at hand is that law professors, courts, commentators, and certain elements of the general public have expressed discontent with regard to the State taking life in the post-trial context, where due process thrives, but those same people don't seem too concerned, at least not for the same reasons, if the state takes a life in the no-trial context, where due process, by definition, languishes. (By my definition, anyway.) We simply cannot hope to eradicate one without eradicating the other, as these two versions of the death penalty rely upon the same logic, namely that people are expendable, and the state can exercise the power to govern the boundary between life and death, as they do the deadly boundaries between the territorial and the extraterritorial, between citizen and immigrants, and, of course, between white and black.

The Supreme Court has interpreted the Eighth Amendment's prohibition on cruel and unusual punishment to bar the imposition of the death penalty on certain classes of people, as I'm sure I don't have to tell most people in this room, and has interpreted the same amendment to bar the imposition of the death penalty where certain offenses have been committed. Perhaps the reason that few commentators have evaluated the no-trial execution in the Eighth Amendment context is that the Supreme Court does not consider the no-trial execution to exist in the same category as the post-trial execution. In the 1989 case, *Graham v. Connor*, the court indicated that, I'm quoting here, “The Eighth Amendment standard applies only after the state has complied with the constitutional guarantees traditionally associated with criminal prosecutions,” end quote, and that all police violence claims are, quoting again, “properly analyzed under the Fourth Amendment's objective reasonableness standard.” Thus, the no-trial execution is not viewed by the Supreme Court as a punishment subject to the restrictions of the Eighth Amendment, and, while there is

⁴ Lawrence Sherman, *Execution Without Trial: Police Homicides and the Constitution*, 33 VAND. L. REV. 71 (1980).

⁵ Jelani Jefferson Exum, *The Death Penalty on the Streets: What the Eighth Amendment Can Teach About Regulating Police Use of Force*, 80 MISSOURI L. REV. 987 (2015).

much more to say about the limitations of the Fourth Amendment doctrine, I leave that to my fellow panelists.

Over the course of the last 40 years or so, the Supreme Court has carved out important categorical exceptions to the death penalty, pursuant to the Eighth Amendment, placing outside of the death penalty's reach certain categories of people and categories of offenses. First, for a quick rundown of the categorical exceptions to the death penalty based on personal characteristics of the persons who've been accused, in cases decided in 1986,⁶ 2002,⁷ and 2005,⁸ the Supreme Court held that the death penalty cannot be imposed on people with severe mental health conditions, on people with intellectual disabilities, and on people who committed a death penalty-eligible offense before turning 18, respectively. Now let's see what those death penalty-eligible offenses are, according to the court. In cases decided in 1977,⁹ '82,¹⁰ and 2008,¹¹ the Supreme Court held that the death penalty could not be imposed for the rape of an adult woman, where a homicide took place during the commission of a felony, and the person who was accused did not kill, attempt to kill, or intended to kill, and finally, where any offense, other than murder, was committed, respectively.

With the benefit of the above-mentioned Supreme Court precedent, it becomes clear that police officers routinely run afoul of the Eighth Amendment's strictures, according to the Supreme Court itself, in attacking certain civilians in ways that could lead to their premature demise. For instance, when the police kill or attempt to kill a person under the age of 18, as we have seen them do time and time again, they flout the Eighth Amendment's prohibition as articulated by the court, because the court has decided that the death penalty cannot be imposed on minors. And I think that you all get the idea.

With those arguments in mind, plaintiffs in civil rights lawsuits against police officers who have administered the death penalty could plausibly add violations of the Eighth Amendment to their complaints. That would entail claims on the Eighth Amendment under one of the aforementioned cases, probably through the vehicle of Section 1983. Plaintiffs in civil rights lawsuits could also attempt to enjoin police officers from executing civilians in the first place. All states and the federal government authorize police to use so-called lethal force against civilians, and these authorizations are susceptible to Eighth Amendment attack inasmuch as they fail to consider or to contemplate the categorical exclusions announced by the Supreme Court, with regard to the death penalty, that is.

Advocates would do well to raise these claims, even if they are sure to lose, and they probably are going to lose. And this is because, of course to the chagrin of the lawyer, and perhaps some lawyers in this room, the law will not save us—at least law alone will not save us. In order for this project to have any chance of success there must be a dialogic, reciprocal relationship, between what goes on inside and

⁶ *Ford v. Wainwright*, 477 U.S. 399, 410 (1986).

⁷ *Atkins v. Virginia*, 536 U.S. 304, 321 (2002).

⁸ *Roper v. Simmons*, 543 U.S. 551, 575 (2005).

⁹ *Coker v. Georgia*, 433 U.S. 584, 599 (1977).

¹⁰ *Enmund v. Florida*, 458 U.S. 782, 797 (1982).

¹¹ *Kennedy v. Louisiana*, 554 U.S. 407, 421 (2008).

outside of the courtroom. As advocates raise claims sounding in Eighth Amendment inside the courtroom, activists and advocates working on the same issue can engage in similar argumentation outside of the court room.

In conclusion, this peculiar and pernicious issue demands not incrementalism from law professors but radical reconceptualization, which is what the police abolitionists I work with in Boston and many others, including the activists I mentioned earlier, who work with BYP-100 right here in DC, have been calling for here. The law professoriate should listen to them, follow their lead and emulate their courage. Instead of celebrating the slow death of post-trial execution, law professors concerned with state-sanctioned killing within US borders ought to concentrate their considerable intellectual prowess on the equally dastardly and far more devastating no-trial execution. Thanks for listening.

[Michael Green] How much time do we have?

[Alexis Karteron] 10 minutes-ish.

[Michael Green] 10 minutes?

[Alexis Karteron] You can go a little over, that's okay.

[Michael Green] I'm going to invite the panelists to move from sitting down front. I'm going to be using the screen, [so] you might want to move down so you can see the screen. I really look at this particular presentation as a question of “Why Am I Even Here?” on this panel. Most of the other panelists are talking about policing and black policing in terms of criminal justice. I'm looking at it as a labor relations issue. So feel free that if you are not here because of me I will be short.

So if we think about this then in terms of what I'm looking at regarding Black Lives Matter, I've been doing a lot of research regarding how Black Lives Matter impacts the workplace, and I specifically came across the issue that I felt was important regarding how black police officers face dilemmas because of Black Lives Matter. Their unions basically are completely critical and hostile to [the] Black Lives Matter movement, and they want all the police officers to adhere to the code that we are always right in terms of what we do in favor of our brothers and sisters on the force, and then when issues come up it presents a dilemma for them.

If you remember in Charlottesville, Virginia – which is the picture down on the left what happened there – and there were questions about why the police weren't involved, why they weren't doing anything, why they were letting both sides go at this issue. I took this picture and started looking at the question of: [so] you see someone over to the left with the flag, the Confederate flag in their hand, you also see this other man here who's spraying this fire thing at him, and from a workplace perspective what you're starting to see now which you didn't used to see before the Trump era is a lot of just open hostility Where people have no problem, no qualms in admitting who they are, they're not wearing masks, they're not hiding themselves, and so the question would be if you saw one of those people [on] either side [of this

encounter in the picture] and you knew that was one of your co-workers what would you do when you went back to work?

So that's where I started and I'm writing another paper that deals with that, but then it led me to this question about what about the police officers involved. The AFL-CIO union has been under pressure because they are focusing on trying to continue to organize workers of color pursuant to Black Lives Matter, yet the major police unions are also members of the AFL-CIO. This creates a conflict and a number of the union members of color have actually asked the AFL-CIO to reject a lot of these police unions from their membership. The head of the AFL-CIO here [in this slide], talking about Ferguson, basically tries to walk the line. He basically says that Michael Brown's mother was a union member, and the person [a police officer] that shot Michael Brown was also a union member. And he's balancing both of those issues. So in terms of this [issue], the fraternal order of police – one of the primary instigators in this issue – they represent a lot of police officers throughout the country as a union [and] have basically had this three-part issue where they have basically made a lot of black officers very upset about their actions in terms of going against Black Lives Matter. And so not only did they put all this money into the defense of the police officer who shot Michael Brown, they also gave this little side job to Jason van Dyck who is a police officer in Chicago, who shot Laquan McDonald 16 times, and then they have also openly endorsed Donald Trump and his candidacy.

So for me this gets into a lot of my research that has to do with Black Lives Matter in the workplace. And I've really been looking at our employees having issues that the employers are not looking at, and the one particular issue I'm looking at here in this presentation is what do black police officers who want to support Black Lives Matter do when their own unions are hostile towards them and to Black Lives Matter. So my solution to address this is for the police officers who want to support Black Lives Matter, [and to analyze] the way that you are going to need to do this. And the police departments have some motivation to do this because of the communities they serve.

One [way] is starting [by] looking more at affirmative action in terms of the hiring of police officers in these communities in which they serve, so that you have more black officers in those communities. That the unions have their voice, but there have been a number of unions where their identity caucuses, like the Dallas Black Police Association who have come out in support of Black Lives Matter, and those voices need to be heard as well. And then finally some community training in policing might add value.

Now this picture [showing slide] is really what made me start to focus on this issue. If you look at the picture on the left, there are two police officers on the south side of Chicago, the woman in the middle is a Black Lives Matter activist, she went to two police stations in the city of Chicago and she was trying to get support for Black Lives Matter. The first police station she went to the police officer said we can't do that. Second one she went to, these two black police officers took this picture with her in support of Black Lives Matter. When the picture came out the two police officers were reprimanded by the City of Chicago Police Department. The [next slide] picture on the right involves a police officer in Mesquite, Texas, and it looks

like he is fighting with someone there with his boxing gloves, but I actually talk about him in a second in terms of a tale of two black policing matters. The other issue that made me think about this is there is a basketball player in Milwaukee, Sterling Brown, who plays for the Milwaukee Bucks who was parked improperly across two disabled parking spots in a parking lot, and late at night at a drugstore and several police officers came up on him to address a parking violation and they used severe force and attacked him and arrested him, and this is his face up here, this is what happened to him, this is again a professional basketball player for Milwaukee Bucks. In addressing this issue the police union really came out very negative in saying that their police officers were justified in everything they do, even though it took several months for the story to come out because they were trying to figure out how they were going to spin this issue. If you think about this in terms of use of force, the Milwaukee Police Association – that was the union that represented him – their whole thing in addressing what happened was that it's the city's fault that you don't provide us with enough police officers, so when we see a potentially hostile person we have to send four or five police officers out to in essence to provide backup force resulting in the attack [of Brown] in this instance.

Alright so, with that in place, you should realize there's been a ton of incidents in the workplace where employees have used and said something about Black Lives Matter and they have been terminated, disciplined, all kinds of negative actions have been taken against them, and that's what I want to spin through really quickly, because I think that's not as important as what I really want to get to in terms of the issue. The two black police officers in that first picture they were reprimanded, that police officer that I showed you to the right that was boxing with these young men in the area in Mesquite, Texas, he is a police officer who spends a lot of his time in that community, even during his off time. And when he first started there, he realized to stop the drug problem that he would go in on his off hours and sneak out into the neighborhood and come around corners and he would arrest people, and he started to get this nickname in the neighborhood, they call him Officer Blade, after the Wesley Snipes character from Blade. So he is a very popular individual in this neighborhood, they all know him. And so one day when he came out to a call some people were boxing and they were teasing him that he couldn't box. Little did they know he was actually a boxing champion. He started boxing with those kids, and it went viral. So that was an example of a police officer who was in the community, known in the community and played a good role in terms of policing in that area. I want to use those two examples of how Black Lives Matter and policing issues can be addressed in a way that's a positive way and helps black police officers deal with it. So that's all the time I want to take, and I'll leave it for questions at the end.

[Ji Seon Song] Hi everyone. My name is Ji Seon and I'm going to be talking about my project on police investigations in emergency rooms. How did I come across the topic? My 15-year-old client was shot by the police and he was taken to a hospital. Because he was also a dependent child [and] had no parents, I became the only person who could go and be at his bedside. I rushed over to the hospital, and they wouldn't let me in. I asked why, and they said, "It's because the police said you can't come up, he doesn't get any visitors including family." I knew that there

were no charges being filed against him, and there were no holds, so I asked couldn't I go visit, and they kept saying, "Because the police have a hold and there's nothing we can do. You can't see him." And of course, because I'm a lawyer, I pressed, pressed, pressed and finally got into the room, but then it also became very clear to me that a bunch of conversations had happened between the medical staff and the police officers about what had transpired, all from the police officers' point of view.

This sparked an immense curiosity about what happens in the emergency room. As a public defender I've read many a police report, and there may be one line that says the person was medically cleared. I took that line at face value. But as I began looking into police in the ER, I realized that that one line could represent a vast range of actions.

What I hope to cover here are the following: what do I mean by police investigations; how does the law permits these investigations to happen; what about emergency rooms make it a particularly susceptible place for this law enforcement and medical convergence? And finally, what are the consequences for this convergence?

These investigations cover a whole range of conduct. There is no dataset that collects this type of information, though one hospital that I note in my paper has begun to informally collect data about their interactions with law enforcement. But police investigations in the emergency room can be gleaned from other sources; from newspaper articles and from medical literature. Police and hospital policies also allude to types of police investigations. And finally, court opinions often detail how police conduct investigations in the ER.

So what do I mean by investigations? This can include a police officer entering an ER and taking personal items such as bloody clothing, questioning and interrogating patients, doing show up procedures maybe by bringing the victims. Or investigations can involve a more fluid process, where police officers put two and two together by virtue of their access to the ER and start developing suspicions against a person. And then there's another category where police officers bring in people so that medical personnel can help them access evidence from a person's body. These include cases where police ask medical personnel to conduct forced blood draws in drunk driving cases, or retrieve drugs from bodily orifices. They may also seek assistance from medical personnel in gunshot wound cases, where police need tangible evidence that connects this person to a crime. Police officers can also bring in people who become injured as a result of force by police.

I've also talked to a fair number of emergency doctors in different jurisdictions, and they bring up what I categorize as softer forms of police investigations, or ones where no case – civil or criminal – results. One doctor told me about a person who was a homeless person known to be frequently outside the hospital. He was stopped and frisked by the police. In the course of that interaction his arm was broken by the police and then he was brought in to the ER and handcuffed as if to indicate that he was under arrest. The doctors set the arm and the police would not leave the side of the patient during the medical procedures. But at some later point, the police officer miraculously disappeared. The hospital did not leave a name, and yet you have this person who is left and is treated as a suspect, his arm broken, but then let go.

How are these investigations permitted under law? [H]ere I focus on two specific issues, and I use the Fourth Amendment as the fulcrum: how police are allowed into the emergency room in the first place? And then two: [how can] police use medical personnel essentially as police agents.

How are police allowed in the emergency room? Courts have essentially deemed emergency rooms as public spaces, or at least "public for police." Though courts recognize that ERs are not public in the same way that sidewalks are public, they nevertheless say that they are public for a few reasons. One is that permission is granted by reason of emergency—police are emergency first responders so they are already there. Because they play this emergency response role, they are then given access. But this rationale only gets you so far. The emergency response rationale may get you to the ER door but by that point, the emergency vis-à-vis the police officer's role has ended. Another reason that's given is that permission is given by the hospital letting them in, or not objecting. This stands in for consent to enter. Yet this rationale flattens the patient confidentiality aspect of the medical care profession, and it also presumes cooperation or at least acquiescence (when sometimes it might just be that the doctors and nurses are just used to police presence in an emergency room). I also talk about statutory permission. Laws like mandatory recording statutes that require certain offenses to then be reported to police are often cited by courts. The logic is that it's just common sense that you would then get a report, and police will show up in the emergency room and conduct an investigation. These laws have been subject to much critique in the medical profession about whether that hinders people from showing up to the hospital, because they are afraid of being arrested.

Moving on to how police use medical personnel as agents. What you find there is that the court tacitly allows this kind of use of doctors. What you find is that the courts have said for decades that modern methods of medicine are crucial in the crime-fighting enterprise of police officers. I outline a series of cases that presume that medical professionals are going to be participating in helping police officers in their investigations. And this is buttressed by other laws providing immunity to physicians and other medical personnel who cooperate with police.

Where is HIPAA in all of this? Many may think that HIPAA would protect patients against police overreach. But HIPAA has a Law Enforcement Exception. HIPAA says there is an exception to HIPAA if there is some law enforcement interest. In practice, though this is not entirely contemplated by the statute itself, is that hospitals and medical personnel give law enforcement wide deference.

I want to take a step back and point out the unique space ERs occupy in this country. In 2015, when the population was estimated to be a little over 321 million, there were about 136 million visits to the ER. In plain terms, a lot of people use the ER. Certain demographics use the ER even at higher rates, such as African-Americans, and those who have Medicaid or Medicare or are uninsured use the ER more frequently as their primary source of medical care. In addition, there is a concentration of violence and medicine that happens at the ER. So from the perspective of law enforcement, there's a whole lot of information, potential information they can be gleaned from this one, concentrated location. Moreover, police may be in ERs not just because they accompany people to the hospital or to

investigate, they may already be there as security or because they are bringing in people from the jails or prisons. It is also worth mentioning that the ER as we now know it is itself a relatively recent invention – it wasn't until the 1970s that you started getting ERs to be a routine and formalized part of the hospital.

There is also strong alignment of interests between law enforcement and the medical profession, which you can see in a case like *Ferguson v. State of Charleston*. This is the Supreme Court case that began with a nurse, Nurse Brown, who decided to roll out a program to test pregnant women for drug use, and then if they tested positive to have them go through a police and prosecutor-sponsored diversion program, essentially arresting them after they give birth. Most of these women were African-American.

Why do we care? I focus on two things: there is a complete vanishing of privacy and dignity that happens in this space. This is particularly when you consider that privacy and dignity are important to the medical profession. The values of privacy and dignity are everywhere when you step into the doctors' hospital. It's all over the hospital billboards; you even have it in the names of health companies.

Moreover, this dominance of police and law enforcement norms is a burden that is shouldered in particular by communities of color. They use the ER more. This type of policing also occurs more in urban areas. In conversations I've had with urban ER doctors, they say, "I see them [the police] all the time, and we get to know them on a first name basis."

There could be some proposed fixes, even though no one or combination will completely solve the problem. For example, Bellevue Hospital has very detailed guidelines that go through the types of things that could happen in terms of abuses of privacy and dignity on the law enforcement end, and take those into account. I think I'm out of time, so thank you.

[Alexis Karteron] Hi everyone, I'm happy to be here, really interesting presentations so far. Like Ji Seon, my paper stems from a case that I worked on in practice, which was about policing in private apartment buildings in New York City. In particular, most of you I'm sure have heard of the stop and frisk abuses in New York City in the black and Latino communities. My case was in particular [was] about stop and frisk in these private apartment buildings, which was really out of control—except it wasn't just stop and frisk. It was also trespass arrests of people who weren't necessarily trespassing. People were getting arrested when they were going to check their mail or do their laundry, having their ID checked as they got in an elevator, a whole host of practices that we know just don't happen to people of means. They basically don't happen to white people at all. But they were happening quite a bit to poor people of color in New York City.

And one of the dynamics that I uncovered in working first on litigation, before working on this paper, was a lot of kids really didn't get to be kids once they reached a certain age. This is what Kris Henning was talking about this morning, for those of you who were at the panel or know her work. Once kids reached 15, 16-ish, they really didn't get any leeway any more, they were really treated like they were criminal suspects all the time. They were stopped all the time, they were searched all the time, they were arrested all the time.

So in this project I tried to analyze why this was happening so much – not just in private apartment buildings, but also in public housing (which was also the subject of a large litigation in the Southern District of New York). I looked at both criminology literature about policing, which I have to say has been a really interesting deep dive. It sounds kind of similar to [Ji Seon’s] work looking at medical literature, because it’s these two different worlds that aren’t talking to each other. Criminologists talk about crime and what drives crime down, [but] they don’t really talk about law. They talk about things like different practices that police engage in, [which] didn’t lower the crime rate, [which] didn’t make a difference, but they don’t really pay attention to whether the police are complying with the core [legal requirements when doing] them.

[O]ne of the things that I’ve done on this project [is] to look at the Fourth Amendment law and how it impacts policing practices in public housing, [police practices] in private housing that’s policed like public housing, and how the Fourth Amendment drives some of those practices. Overall, I concluded that the notion of the home is sacred, which is one we hear quite a bit in Fourth Amendment law . . . really just doesn’t apply in public housing and private housing.

Also, there’s been a lot of talk in recent years about smart policing – how we are supposed to get smart about our policing. [The basic idea is that if] we deploy policing in an appropriate manner then we’ll both drive down crime and respect people’s rights. But the truth of the matter is that smart policing doesn’t work all that well for people who still live in those places that may . . . be “hot spots,” [and] people who live in those places that may suffer from high crime.

So I started by documenting . . . the existence of this excessive attention that police pay to public housing and similar private housing. It seems as though American police departments are fixated on public housing in a lot of places. And of course that’s not to say that there is not public housing or some private housing where there are crime problems – of course there are – but in part because of federal funding from HUD, and in part because of the specialized attention that’s really come from HUD and other places, police have really, really focused on public housing in a way that doesn’t necessarily seem to accord with the actual crime levels that [are] there. Part of this is related to the rise of hot spots policing, which again is one of these kind of smart policing concepts that’s gotten really popular. And it sounds really good, right – this spot is hot, so you put more dots in the hot spots, you put more cops on the hot spots. And in truth “hot spots” is a little more than that—it’s more than just putting cops on dots Police departments, they say that [using hot spots] is identifying [crime] on a micro level . . . a really, really small level. [We’re] talking particular buildings on particular blocks, [and] looking very carefully at spots that are criminogenic, and then responding accordingly. And that can be in a number of ways. It just could be by increasing the police presence in those hotspots, [or] it could be by adopting particular strategies for those hotspots. And in the public housing context, police departments have very often used their really significant authority in those spaces to adopt unique programs there.

So I wanted to give you a couple of examples. One is the use of trespassing lists. So once people have been found to engage in some criminal activity, sometimes there are apartments in public housing departments that engage these trespassing

lists, and say, “If this person is ever found on the premises, they should be arrested by the police.” [Loitering statutes operate similarly.] In Oakland last year, there was a lawsuit filed against the housing police department, [which is a] specialized housing police department. Based on the loitering statute that was in place there, it seemed that the Oakland Housing Authority Police Department was basically arresting people willy-nilly whenever they were hanging out. Any time there was a large gathering of people, there was police attention that was directed towards those large gatherings. People were at the very least spoken to, it's unclear if they were arrested. [In one example, this happened when] there was a funeral that was going on. So really, just any congregation of people is something that got attention.

Another example is from Washington DC, and this is a little bit of an older example, but I think it's an interesting one because it clearly points to the special legal authority that's being put to use by police in public housing. That program in DC was called Operation Bark and Bite, which was about dogs in public housing. Some people thought [dogs] were a nuisance, and the public housing leases barred dog ownership. [T]his created entree for police to engage with people who had dogs on the premises. And very often they would get tickets or get arrested or that kind of thing. And I don't raise this to say that arrests are never appropriate in these circumstances, but what's interesting about them is the way that public housing and private housing have been subjected to this unique specialized attention just because of their status as public housing or some kind of private housing program.

In Houston they similarly had a program that focused quite a bit on public housing. There they would use apartment sweeps –this is again one of those examples that jumped out at me reading criminology literature – where they [say] “apartment sweeps, those worked,” and I [thought] “Wow!...that's not my cup of tea.” But those are the kind of practices that have been in place.

So what does the Fourth Amendment have to do with this, and how does the Fourth Amendment drive some of this police activity? So we've all heard in recent years about Barbecue Becky and similar people who call the police on mostly black people for doing not much of anything. Well, it turns out in public housing, and a lot of other places, you can do that because there are all kinds of rules that are in place in public housing that aren't in place in other places. [These rules] might have to do with barbecuing, [they] might have to do with ball playing, might have to do with the way you take your garbage out. And in some places compliance with those rules is managed by leases, and police departments have agreements with public housing authorities saying that they can in fact enforce those rules. And so it's very, very easy to find violations of those very many rules, and . . . that allows police to stop for anything pretty much. And the Fourth Amendment seems to allow this very clearly. I did a survey of some of the case law in this area, [and] it's not 100% clear that courts have really blessed stops on the basis of civil infractions, but there is at least some suggestion that the courts are widely accepting of the idea that police can conduct stops even for these kind of minor rule violations.

Another doctrine that works to promote stops is the use of the high crime area designation. So all of you who studied the Fourth Amendment know that if the place is deemed to be a high crime area, that is a factor that can be considered in establishing reasonable suspicion. And again, in part because there has been such

outsized attention on public housing, you can imagine it wouldn't be hard to find many, many, many examples of courts saying, "Such and such is a public housing project," and it allows this very easy way for police to engage with people. And then Fourth Amendment law [around] arrests is also very generous to police, as we probably all know. Arrests for minor offenses have been blessed by the Supreme Court in the *Atwater* case. Some district courts seem to have questioned whether that applies, whether that rule allowing arrests even for the most minor crimes applies to noncriminal infractions, but it seems pretty clear that most courts are allowing that to happen. I have a client for example, this is my favorite example, he got arrested once for taking up two seats on the subway. Now we all have done that, everybody in New York City has taken up two seats on the subway at some point, and it's not a rule that's enforced very often, but it is a rule that can be enforced and is enforced sometimes...even [by] an arrest.

[Also], and this has come to light in a set of cases about the search into arrest doctrine, . . . we all know about frisks. [The standard for frisks] is not terribly high once the stop is underway, but very often there are also police officers who are searching people on the idea that they have the authority to arrest. So basically there are cases in the Second Circuit and other places where officers are saying, "I stopped you for riding your bike, or running a stop sign on your bike, and I could arrest you for that," because now there is this *Atwater* rule. . . . [Next, they say "I'm not going to arrest you, but I'm going to search you because I could have arrested you." So it's basically searches taking place on the right to arrest. The Second Circuit actually said it's okay. Now, they haven't quite come out and explicitly said, "We think this is a wonderful practice," but they have not suppressed the evidence that was acquired as a result of those searches.

So all of these practices add up to people in public housing and some places really living under siege, people feeling like they can't leave their buildings, people feeling like the police have quite a bit of control over their lives. And in the paper, I talked some about New York City [public housing developments] in particular. . . . I won't go into details of that now, but I will talk for a minute about some of the costs of these practices. . . . [O]f course we all know about collateral consequences flowing from convictions. We don't talk about collateral consequences flowing just from arrests, or even just from these negative interactions with police officers. But they create alienation and distrust in many communities. They also, in public housing, make people uniquely vulnerable to eviction, because federal law requires public housing to include these provisions saying that you can be evicted if you or anyone in your household engages in criminal activity. So that's not even a conviction – just engaging in criminal activity. There are also community-wide harms, [as] communities that are already marginalized, already don't have a lot of political power, are less able and motivated to engage in the political process. And again it comes back to the idea that the "Home as a Castle" trope really just is not true in these communities where there is really excessive policing. I'm out of time, so I'll leave it there, thank you very much.

Do you have questions?

[Audience] Question for Professor Green. What is it that makes a police officer associating with Black Lives Matter so controversial? What's their stated reasons for reprimanding these officers? Is it just because Black Lives Matter could be described as a political movement, so it takes accounts of inappropriate politics on the job, or is it something more pernicious, like saying it's associating with a hate group?

[Michael Green] So in the example that I have with the city of Chicago police officers, they argued that it was political activity. They analogized, although it's not a good analogy to me, they analogized it to them having disciplined a white Chicago police officer for carrying a Trump button, so when the two black police officers took the Black Lives Matter poses, that was the argument as to why they disciplined them. I don't know if they considered it pernicious. They just considered themselves trying to be consistent in their disciplinary actions.

For me the concern is more even beyond just how the employer responded...how the pressures that they would get, either directly or indirectly from their fellow police officers and their union to not engage in that activity. The fact that the police department took that position is why it became national news. What they have to deal with...I've talked to some police officers. Now in large cities like Dallas and both Chicago and Los Angeles...they have to deal with daily pressures from their fellow police officers, and any kind of support, even if it's in their own community. So it is pernicious in that way. I don't know if it is pernicious in terms of the employer perspective. They just consider themselves trying to be balanced for some reason, even though I don't think it's a good analogy.

[Audience] Thank you.

[Audience] Professor – when you described officer Blade I was actually pretty terrified, because he sounds like a vigilante. He is a vigilante. I think you pretty much described him as a vigilante. Take off his uniform and then go patrol black poor neighborhoods looking for people and arresting people who were engaged in criminal activity.

[Michael Green] Let me say this part: I only had so much time, so that was communicated as when he first started there that he was trying to help out members of that community...there were actually people in the community who were concerned about drugs, so he would help out. But that was when he first started. That's how they got to know him, that's how he got the nickname Blade. For coming out of the corners at night. But I don't think he was – I personally don't think he was, from the story I heard, that he was trying to be a vigilante. He was more trying to help the citizens in that neighborhood who were concerned about the drug dealing that was going on, and he was trying to assist them.

[Audience] Well, that is what Batman does and he is a vigilante.

[Michael Green] Oh yeah, well yeah. If that is what you think.

[Audience] That is clearly a vigilante.

[Michael Green] Right, I don't disagree with you on that part about what Batman is. I just think that their narrative about this officer they call Blade in Mesquite, Texas wasn't a vigilante narrative, it was more positive about [how they] were happy that he was helping, and because he got that--

[Audience] I love that name [Blade], but that is certainly a vigilante. So it sounds like the idea [is] that black officers engage in vigilante behavior in order to build trust in black communities. There can be a situation where there is a picture of him boxing with someone in the neighborhood, and that touted as an example of community policing, and that we should replicate that, right? Because the moment the other person hits too hard, one of them has an opportunity to then escalate, and the other person does not, and then the cop is probably not even...So I was curious about why that's an example [of] why we need more black police officers engaging in vigilante behavior, because when the terms of the debate or argument or friendly game of boxing changes one of them has a clear out.

[Michael Green] Well I certainly agree if you term it vigilante behavior – that's not what the community people were calling it. They were engaging with him as someone who had become a part of their community and was a positive role model in their community.

[Audience] Well, to me this seems like the definition of being a vigilante, righting criminal activity on your own as a private citizen. Isn't that being a vigilante?

[Michael Green] No that is not what happened here. I don't disagree with your analysis on it – I am just saying how they looked at it as he was a positive person in their community. They did not describe him in terms of a vigilante. And in fact when they say he came out, on the day he came out, he came out because there was a call for a disturbance at a party around Memorial Day. And when he came out they all knew him, and they said, "There [is] no problem here," and he said "Okay," and they said they "were boxing – do you want to try and box?" And they have a video of it. It went viral.

In terms of what they were doing, they were joking around with him and laughing, and they weren't doing anything serious in terms of the boxing, it just showed that he had a connection to the community. That's my suggestion, that you have police officers that have connections to the community, not ones who just come out and don't know the people in their community, don't have any feeling about those they are trying to serve and protect. That's what I was suggesting was the positive of it. But I understand your suggestion about how it could be interpreted another way. I don't know if I like the Batman analogy.

[Audience] So a great panel first of all, and I just want to turn for a second to your paper “Emergency Investigations.” So I have so many questions but I’m going to live with myself. I ended up thinking about whether there is any kind of comparative analysis on what Britain does, what the relationship is [between] police going into emergency rooms [in] similar [nations], and whether other countries have found different ways to preserve the privacy, and help privacy rights of the patients? And then the second question is, could you imagine a patient bringing a civil suit for invasion of his or her privacy?

[Ji Seon Song] So I have done some research in this area, but I will answer only in the one place where I found it particularly relevant. So in the mandatory recording statutes, the US has had them on the books for a very long time. New York state was the first in 1926 to pass a law requiring a doctor or a hospital to report a gunshot wound to the police. And then Massachusetts quickly followed, and now you have basically almost all 50 states with these laws on the books, except certain more gun progressive jurisdictions. Canada only recently has started implementing those reforms – I think the first one was in 2010 in Ontario. In the US, there has been little documented debate about these laws--there’s a 1926 article from JAMA where doctor writes, “A gunshot, anybody can tell it’s a gunshot wound, [including] many people before that person gets to me. Why do I have that responsibility, when I have other ethical obligations to a patient?” But that’s really it. Versus in Canada. Though the laws are now all over Canada, preceding these laws was a much more robust conversation about these kinds of laws...

Second question – there have been some suits, [Section] 1983 cases where they bring claims against the police and the hospital and the doctor. Sometimes the doctor gets qualified immunity, because they say that he is actually a state actor, because he’s acting at the direction of a police officer. They say things like, “The doctors are not Fourth Amendment experts,” so if they think that the police officer comes, and then does something reasonable according to the police, then that’s good enough. What I find interesting is that there has been no litigation actually on the HIPAA law enforcement exception itself. Remember that a HIPAA violation doesn’t allow you to bring a private cause of action under HIPAA; you only agency enforcement action. I’ve combed through some of the data, but there’s really no way to separate out what might happen from a police encounter. I would imagine people who are in that situation are probably not following through with a DHSS complaint, or a DOJ complaint. I did find [one case with] about the HIPAA exception. But they lost on standing grounds, so I think that the issue was still very alive.

[Audience] So I had a larger question that I feel like it encompasses a lot of what you guys have probably researched, and I was wondering if anyone could speak on it. So we’ve sort of talked about this in the previous policing panel that I was participating in – [can] anyone update us or give us a little insight into what the state of things [are] in terms of either completely restructuring how policing is done in this country, or abolishing it the way that it exists outright? There is a sort of movement that’s happening now calling for police abolition, but I think it’s more realistically a reframing of just the way policing is done generally...[you know,]

cops with guns giving parking tickets for example. Why does that make sense, things like that? And so you reminded me of it by talking about the folks that are patrolling these “high crime areas” and the young kids that are knowing to assume the position, and knowing to behave in this way. So I wonder if anyone could speak to any of the movement out there that's happening in that regard, if any at all? So I know that's really broad.

[Alexis Karteron] I can only say, well I can't say very much, but I would say . . . maybe I should let Mike respond to this, he's talking about BYP 100.

[Audience] It seems that he was trying to around the edges of this very large thing that is really flawed.

[Mike Banerjee] Well, actually, I think probably the person most in touch with that movement is sitting right in front of me: it's Dereka. I don't want to put you on the spot, but with regard to reframing how policing works, that's not my project, that's not the project that the folks I work with in Boston have adopted. Their project is really not against police just because there is something called police, it's against the act of policing. So in Puritan Massachusetts before there was a modern police force, there was public policing: the church was policing, neighbors were policing each other. And so if we go back, if we were to abolish the formal police, the modern police force there would still be policing. So that's the mode of engagement that I'm familiar with. But with regard to their specific projects, it must vary depending on where one is. A project in Boston is going to be much different I think than a project in DC, and what goes on underneath the banner of police abolition is going to vary across the country I think.

[Audience] Mike, I had a question for you and I apologize for coming in late, so maybe you already addressed this. So I hate the Fourth Amendment regulation of police violence [which], I think, further screwed it all up. I wonder about your response to a concern I have about that, and that the police don't engage in punishment, or at least I don't think we want to conceptualize police as engaging in punishment. Because if we do, yes, maybe we get to regulate legal force using the Eighth Amendment, but that also might mean that police can then claim some authority to use force to deter, or to incapacitate, or even retributive justice. And I get really uncomfortable with that. So can you draw a line between adopting the Eighth Amendment for lethal force, but also saying at the same time, we are not authorizing police to engage in punishment here, does that make sense?

[Mike Banerjee] Yes it does, and thanks for the question. I'm cooking up a penal theory of no trial executions, and I'd be happy to walk through that, but as far as the court is concerned – and people in this room will be familiar with the *Mendoza-Martinez* factors, [or] I guess now it would be the *Kennedy-Ward* test – [there] is a two-step amalgamated version of it. Larry Sherman in 1980 went through those factors and said under these factors it clearly constitutes punishment when the

cops kill. So using that, I definitely don't want to authorize the cops to punish any more than they already do.

The idea here is to make policing as it's done today by police forces untenable, and for that very reason my friend Dwayne Wright, who was in the back of the classroom and dipped out, mentioned to me is why courts won't adopt it. But the idea here is to make policing untenable. That's what's at the core of it. [It's] certainly not to further empower them to punish and so on—it's to name what they already do is the idea here. A change of consciousness is what I think is needed, and in order to do that we have to name what's going on, and that is that cops punish people. When you get pulled over and the cops rip you out of the car and force you onto the hood because you didn't call them “Sir” or whatever else, how is that not punishment? It's hard treatment based on what one did or didn't do. So anyway, and there's much more to say about that, but I hope I answered the question in a roundabout way at least.

[Audience] This is a question, or maybe more than an observation for Ms. Song, or maybe it's a question: does your project, or might it, draw on some of the arguments over what spaces should be safe for undocumented immigrants?

[Ji Seon Song] So that's interesting. I was just talking to the policy director at a state AG office, and this topic came up, and she responded, “Oh I wonder why we don't introduce something at our legislative session about how police investigations just stop at the ER door.” The Bellevue protocols also deal with ICE and there is a concern that these police officers are coming in and getting other information. The hospital I observed also had law enforcement policies that had the effect of discouraging people, including undocumented people, from obtaining hospital services.

[Audience] Can I just say something? I want to talk to you about this [situation]. So embarrassingly last night my son and I were playing tag, and he threw a pillow at me I threw it back and I had to take him to the hospital to get stitches. When I went to the registration desk, they redirected me to the police officer who said I had to check in first before I could even talk to him.

[Ji Seon Song] Wow that's interesting.

[Audience] And so I said, “Why am I talking to a cop?” They said, “Oh, that's just a procedure.” I had to hand in my ID before I can even get in to talk to the--

[Ji Seon Song] That sounds like it was not--

[Audience] That was last night.

[Ji Seon Song] So the hospitals, some of them contract out to Public Safety private agencies for security. They prefer off duty police officers, because if the

situation escalates and that police officer can then draw upon everything that they have as a police officer role. Other ones have their own police department.

[Audience] This isn't really special police. It shifted...it was like a regular PC.

[Ji Seon Song] And I'm wondering what happened, because I don't think that's standard, That's another reason why I say the ER is not actually public. There are very, very strong security measures at both the ambulance bay and in the front entrance to the ER. When I was observing one night, this woman got shot down, and came running up the hill to the ambulance bay, and for some reason managed to get in through the ambulance bay triage. Everyone was more concerned about the fact that she made it through those double doors than the fact that she was shot. I can imagine someone, with maybe a much more lax perspective in the ER saying, "Oh, here's a kid with an injury, it's a reportable thing, let's just tell the police officer now." Because these channels between hospital staff and police are so fluid. Most 911 dispatches are in police departments, so when you make a 911 call even if it's maybe not a police emergency, it can turn into a police incident.

[Audience] So I was just wondering...you said that there are lease provisions in public housing that if anyone in the house engages in criminal activity they can be subject to eviction. So since there are also agreements with local police enforcement to enforce those minor violations, if you are found to be in minor violations of taking out your trash or whatever and a police officer stops and frisks you, does that count as engaging in criminal activity, whether or not the actual violation is criminal, or is it just the fact that you are being stopped by a police officer give grounds for that eviction?

[Alexis Karteron] I would say if it's something as minor as taking out your trash improperly or something like that then probably not. So federal law requires public housing authorities to [include a] lease provision for public housing that [requires the option to evict on the basis of criminal activity]. But the concern is, in part, that these kind of minor rule violations give entree for other police engagement. So you might have some kind of encounter, maybe it's technically a stop, maybe it's not, and that leads to the police searching your pockets, or searching your bag, or asking if you have anything on you that you shouldn't have. And that turns into, you have weed or you have something else, and all of that can lead you down the path toward conviction. And that really depends in part on the public housing authority where you live and how strict they are about enforcing those provisions, because there is not an automatic eviction required, but some housing authorities are more strict than others. So you might have heard from Deborah Archer this morning, who has written a paper about "crime free ordinances" Depending on where you are, depending on, again, how strict that public housing authority or the landlord is, they might take you down this path of eviction. But really the crux of my paper is because there is such hyper criminalization of things that are happening in public housing and some private housing, that leads to these encounters.

[Audience] So do you think with that increased police presence in certain hot neighborhoods or whatever, do you think that's in a way violating covenants, or any other sort of intersection with property rights when it comes to these hyper-policed areas, or is there any recourse based on that?

[Alexis Karteron] That's a really good question. As far as I can tell those covenants really seem to apply to your apartment and not to the common areas. And so again, this is one of these things that is something that just gives poor people different rights to everybody else. So most people wouldn't tolerate being stopped [or] being arrested for smoking. I had a client who lived in public housing, and he smoked—he shouldn't have smoked [because] he was 16—[but] every time he was smoking in the lobby he would end up with a ticket, which was returnable in criminal court. [He had to miss] school to answer for this ticket for having smoked in his lobby. But those kinds of covenants really go to your private space and not so much the public spaces. And so, kind of like the emergency room, the police really end up being entitled to kind of do whatever they feel like doing in those common public spaces, even if it's the hallway outside an apartment door.

[Audience] Very quickly, one of the reasons I think your project is so important is because there is this general move to look at decriminalization as that's manifested in, for example, formal criminal laws, and move traffic infractions from criminal to civil. That doesn't get a question of whether or not police officers can still stop you because of an infraction, and puts your neighborhood into sharp relief and other interests manifesting itself. I think it's part of this overarching concern that decriminalization without addressing the problem of police power just gets you halfway there, so I encourage you to think about it in your report.

[Alexis Karteron] I have thought about it and I have cited multiple papers of yours!

[Audience] Because I'm actually not square in this space, I was looking at the paper by, I forget his name, who looked at some traffic--

[Alexis Karteron] Jordan?

[Man] Yeah, Jordan.

[Alexis Karteron] Yes, I cited that. Yes, I completely agree with you. And part of what I talk about is different ways to approach the problem. I have really basically no hope about the Fourth Amendment getting any better, but I am hopeful that there can be other ways to regulate police activity, perhaps at the local government level, just to say, "You may not enforce this, you are out of business of enforcing these housing rules," for example . . . because cops don't need to be involved in deciding whether you parked in the right place or are playing ball.

[Michael Green] I apologize, if anybody has any more questions about labor aspects feel free to email me, I got another session that starts at 4:55.

[Alexis Karteron] I think we're out of time, so thank you.