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# PROSECUTORS AND OFFICER-INVOLVED FATALITIES:

A FORCED EVOLUTION FROM  
TRAGEDY TO ADVOCACY

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ROY L. AUSTIN, JR., VALERIE BELL, AND JOHN J. CHOI  
FOREWORD BY J. SCOTT THOMSON  
INTERVIEWS CONDUCTED AND TRANSCRIBED BY ALLISON GOLDBERG

A Paper in the Series on:  
Reimagining the Role of the Prosecutor in the Community

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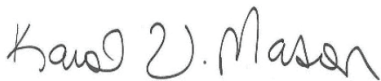
# A Letter from the Co-Chairs of the IIP Advisory Board

The Executive Session on Reimagining the Role of the Prosecutor in the Community (Executive Session), hosted by the Institute for Innovation in Prosecution at John Jay College of Criminal Justice (IIP), is guiding high-level culture change in the field of prosecution. Through a series of facilitated convenings and conversations spanning three years, the Executive Session brings together the foremost experts in the field of prosecution – elected prosecutors, legal professionals, scholars, policy experts, and individuals directly impacted by the justice system.

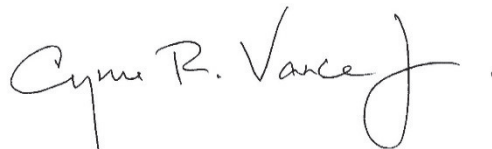
The collaborative research and engagement that informs the Executive Session enables a thorough dive into some of the most complex topics facing prosecutors and their communities: reimagining the role of the prosecutor in a democratic society; producing public safety while reducing harms created by the criminal justice system; and addressing the legacy of racial inequality and structural injustice, to name a few. In order to disseminate these conversations into the field, Executive Session members partner to undertake research and author papers, with an eye towards developing innovative responses. The papers are based on the opinions of the authors, available research, and insight from Executive Session members. While the papers do not represent a consensus of all members, they have been informed by critical engagement and collaborative discussion amongst members. The expertise and diversity of members provide a nuanced lens to some of the most pressing topics in the field of prosecution, and to the criminal justice system overall.

The Executive Session and the papers emerging from it are intended to uplift the evolving role of prosecutors and their power to facilitate the creation of an increasingly equitable and effective American criminal justice system.

For further information about the Executive Session on Prosecution or the IIP, please write to [IIP\\_JohnJay@prosecution.org](mailto:IIP_JohnJay@prosecution.org).



Karol Mason  
President  
John Jay College of Criminal Justice



Cyrus Vance, Jr.  
District Attorney  
New York County, New York

# Foreword

## J. Scott Thomson, Chief of Police, Camden County, NJ

As a police chief, I know first-hand that there has been no challenge more urgent, nor solution more elusive than addressing officer use-of-force. It's what keeps us up at night. The only true pathway forward on this issue is to work hand-in-hand with our communities and our partners in law enforcement, prosecutors.

Too often, our interests are falsely placed in opposition to one another – as if acknowledging that any loss of life is a tragedy is counter to saying that at times force is necessary; as if prosecutors investigating instances of use-of-force means they are not partners in ensuring public safety. We have a duty to dispel these myths, and to acknowledge that in fact our interests – communities, police, and prosecutors – are inextricably linked.

This paper does that. It tells the unfathomable pain of a mother who lost her son to police violence; the considerations of a prosecutor who charged an officer for the death of an African-American man; the imagining of a system that better realizes our shared goals – justice, trust, and human dignity.

My views of my mission and these goals evolved as a front-line police officer on one of America's most challenged streets, Camden, New Jersey. When I truly started to hear the community's concerns and desires, I realized that being a community-builder first resulted in greater neighborhood safety than by solely being a crime-fighter. Working with local residents to reach our common goals of public safety shifts our priorities from enforcing laws – at times by force – to building trust – by walking the beat, making human contact, asking genuine questions of curiosity rather than suspicion; by measuring how many people are sitting on their front steps and kids are riding their bikes, rather than by how many drugs we seized, arrests we made, or summons we wrote. We learned that by investing in training and creating a culture in which officers slow things down and de-escalate situations, we can reach safer outcomes for both officers and the public – a win-win. These values are captured in PERF's 30 Guiding Principles on Use of Force, a guide for police, and the IIP's Toolkit on Officer-Involved Fatalities, a resource for prosecutors.

This paper expands upon these guidelines, and provides the human narratives underpinning these values. It tells the stories of those directly affected by this issue on all sides. It shows how there is an individual and family behind each statistic – critical data we are still seeking to capture, yet often fail to absorb – and the tangible consequences of a loss of life and a lack of transparency or accountability. Such shortfalls shake the foundation of our democracy and impugn the legitimacy of society's guardians. This paper sets the pace of urgency and gives practical guidance for prosecutors, police, and communities to address these tragedies.

As I think about how hearing these stories earlier would have affected my own journey on the force, I imagine the power this paper could have on the field. As police and prosecutors consider how to build community trust in order to enhance public safety, I encourage them to share this with their departments, offices, and communities.

# AUTHORS

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## ROY L. AUSTIN, JR.

### Partner, Harris, Wiltshire, & Grannis LLP

Roy L. Austin, Jr. joined the D.C. law firm Harris, Wiltshire & Grannis LLP as a partner in 2017. Mr. Austin began his career as an Honors Trial Attorney with the Criminal Section of the Civil Rights Division investigating and prosecuting hate crime and police brutality cases around the country. In 2002, he joined the D.C. U.S. Attorney's Office where he prosecuted domestic violence, adult and child sexual assault, human trafficking, homicide and fraud and public corruption cases. In 2009, Mr. Austin returned to the D.C. U.S. Attorney's Office as Coordinator of the D.C. Human Trafficking Task Force. In January 2010, Mr. Austin was appointed Deputy Assistant Attorney General (DAAG), Civil Rights Division where he supervised the Criminal Section, and the Special Litigation Section's law enforcement (police departments, corrections and juvenile justice) portfolio. Among numerous other matters, Mr. Austin worked on cases involving the New Orleans Police Department, Missoula law enforcement and the Maricopa County Sheriff's Office. In March 2014, Mr. Austin joined the White House Domestic Policy Council as Deputy Assistant to the President for the Office of Urban Affairs, Justice and Opportunity. In this position, Mr. Austin co-authored a report on Big Data and Civil Rights, worked with the President's Task Force on 21st Century Policing, helped develop the Police Data Initiative, worked on expanding reentry assistance and was a member of President Obama's My Brother's Keeper Task Force. He has served as an adjunct trial advocacy professor at George Washington University Law School and the Washington College of Law. Mr. Austin received his B.A. from Yale University and his J.D. from The University of Chicago.

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## VALERIE BELL

### Mother of Sean Bell, Author of *Just 23*

Valerie Bell is a published author and activist dedicated to combatting police violence. Ms. Bell's youngest son, Sean Bell, was killed in a hail of 50 shots fired by New York City police officers on his wedding day, November 25, 2006. He was just 23 years old. Since this loss, Ms. Bell has taken up the title "Ambassador for Justice" and committed herself to advocacy efforts that reduce the likelihood of and ensure accountability for police use-of-force. Her work at the local, state, and federal level include working with New York City Council to have a street named in her son's honor, testifying in front of United States Congress, and advocating Governor Andrew Cuomo to sign Executive Order No. 147, which appoints the New York State Attorney General as a special prosecutor in matters relating to the deaths of unarmed civilians caused by law enforcement officers. Her work has set a national model for activists and jurisdictions seeking to combat police violence. Ms. Bell is an active member of the Justice Committee, Mothers of the Social Justice Movement, IIP's Working Group on Officer-Involved Fatalities, and Queens for DA Accountability Coalition. Her first book, *Just 23, Thoughts From a Mother in Spoken Word* by Kisha Walker, is a poetic memoir and a reflective account of the final days of Sean Bell and the subsequent agony of a mother's grieving heart. Until police brutality is extinguished, Valerie Bell will continue to be the Voice for Sean.

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## JOHN J. CHOI

### County Attorney, Ramsey County, MN

John Choi made history on January 3, 2011 when he was sworn in as the first Korean-American chief prosecutor in the country. Since taking office, John has become a state and national leader in progressive justice reform, especially around gender-based violence. John's innovative approach to holding abusers accountable, while working collaboratively with advocacy agencies to help victims, has transformed the way government intervenes in domestic violence and sex trafficking situations in Minnesota. In addition, John has been a champion of raising boys and engaging men to prevent violence against women and girls; successfully advanced legislation to reunite families when it's in foster children's best interest; implemented new performance-based outcomes for youth diversion programs; developed the use of lethality assessments and GPS technology to keep domestic violence victims safe; created pre-charge diversion for adult offenders; successfully advocated at the state to reform drug laws and redirect savings to community reinvestment; and established a Veteran's Court. John is past president of the Minnesota County Attorneys Association, an executive

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member of the Institute for Innovation in Prosecution, serves on the board of the Minnesota Coalition Against Sexual Assault and as trustee for the Women's Foundation of Minnesota.

Throughout his public tenure, John has been innovative in reforming and finding efficiencies in the criminal justice system. As a result, he has received much recognition, including the 2015 Minnesota County Attorneys Association's Award of Excellence for his innovative leadership in establishing our MN Safe Harbor law and accompanying statewide response to prosecuting sex traffickers and helping trafficked children. In his previous capacity as the Saint Paul City Attorney (2006-2010), John was recognized with the International Municipal Lawyers Association's top award for distinguished public service. Prior to his successful career in the public sector, John spent a decade in private practice in government relations, administrative law, municipal law and civil litigation. John holds a bachelor's degree in Psychology from Marquette University, a J.D. from Hamline University School of Law, and was a Humphrey Fellow at the University of Minnesota.

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## **J. SCOTT THOMSON**

### **Chief of Police, Camden County, NJ**

John Scott Thomson was sworn in as chief of the Camden County Police Department on May 1, 2013. Prior to that, he had served as chief of the former Camden Police Department since 2008. Chief Thomson began his law enforcement career in 1992. He holds an M.A. in education from Seton Hall University and a B.A. in sociology from Rutgers University.

During his career, Chief Thomson ascended through the ranks of the Camden Police Department. In 2011, he received the Gary P. Hayes Memorial Award from the Police Executive Research Forum for innovation and leadership in policing. He has served on the New Jersey Supreme Court Special Committee on Discovery in Criminal and Quasi-Criminal Matters, the New Jersey Attorney General's committees for Officer Involved Shooting Responses, Conducted Energy Devices and Body Worn Cameras. In 2017, he received the H. Norman Schwarzkopf Award for Policing Excellence from the New Jersey Public Safety Accreditation Coalition.

Chief Thomson provided testimony for the President's Task Force Report on 21st Century Policing on using community policing to reduce crime. He has served as the Chairman of the Philadelphia/Camden High Intensity Drug Trafficking Area for the White House Office of National Drug Control Policy. Chief Thomson sits on the Board of Advisors for the New York University School of Law's Center on the Administration of Criminal Law, The American Law Institute's Principles of the Law – Police Investigations, the United States Attorney General Global Advisory Committee on Law Enforcement Use-of-Force Investigations Task Team, and the National Initiative for Building Community Trust and Justice. He is the Co-Chair of The Policing Project at New York University Law School, an Executive Fellow for the Police Foundation in Washington, D.C., and a member of the Harvard University Law Enforcement Summit Executive Leadership Group.

Chief Thomson is the elected President of the Police Executive Research Forum in Washington, D.C.

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## **ALLISON GOLDBERG**

### **Policy Advisor, Institute for Innovation in Prosecution**

Allison Goldberg is a Policy Advisor with the Institute for Innovation in Prosecution (IIP) at John Jay College of Criminal Justice. Prior to joining the IIP, Ms. Goldberg served in the White House Domestic Policy Council's Office of Urban Affairs, Justice and Opportunity during the Obama Administration, where she collaborated with policymakers, practitioners and advocates to advance criminal justice reform and civil rights. She previously worked at Liberty Hill Foundation, which funds community organizers advocating for economic justice, environmental justice, and LGBTQ equality in Los Angeles County. She received her BA in Political Science and Peace Studies from Loyola Marymount University and her MPhil in Criminology from the University of Cambridge.

# Prosecutors and Officer-Involved Fatalities: A Forced Evolution from Tragedy to Advocacy

**Roy L. Austin, Jr., Valerie Bell, and John J. Choi**

**Interviews Conducted and Transcribed by Allison Goldberg**

This paper is based on a series of conversations on the prosecutor's role in officer-involved fatalities. Conversations have been edited for length and clarity.

## PART I

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### **Valerie Bell, Mother of Sean Bell, and Author of *Just 23*. [VB]**

My son Sean Bell was born May 18, 1983. I had to have c-sections with all three of my children, but Sean was the only one who came on his exact due date. I didn't have labor pains before giving birth to Sean. But my labor pains began twenty-three years later, November 25, 2006.

Sean loved baseball. That was a gift that God had given him. At the age of six, Sean played for the Ozone Park Little League, where he hit a homerun over the train tracks. My husband and I couldn't believe it, we were elated. He showed a lot of promise, and he continued to play baseball through elementary school and junior high school. In junior high school, Sean was scouted by John Adams High School because they saw how gifted he was. In 1999, Sean's high school baseball team, the Spartans, won the championship at Yankee Stadium. The school's first win since 1986. That is something that we'll never forget.

I have all his trophies. I even have the baseball that Sean signed on the day his team won the championship in 1999 at Yankee Stadium. On the night of his bachelor party, my husband received a phone call from someone who connected Sean with the Dodgers. They wanted to speak to him about coming out to the camp.

As Sean was growing up, I also noticed he

liked taking apart radios. I said, "What are you doing that for?" He said, "I want to be an electrician." During the year of 2006, Sean was given an opportunity through his uncle for an electrician apprenticeship interview, and he was invited to take the test. Come to find out, in January 2007, Sean's uncle told us he was accepted and supposed to start early that year. You know the story, what happened.

But I try not to talk about the 50 shots that led to Sean's death. I try to present my son as the young man he would have been. He always said, "Ma, I want to do the right thing." Sean was drafted by Nassau Community College to play baseball, but he only attended for a year because he wanted to take care of his children. Sean has two daughters. Jada, his eldest, was born on December 16, 2002. She'll be 17 years old this year. He also has a little girl, Jordyn, who's 13 now. He only knew her for five months because of what happened.

Sean was a quiet gentleman. My sister called him an old soul. His friends would go to him for advice about their girlfriends. He was like a counselor for the young men that he knew. Everybody thought Sean was older than he was because of the way he carried himself.

Sean was, how can I say it, you would have loved him. In high school, the women loved Sean. It was so funny, when I went to some of his parent teacher conferences in junior high

school, the first thing the teachers would say is, “Your son is such a handsome young man.” I would say, “Okay, thank you!”

Sean had tried to plan his own wedding. I’ll never forget. In October of 2006, he came to our church for my daughter’s concert. I watched him as he sat there listening. When he gets home he calls me up, and he says, “Ma, I’m ready to get married.” I said, “Okay, when?” He says, “November.” I say, “Woah. November next year?” He says, “No, November this year.” I just said, “Okay.”

picked that day because it made six years for him and his fiancé being together. Instead we planned for the wedding to be held on Saturday. I had to call a lot of reception halls to find out who was available on such short notice. But fortunately, I found a place called La Bella Vita on Rockaway Boulevard in Jamaica, New York that was available. The owner gave us a good price, everything was set. But, you know.

Knowing that it was short notice, Sean still wanted to invite all of his relatives from the South. I said, “Sean, that’s kind of hard, people

**Sean Bell was shot 50 times and killed by NYPD officers on November 25, 2006, the morning of his wedding day, just a few hours before he would marry Nicole, his high school sweetheart and the mother of his children.**

It was God who helped us put it together. The day that Sean wanted to get married fell on Thanksgiving Day in November 2006. Sean

may not have the money to travel up here.” He said, “Yeah, yeah, Ma. I know, I know, I know.” But, they were all going to make it.



Sean Bell’s John Adams High School’s baseball team photo, 1999.

Sean’s the baby, the second child, but the youngest boy. My daughter is the baby girl, and he’s the baby boy. My oldest son is William Bell, Jr. He’s 40 years old. And Delores Jean Bell, she’s 27 years old.

We were a family that just did what we had to do for our family. I would go to work, come home, do homework and take care of my children. Everything was just laid back. I didn’t even think of or have much conversation about police officers. We have police officers in our family.

I’ll never forget, one summer day, my oldest son, William – maybe he was about 18 or 20 years old – and he was going to the store, he left out and he came right back to the house. I said, “What happened?” He said, “Ma, I have to get my identification just in case a police officer stops me.”

My children knew right from wrong. They were very respectful, they knew what to do if an officer stopped them. One summer, Sean was driving, and he was pulled over. The officer stopped him because the passenger didn’t have his seatbelt on. Sean was very courteous and kind to the officer, and they just gave him a ticket.

We didn't really think much of the police interaction as it happened to our son. Even when Amadou Diallo<sup>1</sup> was shot 41 times in 1999. I heard about it and I prayed for the family. It was definitely wrong what the police officers did. But, I just kept living each day and taking care of my family.

Even on the night of Sean's bachelor party, one of Sean's friends said that the cops stopped Sean before they went to the party. I think because of a taillight on the car, and they told him to get it fixed. They didn't give him a ticket. Sean told them "I'm getting married tomorrow, and I'm going to my bachelor party." And the officers said, "Okay, go and have fun."

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**John Choi, Ramsey County (MN)  
Attorney, Chief Elected Prosecutor [JC]**

I was in private practice in 2005. And my practice was nowhere close to criminal law. It was doing a lot of civil work, municipal representations of cities, administrative law, litigation. And then, Chris Coleman got elected in 2005 as Mayor of St. Paul, and he asked me to be the City Attorney. I had to think about that. It meant that I had to give up my practice, but I ended up taking the job. I came into it being very comfortable with the civil side or the corporation counsel work, because I had experience representing cities. But the City Attorney also has jurisdiction over misdemeanors. That was an area I didn't have any background in.

Coming into the job without that background actually caused me to want to spend more time with that function of the office and learn more about it. I think I brought a fresh perspective because I wasn't necessarily influenced by having been raised as a prosecutor or a part of the prosecution system. As I was learning, I was trying to understand why we did certain things and thinking about doing things in a different way. So, from 2006 to 2010, I started enacting a number of reforms or changes, innovations.

One of the most transformative efforts, that I'm really proud of, arose from me asking the question, why do we have so many cases involving people with suspended driver's licenses? And then asking, what do we do in these cases? Well, the answer was nothing, other than pile on more fines and fees. It seemed like we were just processing paperwork, but the reality was that it was people, and we were making them go deeper and deeper into a hole of debt. When we took the time to understand

who was being impacted, it was people who were living paycheck to paycheck, living in poverty, who didn't have any means to get out of that hole. And for people stuck in that cycle, the average amount of fines and fees they had racked up was \$1500. When they tried to get help, nobody in the courts could help them because the system was not designed to provide a way out unless you could cut a check for \$1500.

So, we worked alongside impacted people to find a solution and ended up creating a driver diversion program. This made it possible for people who had accumulated lots of traffic fines and fees to undergo financial education, receive an affordable payment plan, and obtain a provisional license, so they could drive legally, ending the cycle of fines for driving without a license, and putting them on a path out of debt and out of the system.

And then, the opportunity to run for county attorney arose. And I got a lot of encouragement from people to run. During that process, I remember – as you're thinking about getting all that support, labor support, elected officials' support, community support – at that time, it was a big goal to try to round out our campaign and make it as widely-supported as it could be, so the police endorsement was important.

After I had received the police endorsement, I was really happy about it. I was really proud of it. And for good reason. It means a lot. But I never really thought about what that meant, and what it could mean in the future. I had no idea of how things would evolve, and how I would evolve, and how that relationship with the police would evolve.

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<sup>1</sup>Amadou Diallo, 23 years old, was shot and killed by four NYPD officers on February 4, 1999. All officers were acquitted.



And then during my second term, July 6th of 2016, is when Philando Castile was killed by a

Saint Anthony officer, Jeronimo Yanez.

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**Roy L. Austin, Jr., Partner, Harris, Wiltshire & Grannis, LLP; former Deputy Assistant to President Barack Obama for Urban Affairs, Justice & Opportunity and former Deputy Assistant Attorney General, Civil Rights Division [RA]**

I never wanted to be a prosecutor. I actually wanted to be a defense attorney and that was because I saw prosecutors as the ones who were locking up young black men and boys, and defense attorneys were the ones who were fighting for the rights of those who really couldn't fight for themselves as much as others could – they were poor, they were minorities – so that was where I thought I was going to go.

And I was looking for a job my second summer of law school, and I thought the other possibility as a lawyer was just to be a traditional civil rights lawyer. And all I knew about civil rights law, really, was education, and housing, and voting, and employment. And the Department of Justice was working in those areas. And so I said, let me try that.

I went to the interview. And, my dad is a sociologist, he is a criminologist in fact, and so I've always had an interest in criminology. And during my interview, I'm not sure what exactly I said, but the interviewer said, "Well, have you ever considered the Criminal Section of the Civil Rights Division?" I said, "I have never, what is it?" And she said, "Well, it's the group that goes around the country prosecuting hate crimes and police misconduct cases." And I immediately thought, oh, I would love to do that.

And so, I lucked into getting a summer job with the Civil Rights Division's Criminal Section,

and my experience there was awesome. One of the earlier cases that I was involved in was an investigation of Parchman Prison. And, I actually traveled with the attorney there, and saw her interviewing guards about a physical assault of an inmate.

I ended up getting a job in the Criminal Section through the Honors Program when I graduated. I got to the Section to start doing my job, and the supervisor says, "Well, you have to go over to the DC US Attorney's Office because you have to learn to try cases." And the DC US Attorney's Office has two big divisions. One is the federal court division, which is what people think of when they think of US Attorney's Offices. But the other is the superior court division, and that's really like a district attorney's<sup>2</sup> office, doing everything from shoplifting, and simple assault, all the way up to homicide cases. And so I was sent there for six months, and I was actually concerned about being there because DC is a heavily African-American city. And when you're doing drugs and guns prosecutions, then actually the people you end up locking up the most are black people. So I wasn't super excited about going to the DC US Attorney's Office, but I knew it was going to be important training for me to do my civil rights work.

Well, very early on, I realized just how powerful the prosecutor is in the system. The prosecutor decides how much time to investigate a case; they decide what questions to ask a police officer; they decide what the plea's going to look like; they decide whether or not cases are going to get papered or not, and that means whether people who are arrested are actually going to get charged; they decide close to everything in the system.

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<sup>2</sup>In many jurisdictions, locally elected prosecutors have the title District Attorney, commonly abbreviated as DA. There is variation in local prosecutor titles across the country, including in Ramsey County, Minnesota, where John Choi serves as the County Attorney, the chief elected prosecutor.

## PART II: THE LOSS

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**Valerie Bell:** Well my husband was also at the bachelor party. He came home about 4 o'clock AM, getting ready to go to bed. And then the phone rings, and it was Nicole's sister. And she says, "Mrs. Bell, Sean was in an accident." And I'm thinking, okay, a car accident, because he was the driver. She says, "Well get up, run to the hospital."

So I went to the hospital. And I used to work for Jamaica Hospital, and that's where they took him.

So, when you see this room next to the ER, you know that room is to tell you that somebody didn't make it. And, I go into the room, and that's where everybody was at. And I just broke down.

And my mother had already passed away in

1988, and I just remember myself screaming, screaming for my mother to help him, thinking of him.

I had worked there, and they're not letting us go to where he was. And I didn't think of saying or screaming, that I worked there, I didn't think to go back there.

I just waited for hours, and hours, and hours. We got there probably between 5 AM to 5:30. And we waited, and waited, and waited. And I don't think they allowed us to see him until, maybe, in the late afternoon.

And then, I'm looking at his face, but my husband says he saw that handcuffs were still on him. He was handcuffed to the bed. So that makes it look like he was in the wrong, and he wasn't.

**John Choi:** I probably got home around 6 o'clock, 6:30 or something like that, and had dinner with my family. After putting my kids to bed around 9pm, I sat down and looked at my phone to see what was going on in the world. And there it was, breaking news: Police-involved shooting in Falcon Heights.

I was trying to read the media reports, but there wasn't a lot of information other than the Facebook video. I was able to watch it that night before I went to bed and I found it really troubling. I thought to myself, okay, well, we'll get to work tomorrow.

And tomorrow, the next day, was a particularly busy one for me because I had one of the hardest meetings I've ever had as County Attorney. I had to meet with the family of a victim of a police-involved shooting incident that happened in Roseville, which happens to be the suburb adjacent to Falcon Heights. That shooting happened when it was cold, in wintertime. And the grand jury had actually returned a no-bill that Wednesday, so they were declining to prosecute. So, I had to meet with the family. Just really intense, you could imagine the mother looking at you in the eye and begging you to, please, reopen the case.

That was a really, really tough meeting.

It was the day after Philando was shot and killed. And the grand jury on the Roseville incident had made its decision on the day that Philando was shot and killed. Of course nobody knew about that.

So, when I got out of the meeting, I didn't really have a grounding of what was going on. I remember as I was getting all this information from my staff about what was happening, it dawned on me that this was a really big deal for our community. And I had to start thinking, what am I going to say to the community? How am I going to handle this? Because in many ways, how I choose to handle it and, ultimately, the result of this investigation has huge implications for the future of our community.

At the same time, there were national protests in response to Philando's killing and the killing of other black men by police. Then, that same week, an army veteran shot 14 police officers and killed 5 in Dallas. As I look back on it, it was just a really extraordinary – I think extraordinary is the right word – extraordinary time in our nation's history.

And then, I spoke on Friday morning. It was a very short press conference. I hadn't decided to charge and also hadn't decided whether this

press conference, a question was posed to me: "Have you reached out to the Castile family?"

On July 4, 2016, Delrawn Small was killed by an off-duty police officer in Brooklyn (NY). On July 5, 2016, Alton Sterling was killed by Baton Rouge (LA) police officers. On July 6, 2016, Philando Castile was killed by Jeronimo Yanez, St. Anthony (MN) police officer. On July 7, 2016, five Dallas (TX) police officers were killed in an ambush shooting.

would be a grand jury process or if I would make the decision myself. But I just talked directly to the community and focused on assuring everyone that we would be fully transparent and ensure the integrity of the process.

Then, that weekend, I remember some of the thoughts I was having. I remember that I didn't sleep well because I was thinking to myself, why did this happen here? And you're just thinking about the gravity of it all, and how this is going to really alter, really change my world.

I remember on July 8th, when we did that first

And I said, we have not, but it's my understanding that the Bureau of Criminal Apprehension has talked to them about the process, and that it would be kind of inappropriate for me to do that right now. And then, you know, nothing was said about that for quite some time. We didn't even have the case yet. I didn't know what the facts were other than the summaries I was getting.

But, then we had a press conference about adding a special prosecutor that generated lots of interest and media attention. So, Valerie Castile, Philando's mother, was watching, and she must have expressed to her attorney,



Philando Castile's driving course certificate. Ms Castile shared it with John Choi, who created the course when he was city attorney to reduce the burden of fines and fees.

Glenda Hatchett, that she wanted to meet me. I remember getting an email, it was probably that Friday night, I got an email from Glenda saying that her client, Ms. Castile, really wanted to get an opportunity to talk to me. And I remember I wrote back right away. I said, of course.

We had our first meeting shortly thereafter with Ms. Castile, and Glenda, and Clarence Castile, Philando's uncle, was there too. Clarence was actually downstairs with the activists who had gathered to advocate for us to hold the officer accountable, and when he found out about the meeting, he asked if he could join.

We had a good meeting, but in that meeting, you know, one of things was – and you can ask Clarence and Ms. Castile about this too – but I think a connection was made when we were

talking about the driver diversion course. I think it was Ms. Castile who had mentioned that she knew that I was involved in creating that, and she told me that Philando had participated in the course to regain his license. Clarence described it as like a chill down his spine when he heard that.

I hadn't known before that Philando had participated in the course. And, I think, I could tell that there was apprehension, not exactly trusting where this is all going to go, but, there was some trust because that connection was made.

During that meeting, we also talked about human dignity, and I just tried to express empathy and not focus on the technicalities of everything, just convey that we're so sorry this happened.

Philando Castile was stopped by police for low-level traffic offenses more than 50 times prior to July 6, 2016. After this was reported by the media, local community members were outraged over this evident racial profiling. Ms. Castile describes the rate at which her son was stopped as increasing the “probability” that an incident could occur. Philando participated in the driving diversion course that John Choi created to alleviate the burden of traffic fines and fees, which were felt disproportionately by residents of color.

**Valerie Bell:** I don't remember getting any calls from the police department saying they were sorry. I don't remember any of that.

**AG:**<sup>3</sup> *They never reached out?*

**VB:** No, they didn't.

**AG:** *What about the prosecutor?*

**VB:** It wasn't DA Brown<sup>4</sup> who called. It was the assistant DAs, I don't remember their names. Two of them I can remember. We did go down to the courthouse, where they sat us down and were talking about what they were planning to do. It wasn't much time with them that I remember that they gave us, but they gave us information. I don't remember meeting with the prosecutor during the trial, just before the trial, which was in 2008, two years after Sean's death.

<sup>3</sup>The initials AG indicate a question asked by the interviewer, Allison Goldberg, Policy Advisor with the Institute for Innovation in Prosecution at John Jay College of Criminal Justice.

<sup>4</sup>District Attorney Richard Brown was the prosecutor in Queens, New York during the time of Sean Bell's death.

**AG:** *Had you been in touch with the prosecutor or law enforcement prior to 2008?*

**VB:** Nope. Not at all. You know, during services at my church, I saw the Mayor, Michael Bloomberg. At the time, he came to the church, and senators and councilmen came. But I'm not, I'm not remembering seeing who was in charge of the undercover cops, or the prosecutor. None of them came to us.

And prosecutors should involve the family members with the case, keep them updated. Not weeks or years later, I mean right away. If they're able to, provide information of what they plan to do. I don't know if they can sit down with the family and explain steps from A, B, C, D, because it wasn't done with us.

Even if it's weekly or monthly, keep them updated before the grand jury comes along, or the trial comes along. And do not let the family members read in the paper what happened.

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**AG:** *Can you share a bit about your work representing the family of Bijan Ghaisar, who was shot by two U.S. Park Police officers on November 17, 2017 and died 10 days later?*

**Roy Austin:** So, look, I have been in the shoes of the prosecutors, and that is when you're conducting an investigation, you don't want anything to leak that could possibly damage your investigation. I get that. But what these prosecutors fail to understand – and that's because they aren't putting themselves in the shoes of the victim, or the victim's family – is that the prosecutors haven't lost anybody. They haven't lost a loved one. And every single day for anyone who has lost a loved one, and anyone especially who has lost a loved one in this way, every single day is a nightmare. You care so deeply about this person who you lost, that you just want every piece of information that you possibly can have about them, and

how you lost them, and why you lost them, and what could have been done differently.

And so to put a family through what is now almost a year and a half of this kind of pain, is unjustifiable, is incomprehensible. Sit down with the family, have a heart to heart with them, give them a sense of what you're looking at. Because they hold on to every single string of information. They're not going to go out there and tell the world about this. It's not going to impact your investigation.

The Ghaisar family sometimes learns about what is happening in the investigation when local media asks them about it. How could the prosecutors not contact the family, tell the family what is going to happen, so they have an understanding? Because all of these things are triggering incidents to them, they are incredibly painful.

## PART III: THE SYSTEM

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**John Choi:** One of the big questions we had to answer was, are we going to use a grand jury like we have for decades? Or, are we going to make the decision ourselves? Our community was saying, we don't trust the grand jury, nobody can be in the room when that happens.

At the same time, people were also saying, well, the prosecutor's naturally biased because they work so closely with the police. And so, I had to deal with people saying, John Choi is a good guy, and, it's not about him, but we need to have a special prosecutor.

So, we came up with a hybrid option. We invited Don Lewis, who is a former civil rights attorney at the Department of Justice, well-respected African-American attorney who grew up in the heart of the historic African-American community here, to be a part of our team. I wanted an outside perspective from someone who didn't work in our office, from someone who I admired and respected, to review the evidence and tell me what they thought.

**AG:** *Why did you decide to keep the case if there were calls to give it to a special prosecutor?*

**JC:** It would have been really easy for me to walk away and say, "Okay, this is what the community wants. Let's have somebody just do that." But I think that would have been irresponsible because whoever I would have given it to would not have been elected, so they're not accountable to the public.

I was also fortunate to have the support of the federal government. They provided a lot of assistance because they had much more experience than we did in terms of how we might think about prosecuting a police officer. Keep in mind, this was the first time in Minnesota that a police officer had ever been prosecuted for an on-duty shooting.

The federal government helped ensure the investigation conducted by the Bureau of Criminal Apprehension<sup>5</sup> (BCA) was thorough. For instance, a few weeks after the incident, we got a chance to look at the squad car video. We saw the video but we couldn't hear what was being said. What it first looks like is that the police officer is shooting because he's reacting to something.

So, we asked the BCA, "Can you enhance the audio so we can hear it better?" And the BCA said, "No, we can't do that because we don't have the capabilities." And then we asked, "Well, could you figure out how to do that?" And they said they didn't think that technology existed. So, we asked the FBI, and they said, "Sure."

And you know what Philando was saying? In the most pleasant voice, he said, "Sir, I have to tell you that I do have a firearm on me."

Here is Philando trying to do everything right, trying to put the officer at ease, using respectful language. So, then you're thinking, how, how on earth could this officer have ever shot into a car with a four year-old-girl in the back seat?

We announced charges on November 16. There was a group of people downstairs ready to protest. There's live video from that, and you can see their reactions. It's something to see, how much this decision meant to them. They were brought to tears. They just assumed we weren't going to charge.

During that press conference, when we announced the charges, I made statements that some police experts would disagree with. I'm absolutely convinced that's the law, but there are cops out there who think that was a misinterpretation of the law.

What I tell prosecutors is, our job is to be ministers of justice. If you believe the law has been violated, and a crime has been committed,

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<sup>5</sup>The Bureau of Criminal Apprehension is a Division of the Minnesota Department of Public Safety tasked with investigating police shootings. Though a state agency, BCA employees regularly partner with local agencies on crime prevention, data analysis, and standard investigations.

your job is to do the right thing, no matter how hard it may be. Your job is to be independent. Don't worry that you're not going to be liked, or

that you're going to be perceived in an unfair way. We are called here to do the right thing.

**RA:** The prosecutor and the police absolutely need each other. In many cases, you're calling that officer who you know and you're like, hey, can you just go interview that last witness for me? If they appreciate you, they will go do that. If they don't, they're going to find a prosecutor who they want to work with.

So, if you're a prosecutor who is looking at police misconduct, you're putting yourself in a pretty tough position. Because there are some on the force who, regardless of how righteous your case is, they're like, what are you thinking? Why would you go after an officer? It's a tricky situation to be in, for the local prosecutor and for the police officers who want to do the right thing.

But, police can make life and death, liberty and detention decisions in an instant. That's a lot of power to give to one human being. And I think there is this pushback saying, don't investigate us, we know what we're doing, don't accuse us of wrongdoing. The same kind of things happen

in different professions, but the risks aren't as great, the consequences aren't as great as when you get it wrong as a police officer.

I think they need to understand the importance of a thorough investigation. But, the culture for many officers prevents them from accepting that, "Okay, xyz inmate was hurt, or arrestee just got hurt. I should let the powers that be do their investigation. I didn't do anything wrong." And instead of that, there's this kind of knee jerk reaction of, "Don't investigate us. That person's a criminal. I'm a good officer. There's no reason for an investigation." And that's, you know, that's problematic.

The importance of independent investigations is that the community can feel assured that the person conducting the investigation is going to conduct a full, comprehensive, and fair investigation. Hopefully, the police officer who is being investigated and the police department feel the same way.



Roy L. Austin, Jr. leads dialogue with prosecutors, police, and family members impacted by police violence on ways to reduce and address officer use-of-force, February 2018.

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**VB:** You're thinking, okay, they got indicted, maybe they're going to go to jail. I was in the courtroom everyday. Eight weeks. You know, after it happened, I went back to work because I didn't want to sit at home. So I went back to work, and my job was very supportive of me. Thank God, I was able to go to court and still keep my job.

And, when you go inside the court, we sat on the right hand side, but on the left hand side, it was all, all of the officers' coworkers on that side. So we had to face them. They weren't in uniforms, they were in suits, but we knew they were officers.

We had a young man who was a counsel to us, a private lawyer, Neville Mitchell is his name. He sat with us and explained things to us as they were going on each day. And even things that I heard the defense attorney asking or questioning the witness – I'm saying in my

mind, why is the prosecutor not objecting?

For instance, they always make the victim – the one who got hurt, the one who was killed – look like they're the bad person. And the prosecutor should stop that in the beginning. If something comes out in the newspaper or defense raises it, prosecutors should have some input. They should affect what is said or what is heard about a victim. Everybody has a past, that doesn't mean what they did in the past, they're going to stay like that. People need to be given a second chance.

And when a witness is on a stand, why would the defense ask questions about their past? What does their past have to do with what happened now? That's the thing that I didn't like when I was sitting in the courtroom during my son's case. Don't bring up a witness's past, or don't bring up a victim's past. It has nothing to do with his death.

People of color are disproportionately impacted at every stage of the criminal justice system, from stop, arrest, and charge<sup>1</sup>, as evident in the more than 50 times that Philando Castile was stopped for low-level traffic violations. Racial profiling creates unnecessary interactions with law enforcement, exacerbates mistrust, and hinders the potential for a jury pool that reflects a jurisdiction's diversity.

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**JC:** So, we prepare for trial, file motions, build our strategy. There's a huge misconception in this country about how jurors are selected. It's not actually a process of jury selection. It's more a process of jury de-selection. You start out with a jury pool of hundreds of people. They're called at random from voter registrations, driver's licenses, or state IDs, and then they just randomly select 50. You can remove people for cause, but typically it's

because they answered the question that they can't be fair and impartial.

In this case, there was this woman from Roseville, the suburb next to where Philando was shot, just in tears. She is completely upset about the shooting, and she's thinking this is all wrong, and she says out loud that this is all wrong. And then, the judge asks her, "Can you be fair and impartial?" And she says, "No." And then, another guy, he says, "Well, I don't



know, I'm kind of troubled by this." The judge says, "Well, why are you troubled?" The guy responds, "Well, is it true that there was a child in the backseat of the car?" And the judge says, "Well, yes, that's accurate; can you be fair and impartial?" And he says, "No, no way, there was a child in the backseat."

With these questions, it really felt to me like what we're doing is weeding out people who are really engaged in our community, people who keep track of current events and inform themselves about what's going on around them.

And in many ways, it's about the worldview of jurors and their life experiences. They're encouraged to bring their life experiences to the table and instructed to follow the law. And that's the challenge with these police-involved shooting cases, because you're asking people, generally speaking, to turn their worldview upside down.

But, I also think about who we currently allow to be eligible for jury service and how that artificially eliminates people who have different life experiences, different perspectives, and intersection with the justice system.

And the defense did everything they could to activate the stereotype of why Philando was dangerous. How he was smoking pot. They tried to activate every negative stereotype and get a jury that would be susceptible to that messaging. They did the same when they went after Diamond Reynolds, Philando's girlfriend who recorded the shooting on Facebook Live.

I thought that was the most horrible thing they did to Diamond. They were really aggressive. And I think that was their strategy; they had to discredit Diamond Reynolds. Because, at the end of the day, her testimony should have been enough for a conviction.

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**Roy Austin:** First and foremost, the prosecutor or the police officer has to believe that every, every life is sacred. And that means, look, that whether or not someone made a bad decision does not mean that their life wasn't sacred, does not mean that people didn't justly love them. You have to understand the pain of

the family who has lost a loved one. To add to that pain, by saying, well the person did wrong, had the person stopped, had the person not done this or that, this would not have happened, is wrong. Guess what, the vast majority of us have done something wrong, and we were not killed for it.

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**VB:** Many days, I thought, okay they're going to be convicted, they're going to be convicted. But April 25, I'll never forget, it was a Friday: Not guilty on all charges.

After the conclusion of the state trial, then they

sent it to the U.S. Department of Justice, and then, DOJ said that Sean's civil rights weren't violated. I mean, what can you do to say you're not violating somebody's civil rights by killing them like that, 50 shots? What has to be done to violate somebody's civil rights?

In 2012, six years after Sean Bell was killed, one officer – “the one who started the whole thing, the one who followed him to the car, the one who shot 11 bullets” – was fired. One received desk duty for 30 days, and three others left on early retirement.

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**JC:** During the trial, I mean honest to God, we all looked at each other and we said to ourselves, we thought the worst thing that could happen would be a hung jury. We felt really strongly about our case. And then there was a moment when some questions were being asked to the judge. And we concluded for sure, all of us unanimously – we must’ve been in group think mode – that the only thing this could mean was that they’d already reached a decision on the manslaughter charge, and it was probably in our favor. Or maybe it was the other way around, that they had already made a decision on the reckless discharge of a firearm.

So, we were thinking we won at least half of the charges. And we knew going in, this would be an uphill battle and that juries just don’t convict. But we were feeling really good about

the case. And then, the day came. We got the initial notification that the jury had come to a decision in the case. So, we were just waiting and waiting. And then, my staff texted me as she left the courtroom where the verdict was read: Not guilty on all charges.

Across the board, the not guilty verdict just hit us like a ton of bricks. We were not ready for that outcome, and obviously, the Castile family was not either. I will never forget that day. People were counting on us to deliver justice through the court system and we felt like we had let them down. One of the prosecutors on our team came back and he was very dejected. He was in our conference room, and I mean, he was probably in there for hours. I checked on him to make sure he was okay. But, he was just in there, by himself, processing, just silently sitting in a chair.

In the United States every year, approximately 1,000 people are killed at the hands of law enforcement.<sup>ii</sup> In the decade between 2005 and 2015, only 54 police officers faced criminal charges for fatally shooting someone in the line of duty, and nearly half of those cases resulted in acquittal or dismissal.<sup>iii</sup>

## PART IV: CHANGE

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**Valerie Bell:** The lawyer who counseled us had an idea. I never forget, he called me in December 2006. He said, “Mrs. Bell, I want to do a 50 day vigil.” I said “What?” And he said, “24 hours.” I said, “24 hours?” And we did it, a 50 day vigil – for the 50 shots – January 1, 2007 for 50 days, Monday through Saturday, 24 hours, non-stop.

We did this in solidarity for our son. People from all over came out, voiced their opinions, children came out, somebody donated a trailer and put it in the parking lot so people could go in there and get warm. People just came 24 hours, non-stop, from New Jersey, from Pennsylvania, from Brooklyn, from Harlem. Just to stand in solidarity for our son.

And on his death certificate, it says 4:56am is when he passed away. I was there every morning at 4:56am. I stayed until it was time for

me to go to work, and then my husband took over the night shift. And on the weekends I would stay longer, but I constantly went to work because I needed to, just to keep busy in my mind and my body.

And at the vigil, there was a picture that our lawyer, Neville Mitchell, made. It was a big picture of our son’s face and 50 bullets around him, and underneath it said, “Never Again.”

I decided to speak for my son, be a voice for him, a voice for our son, Sean Bell. And in 2014, that’s when I met the Justice Committee.<sup>6</sup> They were there during the 50 day vigil, and when other things started happening with other young men and women being killed, they came to me and asked me to join them, to join the group to fight for justice. I’ve been with them ever since.



Valerie Bell with her family, William Bell, Sr., William Bell, Jr., Delores Jean Bell, and Sean Bell at her 50th birthday party. This was their final family photo together, March 4, 2006.

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<sup>6</sup>The Justice Committee is a New York City grassroots organization dedicated to fighting police violence.

I went to Albany, and I spoke at the legislature when we put together the Special Prosecutor Executive Order.<sup>7</sup> And, as far as the special prosecutor, we got more information from them than I got during my son's trial. When they took on cases, they called us, the Justice Committee, together and showed us information that they presented about cases that they took on. They put a package together, and they gave us each a package showing what did or what didn't happen.

I also support other family members whose young women and men were killed by the police. I've been to Missouri for Michael Brown.<sup>8</sup> Florida for Trayvon Martin.<sup>9</sup> Oakland, California for Oscar Grant.<sup>10</sup> Also here in New York with Ramarley Graham, whose mother is Constance Malcolm.<sup>11</sup> You know Gwen Carr with Eric Garner.<sup>12</sup> And there's so many other mothers. Ms. Baez.<sup>13</sup> Ms Diallo.<sup>14</sup> Sandra Bland's mother.<sup>15</sup> It's so many other people who have been affected, and a lot of people haven't heard of their cases. So I try to support other mothers when they're having events during the anniversary of their son's or daughter's death.

And, DA Brown of Queens, announced he was stepping down this year, before he passed away in May, Rest in Peace. He was the DA back then, and he's been DA for 28 years. So we're getting ready for an election for the DA of Queens, and I joined the Coalition Queens for DA Accountability as a representative of the Justice Committee. We just had a forum at CUNY Law School, so I was one of the people who asked a question: If you become the DA, how quickly can you put these cases together when it comes to a police officer killing someone, or perjury, or being accused of sexually assaulting someone?

You have to put all the evidence together quickly and not wait so long. Maybe that would help. Because the thing with these police policies, rules, and regulations, that I can't understand is, why are you shooting when nobody has a gun? When people do have a gun they don't kill them. And I'm not prejudiced, but you see it, they don't kill the white people who have guns. Dylan Roof, for example. But, they kill our people, our black people, young boys, young men who don't have guns most of the time.

I would love to go to the police department, or the academy, just to let them see these

**Black people are three times more likely to be killed by police than white people, and 30 percent of black people killed by police in 2015 were unarmed, compared to 21 percent of white people killed by police.<sup>iv</sup>**

<sup>7</sup>On July 8, 2015, New York Governor Andrew Cuomo signed an executive order delegating all police-involved shooting cases with an unarmed victim to a special prosecutor in the New York Attorney General's Office.

<sup>8</sup>Michael Brown, 18 years old, was shot and killed by Ferguson (MO) police officer Darren Wilson on August 9, 2014. Wilson was never charged.

<sup>9</sup>Trayvon Martin, 17 years old, was shot and killed by George Zimmerman on February 26, 2012. Zimmerman was acquitted of all charges.

<sup>10</sup>Oscar Grant, 22 years old, was shot and killed by a BART (Oakland, CA) officer in 2009. The officer was charged, convicted, and spent less than a year in prison.

<sup>11</sup>Ramarley Graham, 18 years old, was shot and killed by New York (NY) police officer Richard Haste on February 2, 2012. Charges were dropped against Haste.

<sup>12</sup>Eric Garner, father of six, was killed by New York (NY) police officer Daniel Pantaleo on July 17, 2014. Pantaleo was never charged by the local prosecutor. On July 16, 2019, one day before the five-year anniversary of Eric Garner's death, the U.S. Department of Justice declined to bring charges against Pantaleo. Disciplinary hearings against Pantaleo began in May 2019, and on August 19, 2019, Pantaleo was fired after a police administrative judge found him guilty of violating a department ban on chokeholds.

<sup>13</sup>Anthony Baez, 29 years old, was killed by four NYPD officers on December 22, 1994. One officer was charged and acquitted.

<sup>14</sup>Amadou Diallo, 23 years old, was shot and killed by four NYPD officers on February 4, 1999. All officers were acquitted.

<sup>15</sup>Sandra Bland, 28 years old, was arrested during a questionable traffic stop and found dead in her cell. The officer who stopped her was indicted for perjury but that charge was dropped when he promised to never work in law enforcement again. New video of the stop, taken by Bland, was released in May 2019, bringing renewed calls for a new investigation.

mothers and fathers who they've hurt. Just to try to talk to them, and maybe something would make a change. And the thing is, how are you going to fear for your life if you're not following rules and regulations, and if you're not taking cover because you hear shots? In my son's

case, there were cars in that area. Why didn't you get behind a car to take cover? You just stand there shooting like a crazy person. And that's what they were doing. They were hearing their own bullets. I always say to these police officers, you're supposed to be protecting us.

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**John Choi:** You know, I think a big part of it was actually through this IIP process,<sup>16</sup> by inviting the Castiles to the table. You know, Clarence would call me a lot, and I think sometimes he was just struggling with the outcome of the case. I remember we had a few lunches before the IIP convening, where we'd just get together and talk.

again. That's actually when Ms. Castile gave me Philando's driver diversion certificate.

We also went to Clarence's house, and Ms. Castile wanted to talk. And, in fact, this was the first time I saw Clarence and Ms. Castile together after the jury trial. It was at Clarence's house on a beautiful summer day. We came over and we just kind of talked about the case

Probably around that same time, I was invited to be part of IIP's Working Group on Officer-Involved Fatalities. And we said, why wouldn't we invite Ms. Castile and Clarence to participate? By including them, having some dinners out in New York and opportunities to advocate here locally, I feel like now we're really, in Philando's memory, collaboratively working to try to prevent this from happening in the future and encouraging a more meaningful conversation in this country.



County Attorney Choi and staff Erica Schumacher with Valerie Castile and Clarence Castile, Philando Castile's mother and uncle.

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<sup>16</sup>The Institute for Innovation in Prosecution (IIP) convened a year-long Working Group on Officer-Involved Fatalities in 2018-2019. Led by family members who lost loved ones to police violence; prosecutors; and law enforcement experts, the Working Group created a Toolkit on the Prosecutor's Role in Officer-Involved Fatalities and Critical Incidents, with tangible steps for prosecutors to reduce use-of-force and pursue a path to accountability for unjustified force.

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**Roy Austin:** The prosecutor has to be an advocate for what's right. If a police-involved death were to happen tomorrow, the first step should be to set up a system where your police department or investigative agency knows what evidence to gather and which people need to start being interviewed right away. The prosecutor needs to make a very clear statement to the public that the incident is not going to be pre-judged in any direction, that a full and comprehensive investigation is going to be done, and that when the prosecutor can be transparent about it, they will be transparent about it.

They have to very quickly determine whether this is an investigation that they should be doing, or whether this is an investigation that should be handed off to someone else. Will the community – including the community that was most impacted by the shooting – trust the decision made by this prosecutor?

Prosecutors have to assume that at some point during their tenure, there's going to be a police-involved shooting or death, and they should have a thoughtful protocol in place as to how to deal with it. And when people question the way you dealt with it, you say, look, here's

Seven states ban people with criminal records from accessing state-funded victim services, disproportionately hurting families of color<sup>v</sup>, including families affected by police violence.

The prosecutor needs to be in immediate touch, and consistent touch, with the victim's family, providing them with any mental health needs while the investigation is ongoing. Similarly, the prosecutor needs to be in touch with the officer and the officer's family, and say the same thing to them. That this is a traumatic experience for everyone involved, and while we're not going to pre-judge this in any way, shape, or form, if there is any assistance that you need, professional assistance will be provided while we're conducting the investigation. And you will be on administrative leave or desk duty until this is resolved.

our protocol. If you're keeping the case, you're going to put a very experienced prosecutor who understands that they need to be talking to the community, as well as digging up the facts of the case. You're going to be open, and honest, and transparent. The result's either going to be an indictment of that officer, or it's going to be a report to the public about why you're not indicting that case.

And the question that every single time has to be answered is: What could have been done differently that could have saved a life?

## ENDNOTES

<sup>i</sup> Ashley Nellis, Judy Greene, and Marc Mauer, *Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers*, The Sentencing Project, 2008.

<sup>ii</sup> “National Police Shootings Database,” *The Washington Post*, 2015-2018; “Mapping Police Violence,” Campaign Zero, 2015-2017; “The Counted,” *The Guardian*, 2015-2016.

<sup>iii</sup> “Police Officers Prosecuted for Deadly Use of Force,” *The Washington Post*, 11 Apr. 2015.

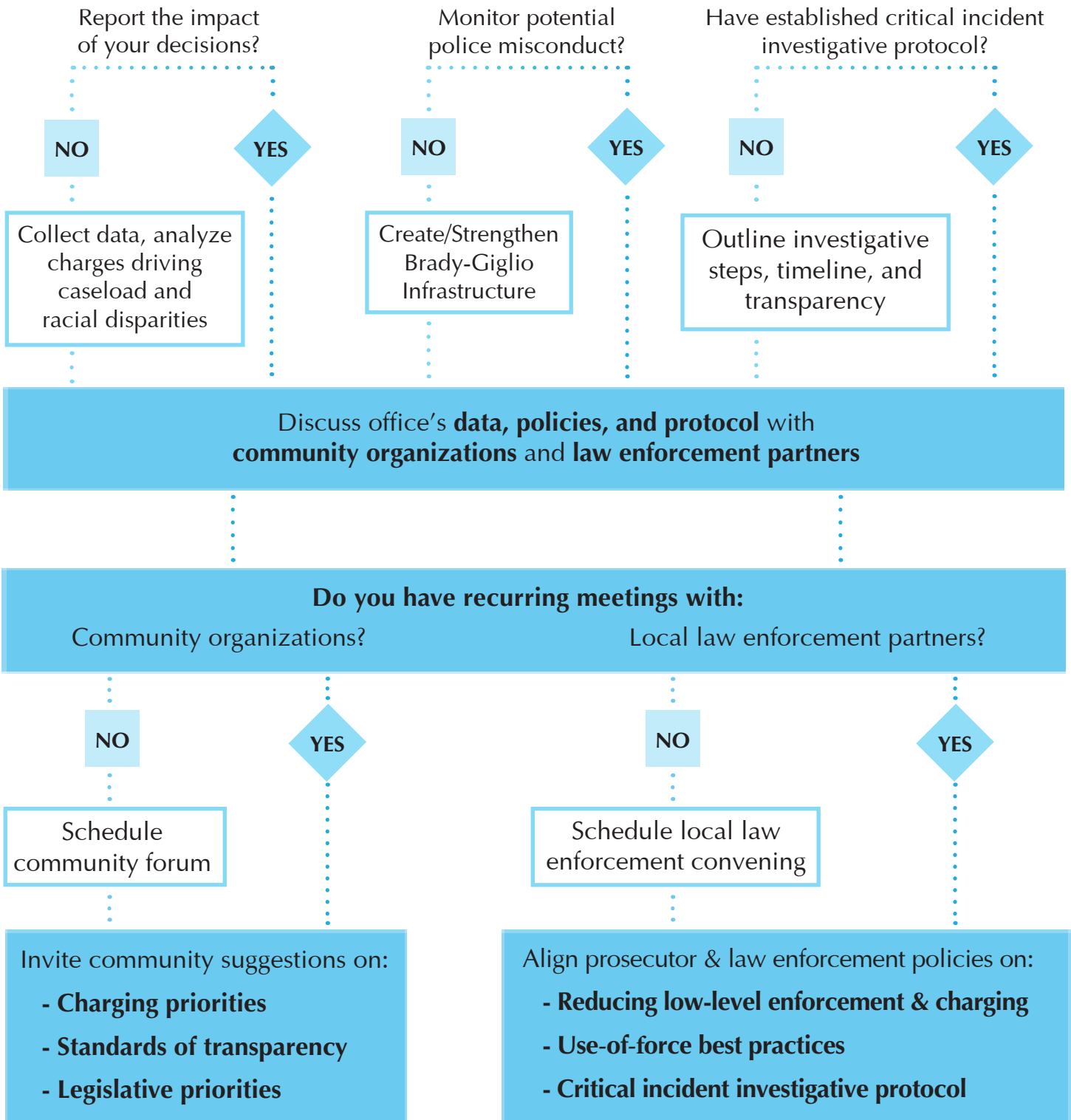
<sup>iv</sup> “Mapping Police Violence,” Campaign Zero, Accessed July 2019.

<sup>v</sup> Alysia Santo, “Seven States Ban Victim Aid to People with Criminal Records,” *The Marshall Project*, 2018.

This Roadmap is from *The Prosecutor's Role in Addressing Officer-Involved Fatalities and Critical Incidents: A Toolkit for Prosecutors and Communities*, By Prosecutors and Communities, which the authors of this paper helped to create.

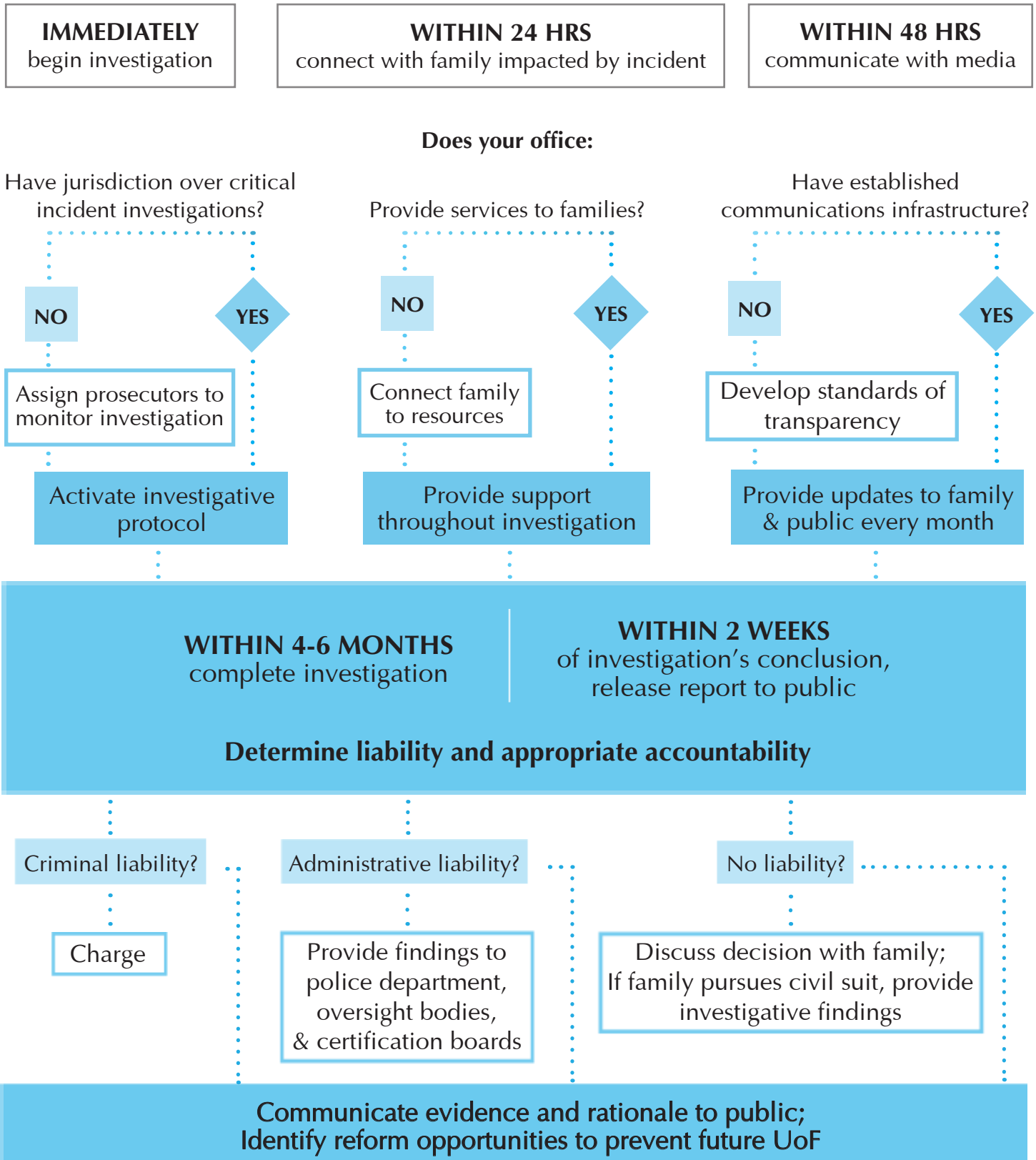
## BEFORE An Officer-Involved Critical Incident Occurs

Does your office:





## AFTER An Officer-Involved Critical Incident Occurs



# PERF 30 Principles

The Police Executive Research Forum collaborated with law enforcement and policy experts to curate this list of guiding principles for law enforcement.

1. The sanctity of human life should be at the heart of everything an agency does.
2. Agencies should continue to develop best policies, practices, and training on use-of-force issues that go beyond the minimum requirements of *Graham v. Connor*.
3. Police use of force must meet the test of proportionality.
4. Adopt de-escalation as formal agency policy.
5. The Critical Decision-Making Model provides a new way to approach critical incidents.
6. Duty to intervene: Officers need to prevent other officers from using excessive force.
7. Respect the sanctity of life by promptly rendering first aid.
8. Shooting at vehicles must be prohibited.
9. Prohibit use of deadly force against individuals who pose a danger only to themselves.
10. Document use-of-force incidents, and review data and enforcement practices to ensure that they are fair and non-discriminatory.
11. To build understanding and trust, agencies should issue regular reports to the public on use of force.
12. All critical police incidents resulting in death or serious bodily injury should be reviewed by specially trained personnel.
13. Agencies need to be transparent in providing information following use-of-force incidents.
14. Training academy content and culture must reflect agency values.
15. Officers should be trained to use a Critical Decision-Making Model.
16. Use Distance, Cover, and Time to replace outdated concepts such as the “21-foot rule” and “drawing a line in the sand.”
17. De-escalation should be a core theme of an agency’s training program.
18. De-escalation starts with effective communications.
19. Mental Illness: Implement a comprehensive agency training program on dealing with people with mental health issues.
20. Tactical training and mental health training need to be interwoven to improve response to critical incidents.
21. Community-based outreach teams can be a valuable component to agencies’ mental health response.
22. Provide a prompt supervisory response to critical incidents to reduce the likelihood of unnecessary force.
23. Training as teams can improve performance in the field.
24. Scenario-based training should be prevalent, challenging, and realistic.
25. Officers need access to and training in less-lethal options.
26. Agencies should consider new options for chemical spray.
27. An Electronic Control Weapon deployment that is not effective does not mean that officers should automatically move to their firearms.
28. Personal protection shields enhance officer safety and may support de-escalation efforts during critical incidents, including situations involving persons with knives, baseball bats, or other improvised weapons that are not firearms.
29. Well trained call-takers and dispatchers are essential to the police response to critical incidents.
30. Educate the families of persons with mental illness on communicating with call-takers.

# MEMBERS OF THE EXECUTIVE SESSION

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**Lenore Anderson**, President, Alliance for Safety and Justice

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**Mark Gonzalez**, District Attorney, Nueces County, TX

**Bob Gualtieri**, Sheriff, Pinellas County, FL

**Frank Hartmann**, Senior Research Fellow, Harvard Kennedy School

**David Kennedy**, Director, National Network for Safe Communities

**Lucy Lang**, Executive Director, The Institute for Innovation in Prosecution at John Jay College

**Marc Levin**, Vice President of Criminal Justice, Texas Public Policy Foundation & Right on Crime

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**Dan Satterberg**, Prosecuting Attorney, King County, WA

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**Ronald Wright**, Law Professor, Wake Forest University

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