



The Bridge: Interdisciplinary Perspectives on Legal & Social Policy

Volume 6 *Police Misconduct and Qualified Immunity: Reimagining "We the People"*

Article 4

2021

Keynote Presentation: A Conversation with Sherrilyn Ifill

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Recommended Citation

Ifill, Sherrilyn (2021) "Keynote Presentation: A Conversation with Sherrilyn Ifill," *The Bridge: Interdisciplinary Perspectives on Legal & Social Policy*. Vol. 6 , Article 4.
Available at: <https://digitalscholarship.tsu.edu/thebridge/vol6/iss1/4>

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Conference Keynote Speaker: A Conversation with Sherrilyn Ifill

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Educational Fund*

Attorney Gary Bledsoe, Moderator, President, NAACP Texas

Hyperlink to presentation: <https://www.youtube.com/watch?v=EGKcAmz07e0>

TRANSCRIPTION:

Gary Bledsoe

Thank you so much for bringing this conference to us. We think it has been a really tremendous conference, and the idea is to make for a better society. And I think that indeed, this has been constructed to do just that. And I know I thanked a few folks earlier, and I think I may have neglected to mention Dean Prudence Smith, Dean Bynam, and Lucinda Daniels, who are also part of that group. But I'm very honored today to be here and to participate with our keynote. Someone who's always been someone I've always looked up to and admired. I'm a lot older, but I've always looked up to her, and I remember meeting her one time, years ago. You know, her late cousin was the great Gwen Ifill, and I saw some police reporting that she did the other day, and that made me think about so much what the Ifill family has brought to this country and this nation.

But Sherrilyn Ifill is the president and director-counsel for the NAACP. She is the old position that the great Thurgood Marshall had. And, you know, she's had some great experiences in her life, having interned for Judge A. Leon Higginbotham. Also working for the ACLU. And I'm on the board there in the state. So that obviously gives you a great bend on them becoming a great litigator on voting rights cases, etc., for the Legal Defense Fund, which I know, as Nina Perales has said, that's really kind of the best civil rights firm that exists in the world today. And so, she always looked at that as a model to seek to strive towards being like. And so we're honored that such a great leader as Sherrilyn Ifill, who heads an organization that is so important, to the fight in terms of trying to achieve justice and bring back true meaning to the United States Constitution, has agreed to be our keynote here for this very important conference. And so, I'd say welcome to my good friend, someone I've admired for many years, Sherrilyn Ifill, the president and director-counsel for the NAACP Legal Defense Fund.

And the way we're going to do this is we're going to go through a kind of a Q&A. Where we can really get the true benefit of her knowledge about the subject matter here and things that are

related to it, which is resources that might be available, some of the things that she might be able to bring us in terms of being instructive, in terms of being very careful in our litigation, and where we go forward. So, I've wanted to start out, because they've been such a leader on these issues that I know that we're looking at where we are in 2021. And I'd like to get her perspective on where we are. If we look back over the years and so much attention was brought to this issue finally, after starting with the Michael Brown matter, and we've come to where we are. So, and then laying the predicate, I'd like to ask Director-Counsel Ifill where are we today? And have we made progress since these issues first started to come up and be in the forefront back since the days with Michael Brown?

Sherrilyn Ifill

Thank you so much, Gary, and thank you for including me in this important discussion today. You're right. We met, I guess, during my first tour of duty as a young attorney at LDF litigating voting rights cases and have known each other for quite a long time and worked together. Most people know that the NAACP Legal Defense Fund is an entirely separate organization from the NAACP and has been since 1957, but we are still sister organizations, and we still work closely together. Especially with state chapters, as we pursue civil rights litigation and other matters. And we relied very much on being able to work closely with NAACP chapters and members. And so I'm thrilled to, to be with you today. I started out my career as a voting rights attorney in Texas, as you know, with the Houston lawyer's case. That was the first case I put together myself as a young LDF attorney. And so, the state of Texas has been very dear to me, as the place where I really started on my own to address many of those issues. But today we're talking about police violence and public safety, and I'm glad we are. It's a really important conversation. And the question you ask is important because, you know, I think last summer when George Floyd was killed, when we all experienced the kind of traumatic shared experience of watching the torture and killing of George Floyd. Many people did ask, you know, has anything changed? Is anything different? Well, it begins with talking about when did this all begin. And I think you're right to identify the killing of Mike Brown as kind of the modern mass movement, but as you well know, Gary, this has been going on for a very long time. Police violence against unarmed African Americans, all throughout the 20th century. And in fact, if you've read the wonderful 2013 Pulitzer Prize-winning book *Devil-- Devil in the Grove*¹, which is about Thurgood Marshall and Franklin Williams and Jack Greenberg with the Groveland Four, that is a case that involved police violence against unarmed African Americans. And that case is from 1949, 1950. So it goes all the way back. Those of us who are in New York - and I'm a native New Yorker -, know about these issues for decades. My first exposure to this issue, as I have shared with many people, is when I was 10, and police killed a 10-year-old black boy, Clifford Glover, in New York. So this has been going on for a long time. And in fact, in Texas, one of the cases that we filed an amicus brief in the year before Mike Brown was killed was the case involving Robbie Tolan, which went to the United States Supreme Court (*Tolan v. Cotton*)². Robbie Tolan survived the shooting on his parents' driveway by a police officer, but his case did go to the Supreme Court. And so that

¹ Gilbert King, *Devil in the Grove: Thurgood Marshall, the Groveland Boys, and the Dawn of a New America* (2012)

² [Tolan v. Cotton, 572 U.S. 650, 134 S. Ct. 1861 \(2014\)](#).

was just a year before Mike Brown was killed. And I remember when Robbie Tolan's case happened, I thought this is going to be the case that's going to start the national conversation about police violence against unarmed African Americans because, of course, you know, the Tolan family, baseball family, you know. I thought the story was kind of readymade.

But when I talk around the country, most people have never heard of the case. So, it's important for us to remember how long this has been going on before we answer the question of what has changed? But I do think that there has been change and change for the better. It has not been a problem that is eliminated. We are still in the thick of it for real and for true. But it is also true that what happened last year demonstrated how much the movement that built from Eric Garner being killed in July of 2014 until last year has gotten into the consciousness of Americans and mobilized people. It's not-- it was not just a fraction, a small subset of people who were on the streets in cities throughout this country. In 50 states, protests in 50 states. But it was a multiracial coalition of people who finally said, "Enough is enough." And they didn't say it just because of George Floyd. They said it because of the cumulative attention that has been brought to this case -- these cases largely by grassroots activists. And we should recognize that. We should recognize that the conversation about whether there is a problem with police violence against unarmed African Americans is no longer posed as a question. Is it a problem? People understand it's a problem.

And now the question is what are the solutions? We are talking about systemic racism, up to the president of the United States, in ways that we were not before. When we're out at rallies now and we see people with signs that say, "End qualified immunity." As you and I know, qualified immunity is a term that kind of mostly only lawyers really knew, but now it has entered the public consciousness. And people understand that removing that doctrine is critical to ensuring that police officers who engage in these unconstitutional practices are held accountable for those practices. So the transformation that's happened is very important. And the passage, of course, of the [George Floyd Justice in Policing Act](#)³ last May through the United States House of Representatives is also powerful evidence that there has been change. We're not all the way there by any stretch of the imagination. There is so much work to do, but if we can look at that arc between certainly 2014, when this modern iteration of mobilization began to happen, and 2021, we can see that there's been an entire narrative shift and an entire shift in focus around what is the solution to, is there a problem? And that's critically important for some-- for a problem that's been with us for such a long time.

Gary Bledsoe

You hit on so many very important topics there. Let me say that Robbie Tolan's mom has really been vigilant, and she has been all over, trying to bring more attention on that issue. So, they have not let it drop. And I want you to rest assured that I've seen the commitment and the zeal that she has, and I know that family is going to continue with it. You mentioned the idea about those signs saying qualified immunity. Could you tell us, you know, what is qualified immunity? Because obviously, qualified immunity is a term that can have different definitions. We have qualified immunity in this context that we're talking about in terms of police litigation. And we're talking about in terms of what is provided for in reference to addressing issues with police conduct on

³ *George Floyd Justice in Policing Act*, H.R. 7120, 116th Cong. (2020).

the United States Constitution. So that's what we're talking about. Could you tell us how you define and what qualified immunity is? And could you also explain to us, so everyone will know how does qualified immunity present a real obstacle to obtaining true justice in these cases involving police misconduct?

Sherrilyn Ifill

Yes. Thanks, thanks, Gary. You know, one of the things that we know that even police officers, if, if you can get them in conversation-- and we've had conversations with police officers, so we have, really engaged with to try to understand from their perspective how do we address this? What do you think is the obstacle to addressing this issue? And even police officers, if they are being honest, will admit that the issue of accountability is key. And we saw this. You know, I talked about this with the killing of George Floyd, that one of the reasons why I think so many of us were so moved and so overwhelmed by what we saw was because of, you know, the fact that we were watching this officer, Derek Chauvin, with his hands in his pockets, you know, fully aware that he was being filmed, staring at us. And I've said that, you know, I regarded that stare as that was the challenge to us. To us as lawyers, to challenge us, us as Americans, because what he was saying with that look was that he knew nothing was going to happen to him. And as we learn more about him, and we learned about the 19 complaints that had been disciplinary complaints that had been filed against him and so forth, we understand he had reason to believe that nothing would happen to him. And police officers will tell you that many officers don't believe anything's going to happen to them. Yes, there may be some publicity, but it's just-- it's-- they're, they're likely not going to be. There's not going to be criminal penalties, and there's not going to be civil penalties.

There's the criminal context, which we can talk about in a minute, but qualified immunity is really about the civil context. It's about when you bring an action against a public officer, an officer of the state, for having violated your constitutional rights. And qualified immunity is a doctrine developed by the courts that suggests that a state actor, in this case, law enforcement, it cannot be held liable for unconstitutional conduct unless they engaged in conduct that they would have clearly understood violated the constitution, that a reasonable officer would clearly have understood violated the constitution. And the way that concept, articulated by the Supreme Court, has now been interpreted by successive lower courts is essentially that you almost have to line up an exact fact pattern in order to find that the officer should clearly have known or should have been able to know that his conduct was unconstitutional.

So, we've had cases in which an officer tased our client to death, tased our client 19 times. Or in which an officer punched, and then threw on the ground, a particular individual. And you'll find courts parsing the facts. They'll say, "Well, you know, the prior cases in which there had been liability, the, the person was tased 25 times. So, this doesn't meet that. So, the officer couldn't clearly have known," right? Or "the officer couldn't have known because in a prior case in which there was no qualified immunity and the officer was held liable for unconstitutional conduct, he had, shot the suspect in the back. Here he shot the suspect in the knee." It has become so insane. It has been twisted so out of order that it essentially functions and has been allowed to function as a kind of form of impunity, a kind of cloak against finding of unconstitutional conduct by law enforcement officers.

Well, that's qualified immunity. And it has shielded officers from being held accountable for this unconstitutional conduct. The George Floyd Justice in Policing Act⁴, which is the legislation passed by the House last year, includes a provision to end qualified immunity for police officers. Now, that doesn't mean that automatically police officers are going to be held liable. You're still going to have all of the same hurdles that you have to scale in order to bring you know, a Section 1983 claim and in order to hold someone responsible for unconstitutional conduct. You're still going to be facing a system in which so often the inferences go in favor of law enforcement in all aspects of the case. It's still going to be the credibility of the suspect against the credibility of the police officer. You know, police officers are still going to be in what is often a preferred position in the legal system. But it would remove this barrier, which as I said, has been interpreted all out of whatever its intent was as a doctrine initially. And I think people think that qualified immunity is, like, written down in the constitution. It is not. It is a judge-made doctrine. It was an interpretation of the court. And so, it's time for it to be changed, and Congress has the power to change it.

Gary Bledsoe

So, the George Floyd Act actually does address that and actually eliminates that as a component of the trial of these cases. What's the likelihood that the George Floyd Act is actually going to pass? I know that right now, we're looking at 50/50 Senate and the issues—

Sherrilyn Ifill

Plus one. Plus one.

Gary Bledsoe

--relating to filibuster. Oh yeah. The filibuster issue, right? And this is maybe not one of those issues that has involved finances, right? So it's going to have to stand on its own maybe. So, do you really foresee that it's still-- that it's got a good chance of passing?

Sherrilyn Ifill

It's really not going to be easy. It's really tough. It's important to do some education around qualified immunity because I think people have been spinning kind of lurid tales that this is now going to mean that, you know, all officers are held liable - it's not going to mean that - this is going to bankrupt officers. No, uh, there's still, you know, insurance that covers-- that will cover the settlements in many of these cases. It's not going to open up the parade of horrors that I think many law enforcement agencies have tried to suggest would happen. And we have to do a better job of educating people about that so that they understand it. But, you know, as with any legislation, it's going to be, you know, the rough and tumble of negotiation and pushing and pulling in the Senate. We want the White House to put their bully pulpit behind it as well. So, we never said it was going to be easy. We're very happy that it passed in the House, and it wasn't easy to pass in the House either. It required tremendous work and negotiation, but it did happen.

⁴ *Id* at Sec. 102

And it's time to really put the pressure on in the Senate to try to make this happen. And that happens when people are mobilized. That means people calling their senators, and, and being informed themselves. And we're going to be preparing, social media kits and so forth so that people can feel comfortable understanding what they're talking about and, and calling their senators. And, you know, it's time out for people to say, "Well, the Republicans will never vote for it." Well, certainly not if you never pressure them, and you've got to pressure them to address this issue. And so, you know, we're going to do the very, very best we can.

Gary Bledsoe

I think you've established that this would not mean that police officers would lose all cases. That's just untrue. There's so many other issues or impediments, but at least those are impediments that may be a little bit more reasonable to make people to try to deal with. Uh, but I think there's another component I'd love to hear your thoughts on it. It would seem to me that we'd end up with better police officers and just a better society altogether if you eliminate this because once you know there's the possibility of liability people are going to take it a lot more seriously. And I think in most of these cases, there's going to be indemnification, right? So, if you work for a city, that city's going to be the one footing the bill and not the individual police officer.

Sherrilyn Ifill

Exactly. Exactly.

Gary Bledsoe

So, it just seems to me that things would get better all around, but we continue to fight these nefarious things that are put out there that are intended to direct the debate in another direction. And they've had some success in doing that. But what do you think? Will this make for a better situation with policing around the country?

Sherrilyn Ifill

Well, there are lots of components to address this issue of public safety. And one is this issue of accountability. All of us have to abide by codes of conduct. We're lawyers, Gary. We're, we're controlled by a code of conduct. There are certain things maybe I want to say that I can't say. There are things you want to say that you can't say because we have a code of professional responsibility that governs our conduct. And everybody on every job has things that they can do and that they can't do. And there has to be a system of real accountability. So this is not the only component. There's qualified immunity. There's the actual disciplinary process within law enforcement and cities that is broken in so many places. It's real civilian complaint review boards with real power. And then there is this whole question of, like, how much should the police even be doing in our communities? And how do we shrink the footprint of armed constabulary as alleged problem solvers in our communities?

So, there are many, many components to this. There is no magic to one solution, but I can't think of any other structure in which we don't think that having a system of accountability would improve conduct. I mean, that's just like a no-brainer. A system accountability-- of accountability

improves behavior and conduct. It'll incentivize cities to get serious about who they allow to be hired as police officers and so on and so forth if they have to indemnify these cases. The whole regime has to be rethought and reimagined, and we have to now stop pretending that the rules that apply in every other employment context somehow would not apply in the law enforcement context as it relates to accountability and discipline.

Gary Bledsoe

So now I know that you all are always there on the Hill, lobbying these issues. And so, you take a very prominent role or at least the LDF does. I think you have a lobbyist that kind of does that for you guys, but sometimes I think you're called upon to be a witness. Can you tell us where, -- no, not hardly? Okay. Can, can, can you tell us where we are with the George Floyd Act and what other provisions you think that probably those who are watching should know about that that really stand out as making a potential difference if they get passed?

Sherrilyn Ifill

Well, it's early days yet of the Biden administration. Just a few weeks. As you know there has been quite a bit of tussling in the Senate around committee chair-chairmanships or chairs, and that has finally been resolved. So, having the committees in place, because of course, these bills have to go through a committee, is vitally important. And so, we have that process. We have the process of confirmation that's happening right now and that's taking kind of precedent in getting the Biden cabinet confirmed. So, we have a little bit of time because this is an administration standing itself up, a committee structure in the United States Senate standing itself up, and these bills have to flow through the various committees for review. So we've got time, a little bit of time, but that should be time we're using to get educated and organized.

We actually don't have a lobbyist, but we care deeply about these issues. And we speak to these issues, and we talk to members of Congress, and we continue our work at the local level because there's a lot of local work to do around public safety and trying to support the voices of people in communities who want to reimagine what public safety should look like in their communities and not just accept whole what has been handed to them. So, we do that work as well. We do our own litigation. We're part of the team that challenged stop-and-frisk in New York. And we continue to monitor the consent decree in that case. We monitor the consent decrees in cases that the Department of Justice brought in Baltimore and Ferguson and other places. And as soon as the DOJ is up on its feet and the attorney general is confirmed, we're going to be reengaging around the issue of starting pattern and practice investigations again of unconstitutional policing, which basically stopped under the Trump administration, under Jeff Sessions and Bill Barr. They simply stopped investigating police departments for patterns and practices of unconstitutional policing. And that's big. It needs to be reopened. That's another accountability piece that is vitally important, and police departments need to know that there will be this federal oversight and potentially these federal suits brought against policing practices that violate the constitution.

Gary Bledsoe

So, you raised the issue with Merrick Garland maybe being confirmed. And I guess there will be new people in the civil rights division, some that I think that you know and have great legacies in terms of their own footprint in the civil rights arena. I know the old justice department under President Trump ended up eliminating-- Sessions ended up-- his last day in office, I think, he eliminated all those consent decrees from Eric Holder's days as AG. And so, you raise the specter of maybe those pattern and practice type investigations actually making a difference in your community. How would actually get started? And how does one actually put one of those together? And do you guys work pretty actively with communities and helping, trying to put together information to show pattern and practice issues so the DOJ will have the authority to bring about some change in the community?

Sherrilyn Ifill

Yes. It's really important. And I should just correct you. Sessions did not end the consent decrees that existed, and he doesn't have the power to do so. What he did do, I will tell you, when he came into office-- one of the first things he tried to do was scuttle the then, not quite yet signed, Baltimore consent decree. So, after Freddie Gray was killed in 2015, the Department of Justice opened an investigation into the Baltimore City Police Department and a year later issued a report and its complaint and its intention to sue the Baltimore City Police Department for patterns and practices of unconstitutional policing in violation of the federal statute that governs that conduct. And Baltimore then entered into the negotiations. The consent decree was almost ready to be signed. Enter Jeff Sessions, who just came into office, and we learned that there was going to be an effort to try to stop this consent decree process the day before a public hearing in federal district court in Baltimore City. We very quickly prepared an emergency motion to intervene and came into court the next day and made clear that we intended to intervene in the case that the Department of Justice would not move forward with the consent decree. Fortunately, the judge was an excellent judge, Republican-appointed, by the way, federal district judge, Judge Bedar, who refused to allow the Department of Justice out of the consent decree. They said, "This is the consent decree you negotiated," essentially told us, "We're not going to let you in the suit, LDF, unless the Department of Justice doesn't do its job, but I'm going to hold them to the commitments they have made in the consent decree."⁵ So, the [Baltimore consent decree](#) went forward.

But what happened was, essentially, there were none. They were, I think there was one investigation that Barr did at the end of a small department in Massachusetts. But essentially, you had two dozen pattern and practice investigations filed under the Obama administration and you basically had zero under the Trump administration. And yet, we've all seen the various incidents that have happened and occurred around the country. You know, fortunately, there are some good line attorneys, career attorneys in the Department of Justice who have kept the consent decrees that existed already going. And we have basically played the role of shadow monitoring those consent decrees to make sure that the Trump justice department was doing its job. And we continue to do so in Baltimore and other places. What we want now is for the new Department

⁵ See, [United States v. Balt. Police Dep't](#), 249 F. Supp. 3d 814 (D. Md. 2017).

of Justice, presumably headed by Merrick Garland, and as you pointed out, Vanita Gupta, who most recently headed the Leadership Conference on Civil Rights, will be the associate attorney general. It's the first time a civil rights lawyer will be one of the top three positions in the Department of Justice. Prior to that, she was at the ACLU, and prior to that, at the Legal Defense Fund. And then Kristen Clarke, who is, the executive director of the Lawyers' Committee for Civil Rights Under, Under Law, who also directed the Civil Rights Bureau in the New York Attorney General's Office and also is a former LDF attorney, has been nominated to be assistant attorney general for civil rights.

And so, what they will have to do is to marshal their resources to address the jurisdictions where pattern and practice investigations should be opened up. We need the Department to do this because to do these investigations requires an incredible amount of resources. It took years and years for the consortium of organizations to be able to sue New York City under stop-and-frisk, the NYPD.⁶ Because even gathering the data is so resource intensive and expensive, but the Department of Justice has the ability. They have the resources to be able to do this. This is how they could start an investigation in Baltimore one year and the next year be able to file that, that pattern and practice case. And so, we need them in the game. They have the lawyer resources and the other resources that are needed to get the data from the police departments to determine whether there are racially discriminatory stops and so forth. And so, we, we need them to get back in the game, under the new administration.

Gary Bledsoe

So how do you distinguish between communities? What advice would you give? Let's say you live in a small town in Texas and you're wanting to see if you can get DOJ to do an investigation in pattern and practice, and probably we'll hear from 500 cities around the country once we have a new group confirmed. What is it that kinda sets you apart that allows you to become more part of the conversation with the likelihood of having some DOJ intervention in your community?

Sherrilyn Ifill

Well, I think that's why civil rights groups are here. They should be reaching out to you, Gary, saying, "We're here in this town. This is what has been happening to us," working with local NAACP chapters and other local civil rights organizations who can begin to do some preliminary investigation themselves and who then can turn around a, a letter that can get to the top of the pile, right, at the Department of Justice, saying, "This is our analysis of what has happened." So I think that's where you use the resources of civil rights groups and communities at the local and national level to be able to put that package together that can get that attention first to be able to assess what the likelihood is of being able to launch a pattern and practice investigation in a community. And then being able to share that information and hopefully bring in the resources of the Department of Justice or of the state if you are in a state that has an attorney general who has the power to bring those kinds of investigations as well.

⁶ See, [*Floyd v. City of N.Y.*, 959 F. Supp. 2d 540 \(S.D.N.Y. 2013\)](#)

Gary Bledsoe

There's sometimes been colleges and universities that have been part of the group that have helped put together the pattern and practice information to send to DOJ that you're aware of?

Sherrilyn Ifill

No, not that I'm aware of. Of course, we do rely on legal academics to be able to help us understand what is the local law as we work on some of these cases. And so certainly there is that role-- there is that consultative role to play that is hugely important and helpful. But not as a university. Mostly, it is individual professors who have a background in some aspects of the law that are relevant to these cases or matters. That's really helpful for us because these are people who are steeped in understanding what is the local law and how that local law is interpreted.

Gary Bledsoe

Let's visit a little bit about the Supreme Court and qualified immunity. I know that that has kind of been an issue, and I know many feel as though the court is not wanting to take up a case involving that to change the law at all. And I know that we've had recent dynamics that have changed perspectives about what might happen with that court with the sad passing of Justice Ruth Bader Ginsburg. So, what do you see in terms of any changes on that front in terms of litigation before the Supreme Court on these issues?

Sherrilyn Ifill

Yes. I think the pressure is going to have to come from the bottom up, and by the bottom I mean it's going to have to come from lower courts. And you're beginning to see that. The interesting thing about qualified immunity is that there's a bit of a left-right coalition around this. There are a number of conservatives who believe that qualified immunity has to be reformed. And so, you're often seeing conservative judges writing concurring opinions expressing their views, concurring that the law requires them to uphold qualified immunity but expressing their concerns about the doctrine itself and beginning to kind of develop that in the lower courts. It's going to take something of a mutiny I think for the Supreme Court to be able to understand that the dynamic has shifted. The lower courts are closer to the problem. They're closer to understanding. They see many more of these cases than the Supreme Court does. The Supreme Court gets a few qualified immunity cases that make their way through every year, and they're largely making decisions not to take up those cases.

But the lower courts are seeing those cases all the time. And so, they have a better sense of what's going on. And I think at some point, the drumbeat, it can't be ignored. That's why it's important to have those lower courts writing concurrences or writing dissents to articulate to the Supreme Court the nature of the problem and the urgency of the problem. And so, to the extent that courts can do that, they should do that. We need more writing. We need the Academy to be engaged in this conversation. I raised this issue often in the American Law Institute. The American Bar Association (ABA) should be talking about it. The institutions of our profession have to be taking this issue up, and they should. This is a judge-made doctrine. This is not something that's written down in the United States Constitution. And if it has gotten out of whack, if it has been interpreted

out of all shape and out of all sense of justice, then it's the responsibility of the profession to correct it. So when we show up in our ABA meetings and our other bar association meetings, when we show up at the American Law Institute, it's important for lawyers to take responsibility for demanding the reimagining of a doctrine that systematically produces injustice.

Gary Bledsoe

That is so true. It couldn't be better put. You know I want to bring one matter to your attention maybe that you might discuss with us. And that is, you know, last summer, we saw all the protests around the country that Black Lives Matters really kinda led and many other groups might've been part of and being out there and protesting misconduct by police that was obviously spurred by the horrible slaying of George Floyd in, in plain sight. And then we saw what, of course, happened on January 6th, right? When we have people, a bit more conservative that stormed the United States Capitol and basically took over the Capitol. And they were handled in very different ways. It seems, you know, they were all allowed to go home. And what I love to tell folks, in my personal belief, if those had been Black Lives Matter protesters, they wouldn't have made it past the first perimeter, and there would have been a whole lot more protection that was actually provided there. And I know you guys have been involved in that. So, I'd be curious if you might comment on whether or not, -- or what you guys might be doing to address the types of disparate treatment that we've seen in those types of cases.

Sherrilyn Ifill

Yes. Well, let me begin by saying that what we saw on January 6, those were not protesters. Those were rioters and insurrectionists. These were not people who came to the Capitol to lift their voices and let their voices be heard about an issue of injustice. I think the more we're learning that people came there to break into the Capitol, to do violence, and in some instances, to harm members of the United States Congress. So, I want to be very clear that there is no equivalence. You know, it's not like protesters and protesters, right? But nevertheless, your question, uh, is an important one because what we also saw were most of those people walking out of the Capitol with doors held by police officers as they walked out after having exhausted themselves marauding and rampaging through the Capitol as they searched and hunted for our elected leaders. We saw them going home. You know, there are a number who have been arrested, but they've been arrested at their homes in Arkansas, in Florida, in Georgia. They were not stopped. And we saw that originally there were only 15 arrests. Most of the arrests that happened that day happened for, for violations of curfew that evening. It was shocking and appalling to see the way in which those people were allowed to storm the Capitol, to hang a gallows outside the Capitol. To, with murderous intent, walk through the Capitol and deface the Capitol and walk out unscathed. Just absolutely stunning and really putting on display the deep disparities in our justice system. And there's a lot to be investigated, and more, we need to learn about what happened and how it happened and why it happened.

Last year, as you point out, all around the country, and as I said earlier, in every state in this country, in 50 states, multiracial, groups of protesters came out to speak to the injustice they saw after the killing of Ahmaud Arbery, who was killed not by an active law enforcement officer, but by a retired law enforcement officer and his son. Who was chased through a community and

basically hunted down and killed. After the killing of Breonna Taylor in her own bed, in her home in Louisville, after watching the torture video of the death of George Floyd. Those protesters were met quite differently than the rioters on January 6th. Many of us saw in fact, conduct by law enforcement that reinforced precisely what the protests were about. We saw law enforcement officers kettling people and macing them and beating them. We saw them push that elderly man down in Buffalo and then refuse to allow anyone to provide medical treatment to him initially. We saw them driving cars through protesters. We saw them beating protesters. We represent a young man who had officers pull down his mask and then pepper-spray him in New York City. We represent protesters in Louisville. We represent protesters in the City of Philadelphia. And each of those are class actions. It was astonishing to watch that conduct. So that's one piece of it.

The second piece of it is the reaction of the federal authorities. Last year, when those protests were happening the then President Trump was getting more and more bellicose about the protest. He and his Attorney General Bill Barr held a conference call with governors around the state in June. I listened to the full call. On that call, and I will not say that Trump was necessarily leading the charge. Barr was very much leading Trump, insisting that it's critical to dominate the streets. Those were the words that Barr used, "You have to dominate the streets," and essentially promising that he would have federal authorities bringing multiple federal charges against protesters. And Trump then agreed and said, "Yes, you have to arrest them. And they can't go away for short periods of time. They have to go away for long periods of time. They're terrorists. They're anarchists." That's what he can be heard saying on the tape. And unfortunately, a number of governors welcomed this.

So around the country, we have people who participated in protests against police brutality and in protests against Confederate monuments, who otherwise normally would have simply faced state charges, are now facing federal charges. We're talking about young people, 21, 22, 23 years old, facing 30 years in prison because of these federal charges. And so, this is an issue we intend to raise with the new attorney general as well. It really starkly dramatizes the deep injustice in our justice system. And it's going to be impossible for people like you and me, Gary, to be able to encourage a belief in a system or the utilization of a system that shows itself to be so illegitimate in those matters. And so, it's critically important that this be addressed.

Gary Bledsoe

I don't think there's any question about that. And, you know, one question I would have to you in reference to that is, I think there was a friend of mine who chairs ACLU board, is a law professor at UT, mentioned to me the other day that you could identify everyone at the Capitol with a simple request to the cell phone companies, right? And so, you presume the idea of that if you're within the Capitol, you probably violated federal law, but there seems to not be a real enthusiasm or zeal in going after individuals, as compared to what you're saying. And you have regular individuals that are looking at 20, 30 years in prison. So there appears to be a real issue in terms of law enforcement and how the law is enforced based upon one's political philosophy. I don't know if that's getting a little bit far, but is that--

Sherrilyn Ifill

Well, well--

Gary Bledsoe

part of this discussion here?

Sherrilyn Ifill

Well, I will say, Gary, that actually, I've been in the days following and the weeks since January 6, law enforcement appears to be doing a fair-fairly admirable job in finding and arresting a number of these people. And by the way, it's not requiring any sophisticated level of investigation or facial recognition technology because these people believe that nothing would happen to them. They believe that what they were doing was entirely fine. And so many of them posted on social media, "This is me storming the Capitol, right? This is me entering the building. This is me at Nancy Pelosi's desk," and so on and so forth, right? So, frankly, this has not required crackerjack investigative skills. These are people who are posting on social media, on Parler and other platforms, precisely what they were doing. Who were posting videos in real time because they figured, "Trump is president, and we're going to keep him in as president, and therefore, nothing will happen to us. We-we're doing the president's bidding," which is what many of them said. "He invited us. He asked us to do it, and we're here because the president asked us to come."

But I have been encouraged by the increasing number of arrests that have happened in the subsequent weeks, as the FBI (Federal Bureau of Investigation) has gotten involved. What I cannot forget is how they walked out of that building and how they were allowed to board planes or get in cars and drive back home or fly back home with no one stopping them when they had clearly engaged in illegal conduct and when a number of people, including law enforcement officers, were dead. So that's the part that we still have to deal with. Yes, we have to deal with finding the perpetrators and making sure that those arrests happen and that there's accountability. But we also have to deal with the fact that they were allowed to walk out that day, and we need to understand what that was about.

Gary Bledsoe

I mean, you can even look at how they've been handled locally, right? So many of them have been bonded out and allowed to go home, when you would not see the same thing happen with protesters that they if they look different. So that's really been kind of a stark contrast. DC has had to veto so many local jurisdictions in their handling of these cases. I'm curious. There's an issue that's been discussed, and it became even an issue in the presidential campaign that's about defunding the police. And I know there are groups that started up with, with noble effort. The idea was to bring about police reform, but there's an issue in reference to what's actually meant by defund the police and how that's become such a major part of the discussion on police reform. I know this is a controversial topic, but many feel that maybe it, it led some voters to move and go in a different direction because of their feeling that this was meaning get rid of the police department. And I think that was a misunderstanding of what is actually meant by defund the police. Could you bring some perspective to us what's meant by defund the police and how that should be handled, how we should handle that discussion of the issue when it's brought up of defund the police?

Sherrilyn Ifill

Yes. Well, I don't purport to speak for any community group. And so, I want to first say that. But what I do want to say is the following. First of all, it is entirely legitimate to look at the question, of funding for services within a particular jurisdiction or municipality. And I think it is quite apparent that in many cities there is an incredible amount of money that goes into supporting law enforcement. And when we look at that budget, we have to then ask ourselves, is that the appropriate place for all of those resources? And at what cost do we allocate those resources in that direction? And so, when people say, "We want to lessen the footprint of police in black and brown communities," what we're saying, I think is that we have the right to be able to look at the full range of services that communities need, the full range of services that law enforcement has been assigned, and to recalibrate who is responsible for addressing issues in our communities.

As I have said it's not clear that we always need armed law enforcement to respond to all community conflict. If young people are out late at night on the street and they're making a lot of noise and they're sitting on your car and you ask them to move and they cuss you out is the next move to call 911? Is that who should be responding to that circumstance, or should there be a special core of public safety officers who are focused on youth services and who understand how to engage and talk with young people? Because once you call 911, you understand what the logical end to that encounter can be. If there's a homeless person who has been sitting on your stoop and you can't get them to move off your front porch and you get into a conversation and an altercation with that person, is the next step to call 911? If your child who you know suffers from some mental illness is having an episode and you're afraid they're going to harm themselves, is 911 the number that you should call? Because we also know what can happen in that circumstance.

So, I've just described three areas in which right now the practice is generally that police respond to those encounters. And the question then becomes, why? Are they best prepared to respond to those encounters? Are they trained to respond to those encounters? The answer largely is no. And when police officers are telling you the truth, they will tell you also that they would prefer not to respond to those encounters. So the question is, why are we taking the resources within a city and allocating it to law enforcement that then allows them to be the front line for the kinds of circumstances that I just described to you? And when I share this with people in the way I describe it to you, most people say, "Yeah, you're right." They don't find this to be a radical, upsetting, distressing idea. So, I think that's where we begin. I think people get upset about the term, and it kind of inflames the conversation. I do think that there is a continuum of how people define it. And that's why I'm not suggesting that my way of thinking about it, or at least the way I see it, is necessarily shared by every group that uses the term. But I understand what animates the term to be something that I do agree with, which is that what has been happening is not working. It's not working. And so, there is a radical search for other solutions, and the solutions are about public safety, not about policing.

And that is something that our communities care about. Our communities care deeply about public safety, and we have issues of gun violence and homicide. I'm speaking to you from Baltimore City right now. Our community cares deeply about that, but we've only given them one answer. We've only said the only thing we can do is more police. And I think it's entirely appropriate for black and brown people to be saying, "That is not working, and it is having this consequence of innocent people being killed or brutalized and that it has left a force that acts like

an occupying force often in our communities." We should be able to look for other solutions. And it begins with thinking about the allocation of resources and whether we can use resources to strengthen other aspects of our community, community mental health services, homelessness services, youth services, and so forth, and rebalance and recalibrate our way of thinking about public safety. And what comes with that, of course, is recalibrating the resources or the budgeting that we're giving to law enforcement. When I describe it that way, does that sound super scary? I don't think so.

Gary Bledsoe

Sounds great to me.

Sherrilyn Ifill

And I'm not suggesting that that's the end of the continuum. I'm just saying it starts there. And so I encourage people to actually move past the terminology and to really be thoughtful about what needs to happen in this moment.

Larry Taylor

We're running out of time. We want to make sure we get to the question and answer session for our attendees, and the conversation has been absolutely wonderful and on point. Our first question would be based upon the shadowing of the implementation of consent decrees, have you identified profound instances of questionable behavior exhibited by law enforcement agencies?

Sherrilyn Ifill

Yes. I mean, consent decrees aren't a panacea either, right? It's a beginning. It requires good leadership of the police department, good leadership of the city. It still requires discipline and a strong disciplinary structure. It's very disturbing to see when conduct continues. But at least there is an infrastructure when you have a consent decree to be able to address the issue when you see the issue and to be able to get at some of the root causes. And the infrastructure is already in place, so you don't have to kind of scramble for the infrastructure. And also, there's accountability in that the police department is accountable to somebody else, which is the federal judge. In Baltimore, the federal judge has regular hearings, public hearings, receives public comment. There's a whole process happening right now around some training that they're doing for the police department, that the community has been invited to not only comment on the training but participate and understand exactly what's happening.

So it creates an infrastructure in which the community voice can be heard, in which the community can raise what are the concerns they have about different measures that might be undertaken by the department, and that infrastructure is really, really important to make sure that there is oversight because what normally happens is these events happen, something flares up, there's a lot of attention, then it dies down, and it's back to business as usual. The consent decree structure and the monitoring of it ensures that there's an infrastructure in place that allows for the continuation of review and change.

Larry Taylor

And that actually brings us to our next question. Individuals who are not attorneys, how can they be more involved at shaping and moving this particular discussion forward?

Sherrilyn Ifill

Well, I will, first of all, say that people who are not lawyers have been shaping this discussion. I mean, I think we have to be really clear that the reason we are here at this moment with a community around the country, a nation of people who understand this issue, certainly not all, but certainly many, many more than in the past. A majority of people who believe change has to happen around policing. That has happened because of grassroots mobilization and activism around the country. So, there is no shortage of organizations that communities can join and be a part of to continue to have their voice heard in this process. And I think it's vitally important. Lawyers can only do so much. We recognize that. We try to make sure that our work is consistent with the vision and the requirements and the demands of communities. We have organizers on our own staff, who keep us engaged with the community.

And so, I would just say that people should keep doing what they're doing, not let it die down. And use social media, as a way of keeping the conversation going. Pay attention to all of these issues when these confirmations are happening of people like the attorney general. Don't presume that just because there is now a federal government that is more aligned with issues of justice and equality-- certainly, the polar opposite of the Trump administration, doesn't mean that the struggle is over. Remember that we started the modern iteration of this in 2014 when Obama was president. And we saw Eric Garner, and we saw Mike Brown, and the next year we saw Freddie Gray, and we saw, Walter Scott in North Charleston and on and on and on. So it's not going to be magically changed, and therefore, people should understand that they should not stop pushing. You have to keep pushing.

Larry Taylor

And just a follow-up on that before we conclude. Would you also say that it would be important for them to get involved in their local government and areas in which they can be either community voices or part of community, groups that actually speak to the elected officials about this?

Sherrilyn Ifill

I'm so glad you asked that question because we spent last year, in addition to talking about policing and public safety, talking about voting. And one of the problems with the way we talk about voting in this country is that now everybody's feeling pretty good about themselves 'cause we had this incredibly high turnout, and Georgia has turned blue and all the stuff that people are talking about. The problem is we think that, that it ends after you cast the ballot and the ballot has been tallied. It doesn't. So, if you cast that ballot, but you never show up at a city council meeting, when the city council has authority over the police. You never show up at the mayor's forum. You never bring your voice to bear to now make the people that you elected deliver on the promise, right? You never go to the congressional office. You never call your

congressperson's office. You know I really challenge people. You should be making at least two calls a month, and I would say three, to both of your United States senators and to your congressperson. Everybody has enough time. They could do that once a month.

You call the Capitol, 202-224-3121. You ask to be connected with your senator. You all in Texas, you ask to be connected with Senator Cornyn's office or Senator Cruz's office. And you tell them, "My expectation is that you're going to pass the George Floyd Justice in Policing Act, because we've had it. I live in the state where Robbie Tolan was shot, right? And, and we want to honor the activism of his family and his strength and courage, and we're determined," right? There is no reason that you're not calling both your representative, whoever that representative is, and your two senators to tell them you want the George Floyd Justice in Policing Act, and you should be calling every month until that act is passed. They should hear from you. And if you can't, then you're going to send a letter. And if you can't send a letter, you're going to tweet at them, or you're going to say something to them on Facebook.

Everybody has a job to do. And if you think it ended on November 2nd, when the election happened, you are sadly mistaken. That was the beginning. Now you decided what you're going to do. The results were whatever the results were. Even if you didn't vote for this person, they represent you, and you have to hold them accountable, and they have the, the right to hear what you expect of them. So, what do you expect of them? And are you prepared to follow through as a citizen, which is part of the responsibility of citizenship and make sure that they follow through on what you want? And then in your local jurisdiction, can you go to one city council meeting? Can you go to one school board meeting? When they just see you sitting there, when they walk into the room and the room is full, there's a different tension. There is a concern. I think this is something that our faith organizations, our churches have to get involved in. And now that you can attend these meetings over Zoom, there's really no reason that you can't show up and that you can't sign up beforehand so that you get to make a little statement. It's important for them to hear your voice and to feel the pressure coming from the community for transformation.

Larry Taylor

Thank you, President Ifill. I believe that is our time. For those who are still on, remember, you can go back to the main screen of the platform and hit Next Session to join our next session or to see, the current video. Once again, thank you both for a very insightful and informative discussion.