

21ST CENTURY LAW ENFORCEMENT: HOW SMART POLICING TARGETS CRIMINAL BEHAVIOR

HEARING BEFORE THE SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES ONE HUNDRED TWELFTH CONGRESS FIRST SESSION

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FRIDAY, NOVEMBER 4, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 11:05 a.m., in room 2141, Rayburn House Office Building, the Honorable Bob Goodlatte (Acting Chairman of the Subcommittee) presiding.

Present: Representatives Goodlatte, Smith, Lungren, Marino, Gowdy, Scott, Conyers, Chu, Jackson Lee, and Quigley.

Staff Present: (Majority) Caroline Lynch, Subcommittee Chief Counsel; Sam Ramer, Counsel; Arthur Radford Baker, Counsel; Sarah Allen, Counsel; Lindsay Hamilton, Clerk; (Minority) Bobby Vassar, Subcommittee Chief Counsel, Keenan Keller, Counsel; and Veronica Eligan, Professional Staff Member.

Mr. GOODLATTE. The Subcommittee will come to order. I want to welcome everybody to today's hearing on "21st Century Law Enforcement: How Smart Policing Targets Criminal Behavior." I would especially like to welcome our witnesses, and thank you for joining us today, and apologize for the delay. In fact, we have another vote pending. We are going to try to get a little bit of our business done, and then we will go do that vote and come back again.

So I am joined today by the distinguished Ranking Member of the Subcommittee Bobby Scott, and the Chairman of the full Committee, Congressman Smith, and the Chairman emeritus of the full Committee and Ranking Member John Conyers of Michigan.

I have an opening statement, and I am going to submit that for the record and yield to the gentleman from Virginia for his opening remarks so we can move the process along.

[The prepared statement of Mr. Goodlatte follows:]

Prepared Statement of the Honorable Bob Goodlatte, a Representative in Congress from the State of Virginia, and Chairman, Subcommittee on Crime, Terrorism, and Homeland Security

I want to welcome everyone to today's hearing on 21st Century Law Enforcement: How Smart Policing Targets Criminal Behavior.

The past 20 years has seen a dramatic decrease in crime levels across the United States. According to the FBI, violent crime in the U.S. has dropped by almost 50%

in the last 20 years.¹ In some cities, like New York, the decline has been even more dramatic. The number of murders in NYC has dropped below 700 a year, compared to over 2000 a year in the 1990's, levels not seen since 1963.² According to two recent Virginia law enforcement reports³, violent crime in Virginia fell dramatically over the last decade, 19 percent from 2000 to 2009. That's actually a sharper drop than the national average of 15 percent over the same time period.

Property crime rates in Virginia have also fallen significantly, 12 percent over the decade. Much of this decline has occurred during a severe economic downturn. The old liberal theories of crime blamed "root social causes", such as poverty and joblessness, for criminal behavior, and recommended release and job training instead of prison. Those old, 20th century assumptions have been proven wrong. But many lawmakers and criminologists now credit improved police computer-based crime fighting tactics like CompStat, longer prison sentences, and more offenders in custody.⁴

However, despite the gains in public safety enjoyed by citizens in America, some continue to criticize police departments across the country for enforcing the law unfairly based on race. Even though the Justice Department banned any use of "racial profiling" in 2003⁵, some continue to allege that the police have gained their success by targeting certain populations.⁶ Meanwhile, many argue that taking ethnic and racial trends to account in policing is a rational and efficient method of allocating investigatory resources to safeguard the security of all.

In a polyglot society such as the United States, there is no single dominant ethnic identity. Americans come from many countries, many religions, and many ethnicities. Because of the vast array of cultures here, it would be hard for us to expect that the demographics of the criminal justice system would exactly mirror those of society. For example, we would not be surprised to find out that the percentage of male inmates is much greater than their representation in society. According to the Bureau of Prisons, 93.5% of the Federal prisoners in the country are men, but men are a slight minority in the United States at 49% of the population. Should we in Congress then argue that the police and the courts discriminate against men? Of course not. We understand, as citizens, that the criminal justice system targets criminals and tries hard not to prosecute the innocent. That means that the prison population will reflect the population of criminals, and not the exact demographics of average citizens.

The stunning crime decline we have enjoyed also cuts against an argument about racial bias in policing. If, in fact, the police were unfairly singling out black and Hispanic criminals, while allowing white criminals to roam free, the crime rate, I would think, would be higher, because the bulk of criminals would be at liberty due to the unproductive police focus on race. I would also like to point out that currently, according to the Bureau of Prisons, the majority of inmates in the Federal system are white.

So, rather than rest on our laurels, we on the crime subcommittee want to continue this decline in crime. So we should look at the reasons for this decline, and encourage common-sense tactics and laws that allow the police and the courts to do their jobs. I don't think that it helps the citizens of this country to have the police using political correctness as a guide in deciding whether to arrest a criminal. A criminal is a criminal whether he (or she) is white, black or polka-dot. Political correctness hamstring the police, wastes money, and contributes to lawlessness.

The City of LA has been under a Justice Department consent decree for over a decade. It has spent millions of dollars, and has had to pull officers off patrol, to fill out paperwork to keep track of the ethnicity and race of every person with which they come in contact. Even though LA has made substantial progress of improving the way they run their department, Eric Holder's Justice Department has resisted releasing Los Angeles from their onerous probation. Is this because there is truly a problem with law enforcement, or is this a political tactic to gain points on the left by criticizing police? Are the statistics nationwide generated from unfair polic-

¹ FBI, Crime in the United States: <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10tbl01.xls>

² Lueck, Thomas J. (December 31, 2007). "Low Murder Rate Brings New York Back to '63." *New York Times*.

³ The Virginia State Police's "Crime in Virginia" and Department of Criminal Justice Services' "Virginia Crime Trends 2000-2009."

⁴ Chan, Sewell (August 13, 2007). "Why Did Crime Fall in New York City?" *New York Times*.

⁵ Guidance Regarding the Use of Race by Federal Law Enforcement Agencies, U.S. Dept. of Justice, June 2003. http://www.justice.gov/crt/about/spl/documents/guidance_on_race.pdf

⁶ ACLU, "Mapping the FBI": <http://www.aclu.org/mapping-fbi-uncovering-abusive-surveillance-and-racial-profiling>

ing, or are the charges merely a way to question the law enforcement-driven model of crime reduction? It is an issue that continues to generate debate.

Today, we will look at how modern, 21st century law enforcement has improved, and reduced many of the problems we were concerned about back in the 20th century. As the crime rate continues to fall, we should make sure that our tactics continue to evolve and target criminals, regardless of race, color or creed, so that we may protect Americans regardless of race, color or creed.

I look forward to hearing more about this issue and thank all of our witnesses for participating in today's hearing.

Mr. SCOTT. Thank you, Mr. Chairman. And I thank you for calling the hearing.

During a time when State and local governments are faced with shrinking budgets and the continuing challenge of maintaining the public safety infrastructure, the topic of smart policing makes sense for oversight by the Crime Subcommittee.

The fundamental question faced by law enforcement agencies is what practices or tactics represent the best utilization of scarce agency resources. For quite some time there has been a discussion of the practice of community-based policing by law enforcement agencies. Though the strategy takes many forms, it seems that there is substantial agreement that having the involvement and trust of local communities is a critical factor in successful law enforcement.

Much of the focus on community policing has been driven by the sometimes adversarial relationship between the police and communities of color. To some degree this debate over racial profiling and the use of race by law enforcement has become a central element in the relationship between the police and the minority community. Over the past two decades, tension between police and minority communities have grown as allegations of racial profiling by law enforcement agents, sometimes supported by data-collection efforts, have increased in number and frequency.

The arrest of Harvard professor Henry Louis Gates demonstrated that the combination of race and law enforcement represents a volatile mix across all strata of the minority community. The real problem is not when the search turns up—the real problem is not when a search turns up contraband, but when a pattern of race-based searches creates a climate of harassment in the entire community, including law-abiding citizens, that ultimately undermines the police department's public safety mission.

In response to these concerns, the Department of Justice under the past two Presidents and Members of Congress have introduced a variety of measures designed to eliminate the practice of racial profiling. When data-collection legislation was first introduced in 1997, the racial-profiling issue was relatively straightforward in political terms. Profiling was represented by the classic pretext traffic stop for an African American male driver who was pulled over for a minor or sometimes a manufactured traffic violation, then asked for consent to search the vehicle. Today traffic and pedestrian stops have given way to even more complex concerns of airport passenger profiles and immigration sweeps. However, the original challenges represented by the traffic stop context have not been eliminated and, in fact, form the foundation for all other kinds of racial-profiling complaints.

As we move forward, I believe it is important to remind Members just how far we in Congress have come in developing bipartisan consensus on racial-profiling issues. On September 11, 2001, there was substantial empirical evidence and wide agreement among Americans, including President Bush and Attorney General Ashcroft, that racial profiling was a tragic fact of life in the minority community, and that the Federal Government should take action to end the practice.

Data collected from California, Florida, Louisiana, Maine, Maryland, Michigan, New York, Ohio, Oklahoma, Rhode Island and West Virginia have demonstrated beyond a shadow of a doubt that African Americans and Hispanics were being stopped for routine traffic violations far in excess of their share of the population or even the rate at which populations are accused of criminal conduct. Incredibly this pattern existed even after law enforcement knew that the statistics were being gathered. Similarly the Justice Department reports found that although African Americans and Hispanics were more likely to be stopped and searched by law enforcement, they were much less likely to be found in possession of contraband.

Law enforcement officials have similarly involved their views. While some take issue, most in the law enforcement community acknowledge that singling out people for heightened scrutiny based on their race or ethnicity can erode trust in law enforcement necessary to appropriately serve and protect those communities.

Rather than seeking to deny the concerns of the minority community—rather than seeking to deny the concerns of minority community advocates, many law enforcement officials have joined the effort to create solutions and build trust in their communities. As a result, more than 20 States have passed bipartisan legislation prohibiting racial profiling and/or mandating data collection on stops and searches, and hundreds of individual jurisdictions have voluntarily commenced to collect data. Congress itself is actually—was actually poised to pass racial-profiling legislation in the fall of 2001 with the express support of President Bush before the terrorist attacks of 2001 changed the legislative climate.

This hearing is another step in creating a record to rebuild the bipartisan legislative coalition pioneered by President Bush and Attorney General Ashcroft. I hope the question that we answer today—the question I hope we answer today is whether the reliance on racial, ethnic or religious classification is smart policing in the 21st century, and I hope the answer that we find is no.

I yield back the balance of my time.

Mr. GOODLATTE. The amount of time remaining in the vote is about 7 minutes, so we will go ahead and recess the Committee, and cast this vote, and return as quickly as possible and resume the hearing. We will stand in recess.

[Recess.]

Mr. GOODLATTE. The Subcommittee will reconvene, and I will take the opportunity to give my opening statement. The past 20 years have seen a dramatic increase in crime levels across the United States—a decrease rather, a dramatic decrease, in crime levels across the United States. According to the FBI, violent crime in the U.S. has dropped by almost 50 percent in the last 20 years.

In some cities like New York, the decline has been even more dramatic. The number of murders in New York City has dropped below 700 a year compared to over 2,000 a year in the 1990's, levels not seen since 1963.

According to two recent Virginia law enforcement reports, violent crime in Virginia fell dramatically over the last decade, 19 percent from 2000 to 2009. That is actually a sharper drop than the national average of 15 percent over the same time period. Property crime rates in Virginia have also fallen significantly, 12 percent over the decade. Much of this decline has occurred during a severe economic downturn. Many lawmakers and criminologists now credit improved police computer-based crimefighting tactics like CompStat, longer prison sentences, and more offenders in custody.

However, despite the gains in public safety enjoyed by citizens in America, some continue to criticize police departments across the country for enforcing the law unfairly based on race. Even though the Justice Department banned any use of racial profiling in 2003, some continue to allege that the police have gained their success by targeting certain populations. Meanwhile others argue that taking ethnic and racial trends into account in policing is a rational and efficient method of allocating investigatory resources to safeguard the security of all.

In a polyglot society such as the United States, there is no single dominant ethnic identity. Americans come from many countries, many religions, many ethnicities. Because of the vast array of cultures here, it would be hard for us to expect that the demographics of the criminal justice system would exactly mirror those of society. For example, we would not be surprised to find that the percentage of male inmates is much greater than their representation in society. According to the Bureau of Prisons, 93.5 percent of the Federal prisoners in the country are men, but men are a slight minority in the United States at 49 percent of the population.

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So rather than rest on our laurels, we on the Crime Subcommittee want to continue this decline in crime. So we should look at the reasons for this decline and encourage commonsense tactics and laws that allow the police and the courts to do their jobs.

I don't think that it helps the citizens of this country to have the police using political correctness as a guide to deciding whether to arrest a criminal. A criminal is a criminal whether he or she is White, Black or some other race. Political correctness hamstring the police, wastes money and contributes to lawlessness.

The city of Los Angeles has been under a Justice Department consent decree for over a decade. It has spent millions of dollars and has had to pull officers off patrol to fill out paperwork to keep track of the ethnicity and race of every person with which they come into contact. Even though L.A. Has made substantial progress improving the way they run their department, Eric Hold-

er's Justice Department has resisted releasing Los Angeles from their probation. Are the statistics nationwide generated from unfair policing, or are the charges merely a way to question the law enforcement-driven model of crime reduction? It is an issue that continues to generate debate.

Today we will look at how modern, 21st-century law enforcement has improved and reduced many of the problems we were concerned about back in the 20th century. As the crime rate continues to fall, we should make sure that our tactics continue to evolve and target criminals regardless of race, color or creed so that we may protect Americans regardless of race, color or creed. I look forward to hearing more about this issue and thank all of our witnesses for participating in today's hearing.

And it's now my pleasure to recognize the Ranking Member of the full Committee, the gentleman from Michigan Mr. Conyers.

Mr. CONYERS. Thank you, Chairman Goodlatte.

And I want to begin by expressing our appreciation to the Chairman of the Subcommittee Jim Sensenbrenner on the agreement that he got with the Chairman of the full Committee to hold this hearing. I think it is a very important hearing, and I am looking forward to many of the witnesses who have been here—I think everybody has been here before. There are no newcomers before us today. I am glad to see you all here.

Let me approach this from—and Chairman Goodlatte provoked this thought. He gave us the percentage of men incarcerated, but he didn't give us the percentage of African American males incarcerated as opposed to White. That is the problematic issue, and I am not sure that it can be rationalized as easily as you did that of men to women in terms of incarceration rates. It is two completely different problems.

Now, back in the year 2000—well, even before 2001. In 1997, 47 of the 50 States of the Union had adopted a measure that had been before the House Judiciary Committee a number of times. It was a data-collection bill called the Traffic Statistic Studies Act, and it finally passed the House under suspension in 1997. But 47 of the 50 States, 47 of the 50 States, all but 3, had already adopted within their borders some version of this same bill, because the one that I am referring to did pass the Committee and the House, but it did not pass the Senate, nor was it signed into law.

Now, let us forward to President Bush and his Attorney General George Ashcroft. Incredibly—and I have quite a bit of data collected in this Committee on the things that President Bush did that I not only didn't agree with, but that I thought were improper—but it was the same President George Bush in his State of the Union Address that said the following, quote—this is his first State of the Union Address, February 27, 2001—racial profiling is wrong, and we will end it in America. In so doing we will not hinder the work of our Nation's brave police officers. They protect us every day, often at great risk. But by stopping the abuses of a few, we will add to the public confidence our police officers earn and deserve.

And so within 6 months, the President—we introduced a—well, wait a minute. Within 6 months the Justice Department under Attorney General John Ashcroft issued guidelines designed to end ra-

cial profiling by Federal agents in routine police work, but the guidance allowed large loopholes for the use of race and ethnicity.

Mr. GOODLATTE. The gentleman is recognized for 1 additional minute.

Mr. CONYERS. Thank you, sir.

It allowed loopholes for identification of terrorism suspects and for border enforcement purposes.

So in conclusion what I am suggesting in my opening remarks is that we made great efforts at closing the door on racial profiling, but the events of September 11, 2001, reopened this whole subject. In a way we have slipped backwards, and that is why the hearing is so important, and that is why I am glad that all of you panelists are here today to continue this discussion.

Thank you, Chairman.

Mr. GOODLATTE. I thank the gentleman.

And it is now my pleasure to introduce today's witnesses. Hilary O. Shelton currently serves as the vice president for advocacy and director of the NAACP's Washington bureau. Prior to serving as director to the NAACP Washington bureau, Mr. Shelton served as Federal liaison assistant director to the Government Affairs Department of the United Negro College Fund in Washington, D.C. Prior to working for UNCF, Mr. Shelton served as the Federal policy program director to the United Methodist Church's Social Justice Advocacy Agency.

Mr. Shelton serves on a number of national boards of directors, including the Leadership Conference on Civil Rights, the Center for Democratic Renewal, the Coalition to Stop Gun Violence and the Congressional Black Caucus Institute, among many others.

Mr. Shelton holds degrees in political science, communications and legal studies from Howard University, the University of Missouri in St. Louis, and Northeastern University in Boston, Massachusetts, respectively.

Ms. Heather Mac Donald is a John M. Olin fellow at the Manhattan Institute and a contributing editor of City Journal. Ms. Mac Donald's writings have appeared in the Wall Street Journal, the Washington Post, the New York Times, the New Republic, Partisan Review, the New Criterion, Public Interest and Academic Questions. She is also the author of several books, including *The Burden of Bad Ideas*, *Are Cops Racist?*, and *The Immigration Solution: A Better Plan Than Today's*.

Ms. Mac Donald has clerked for the Honorable Stephen Reinhardt, U.S. Court of Appeals for the Ninth Circuit; has been an attorney advisor in the Office of the General Counsel of the U.S. Environmental Protection Agency; and a volunteer with the Natural Resources Defense Council in New York City. In 1998, she was appointed to Mayor Rudolph Giuliani's Task Force on the City University of New York.

Ms. Mac Donald received her B.A. in English from Yale University, graduating with a Mellon fellowship to Cambridge University, where she earned an M.A. in English. Her J.D. is from Stanford University Law School.

Mr. Edward Conlon retired as a detective in the New York Police Department this past August after serving 17 years with the department. For 14 of those years, he was assigned to the South

Bronx. He was promoted to detective in 2001. He also served as liaison for the NYPD Intelligence Division to the National Police of Jordan where he lectured at the Royal Police Academy.

Mr. Conlon has published numerous articles on police work and the community for the New Yorker, Harper's and other periodicals. He is the author of two books, including Blue Blood, a family memoir of law enforcement, which was a New York Times best seller, and finalist for the National Book Critics Circle Award. Mr. Conlon is a graduate of Harvard University.

Professor David A. Harris is distinguished faculty scholar and associate dean for research at the University of Pittsburgh School of Law, where he teaches criminal procedure, criminal law, evidence, and advanced courses in criminal justice policy and homeland security. In 1996, Professor Harris served as a member of the Civil Liberties Advisory Board to the White House Commission on Aviation Safety and Security. Before he began teaching in 1990, Professor Harris was a public defender in the Washington, D.C., area; a litigator at a law firm in Philadelphia; and law clerk to Federal Judge Walter K. Stapleton in Wilmington, Delaware.

Professor Harris is the author of several books, including Profiles in Injustice: Why Racial Profiling Cannot Work; and Good Cops: The Case for Preventive Policing. His new book, Failed Evidence, will be published in September 2012.

Professor Harris earned his bachelor of arts from Northwestern University, his LL.M. from Georgetown University, and his juris doctor from Yale Law School.

Mr. Jiles H. Ship is current president of the National Organization of Black Law Enforcement Executives, NOBLE, and formerly served 4 years as the northern New Jersey chapter president. Mr. Ship started his career in law enforcement in 1985, first serving as an officer on the Edison Police Department, during which time he also served as an instructor for the Middlesex County Police Academy. He recently served as the director of public safety for the city of Plainfield, New Jersey. As chief executive officer of the Department of Public Safety, he oversaw the police division, fire division and the Office of Emergency Management. Prior to that appointment, he served in the New Jersey Attorney General's Office, Division of Criminal Justice, as the special assistant to the director, and as a supervising State investigator, lieutenant State investigator and administrator of investigations.

Mr. Ship is an adjunct professor at Bergen Community College and teaches police administration and criminal justice. He received his master of arts degree from Seton Hall University College of Education in administration and supervision and his bachelor of science degree in administration of justice.

At this time we will turn to the testimony first with Mr. Shelton. Welcome.

TESTIMONY OF HILARY O. SHELTON, SENIOR VICE PRESIDENT FOR ADVOCACY AND POLICY, AND DIRECTOR, NAACP WASHINGTON BUREAU

Mr. SHELTON. Good morning, Mr. Goodlatte and Ranking Member Scott, and distinguished Members of the Subcommittee. I

would also like to give my deep appreciation of the NAACP to the Judiciary Committee Chairman Lamar Smith, who——

Mr. GOODLATTE. Mr. Shelton, pull that mic closer and make sure it is turned on.

Mr. SHELTON. I would also like to extend the deep appreciation of the NAACP to the Judiciary Committee Chairman Lamar Smith, who was instrumental in arranging this hearing.

I would also like to thank Congressman Conyers for his unyielding courage and support in addressing the scourge that still must be addressed in our society, and it is the issue of racial profiling; and, of course, our dear friend Congresswoman Sheila Jackson Lee for her support and continued leadership.

As you mentioned, my name is Hilary Shelton, director of the NAACP's Washington bureau. The Washington bureau is the Federal legislative and national public policy arm of the Nation's oldest and largest grassroots-based civil rights organization.

NAACP units throughout the country report receiving hundreds, if not thousands, of complaints of racial profiling each year, a practice that is unconstitutional, socially corrupting, and counter-productive to smart and effective law enforcement.

For the record, and to avoid confusion, the operational definition of the term "racial profiling" means the practice of a law enforcement agent or agencies relying on an—in any degree on race, ethnicity, national origin or religion in selecting which individuals to subject to routine or spontaneous investigatory activities, or on deciding upon the scope and substance of law enforcement activity following the initial investigatory procedure, except when there is trustworthy information relevant to the locality and timeframe that links the person of a particular race, ethnicity, national origin or religion to an identified criminal incident or scheme.

Sadly, racial profiling is being used even today at all levels of law enforcement. Local, State and Federal agents have all been shown to use racial profiling as a damaging and unnecessary means and tools of policing.

To add further concern, the use of racial profiling is increasing as more States take stands against undocumented immigrants as seen in Arizona, Alabama, and as local, State and Federal authorities contend with the post-September 11th world.

Racial profiling against people who appear to be Hispanic heritage as well as against Arabs, Muslims and South Asians has multiplied and been exacerbated by lack of responsive policy, guidance and education about the damage it causes.

Even at the most global level, the United Nations Committee on the Elimination of Racial Discrimination highlighted the importance of combating racial profiling in its General Comment as combating racism in the administration of the criminal justice system from a report done August of 2005. Domestically the continued use of racial profiling has sadly and unfortunately undercut our communities' trust and faith in the integrity of the American judicial system.

The racially discriminatory practice of racial profiling must be challenged when we find it cannot drive down an interstate, when we cannot walk down the street, work, pray, shop, travel or even enter into our homes without being detained for questions by law

enforcement agents merely because of suspicions generated by the color of our skin or our physical characteristics.

Racial profiling leads to entire communities losing confidence and trust in the very men and women who are meant to protect and serve them. As a result of racial profiling practices, it has become much harder for law enforcement, even those who do not engage in racial profiling, to do their jobs to prevent, investigate, prosecute or solve crimes.

Evidence to support the prevalence of racial profiling by law enforcement officials is as voluminous as it is varied. According to a 2004 report by Amnesty International USA, approximately 32 million Americans, a number equivalent to the population of Canada, report they have already been victims of racial profiling. Furthermore, prominent people speaking out against racial profiling are as varied as former President Bill Clinton, who called racial profiling a, quote, morally indefensible, deeply corrosive practice, and further stated that, quote, racial profiling is, in fact, the opposite of good police work where actions are based on hard facts, not stereotypes. It is wrong, it is destructive, and it must stop; and George W. Bush, who, on February 27, 2001, said that racial profiling is, quote, wrong and will end in America. In so doing we will not hinder the work of our Nation's brave police officers. They protect us every day, often at great risk. By stopping the abuses of a few, who will add to the public confidence our police officers earn and deserve.

At the Federal level effective anti-racial-profiling legislation has been introduced in the House and the Senate since 1997, and numerous hearings have been held, but to date no legislative action has been taken. The response of State legislatures in evidence of racial profiling by law enforcement agencies has been, according to the American Civil Liberties Union, with a few exceptions, inaction and a series of half measures.

It is clear that more can and must be done to eliminate racial profiling. From my experience both on the policy side and anecdotal side, listening to NAACP adult and youth members, branch presidents and members of the national board, there are a few steps that need to be taken on a national level to end this scourge once and for all.

First, we need a clear and effective definition of what racial profiling is.

Mr. GOODLATTE. You may want to sum up your remarks.

Mr. SHELTON. Very good.

There are a number of things that need to be taken. And certainly as we are going to address this issue, we must first quantify it; that is, in order to fix a measure, you must first measure it. We must also retrain our police officers and must give our citizens an opportunity to be able to challenge these concerns when they happen in our communities. With that, we can begin to move our Nation forward and address this concern again once and for all.

Mr. GOODLATTE. Thank you, Mr. Shelton.

[The prepared statement of Mr. Shelton follows:]



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TESTIMONY OF HILARY O. SHELTON

**DIRECTOR, NAACP WASHINGTON BUREAU &
SENIOR VICE PRESIDENT
FOR ADVOCACY AND POLICY**

before the

**HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON CRIME, TERRORISM AND
HOMELAND SECURITY**

on

**“21ST CENTURY LAW ENFORCEMENT:
HOW SMART POLICING TARGETS
CRIMINAL BEHAVIOR”**

November 4, 2011



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November 4, 2011

Good morning Chairman Sensenbrenner, Ranking Member Scott and esteemed members of the Subcommittee. Thank you so much for calling this important hearing and for asking me here today to share with you the NAACP's position on this crucial issue. I would also like to extend the deep appreciation of the NAACP to full Judiciary Committee Chairman Lamar Smith, who was instrumental in arranging for this hearing.

My name is Hilary Shelton, and I am the Director of the NAACP Washington Bureau, the federal legislative and national public policy advocacy arm of the NAACP. The NAACP currently has more than 2,200 membership units in every state in the country, and I would wager that every NAACP unit has, at some point, received at least one complaint of racial profiling in any given year. Many NAACP units report receiving hundreds, if not thousands, of complaints of racial profiling each year. Racial profiling is unconstitutional, socially corrupting and counter-productive to smart and effective law enforcement.

For the record and to avoid confusion, the operational definition of the term 'racial profiling' means the practice of a law enforcement agent or agency relying, to any degree, on race, ethnicity, national origin, or religion in selecting which individual to subject to routine or spontaneous investigatory activities or in deciding upon the scope and substance of law enforcement activity following the initial investigatory procedure, except when there is trustworthy information, relevant to the locality and timeframe, that links a person of a particular race, ethnicity, national origin, or religion to an identified criminal incident or scheme. In other words, racial profiling occurs when any law enforcement representative uses one of the pretextual characteristics stated above when determining who they will investigate, arrest, question or detain without acceptable cause.

Sadly, racial profiling is being used, even today, at all levels of law enforcement: local, state and federal agents have all been shown to use racial profiling as a damaging and unnecessary means and tool of policing. The fact that racial profiling is still a common tactic among so many law enforcement agencies is, frankly, startling, given that it has been proven to be an inefficient, offensive, counter-productive and illegal law enforcement tool.

To add further concern, the use of racial profiling is increasing as more and more states take stands against illegal immigrants and as local, state and federal authorities contend with the post-September 11 world. Racial profiling against people who appear to be of Hispanic heritage, as well as against Arabs, Muslims, and South Asians has multiplied and been exacerbated by a lack of responsive policy, guidance and education about the damage it causes.

Even at the most global level, the United Nations' Committee on the Elimination of Racial Discrimination highlighted the importance of combating racial profiling in its General Comment on combating racism in the administration of the criminal justice system from August, 2005.¹ Domestically, the continued use of racial profiling has, sadly and unfortunately, undercut our communities' trust and faith in the integrity of the American judicial system.

The racially discriminatory practice of racial profiling must be challenged when we find we cannot drive down an interstate, walk down the street, work, pray, shop, travel or even enter into our own homes without being detained for questioning by law enforcement agents merely because of suspicion generated by the color of our skin and other physical characteristics. Racial profiling leads to entire communities losing confidence and trust in the very men and women who are meant to be protecting and serving them. As a result of racial profiling practices, it becomes much harder for law enforcement, even those who do not engage in racial profiling, to do their jobs to prevent, investigate, prosecute or solve crimes.

Evidence to support the prevalence of racial profiling by law enforcement officials is as voluminous as it is varied: According to a 2004 report by Amnesty International USA, approximately thirty-two million Americans, a number equivalent to the population of Canada, report they have already been victims of racial profiling².

Furthermore, prominent people speaking out against racial profiling include former Presidents Bill Clinton, who called racial profiling "morally indefensible, deeply corrosive practice" and further stated that "racial profiling is in fact the opposite of good police work, where actions are based on hard facts, not stereotypes. It is wrong, it is

¹ CERD Gen. Rec. No. XXXI, §III(A)*20, 71st sess., U.N. Doc. A/60/18 (Aug. 17, 2005)

² Amnesty International USA, "Threat and Humiliation: Racial Profiling, National Security, and Human Rights in the United States" October, 2004, available at http://www.amnestyusa.org/racial_profiling/report/tp_report.pdf

destructive, and it must stop.³ and George W. Bush, who on February 27, 2001, said that racial profiling is ... "wrong, and we will end it in America. In so doing, we will not hinder the work of our nation's brave police officers. They protect us every day -- often at great risk. But by stopping the abuses of a few, we will add to the public confidence our police officers earn and deserve."⁴

It has become frustratingly clear that all too often, elected officials at the local, state and federal level are willing to "talk the talk" about the numerous ills of racial profiling, but shamefully only a few are actually demonstrating the courage to do something about it.

At the federal level, effective anti-racial profiling legislation has been introduced in the House and the Senate since 1997, and numerous hearings have been held, but to date no action has been taken. The response of state legislatures to evidence of racial profiling by law enforcement agencies has been, according to the American Civil Liberties Union, "with a few exceptions, inaction and a series of half measures."⁵

It is clear that more can and must be done to eliminate racial profiling. Since coming to the NAACP Washington Bureau more than 14 years ago, I have had the honor of working with coalition partners, members of Congress, and various Administration officials from both political parties to try to develop an aggressive and comprehensive approach to end racial profiling in this country. From my experiences, both on the policy side and the anecdotal side – listening to NAACP adult and youth members, branch presidents, and even members of our National Board – there are a few steps that need to be taken on a national level to end racial profiling once and for all.

First, we need a clear and effective definition of what is racial profiling as well as an unambiguous and unequivocal ban on its use by all law enforcement officials.

Second, we need data collection to truly assess the extent of the problem. In simple terms, "in order to fix it, you must first measure it". The only way to move the discussion about racial profiling from rhetoric and accusation to a more rational dialogue and appropriate enforcement strategies is to collect the information that will either allay community concerns about the activities of the police or help communities ascertain the scope and magnitude of the problem. Furthermore, implementing a data collection system also sends a clear message to the entire police community, as well as to the larger community, that racial profiling is inconsistent with effective policing and equal protection.

If it is done right, data collection will also lead to the third element of an effective anti-racial profiling agenda: training. Law enforcement officials at all levels, from the unit

³ *Attorney General's Conference on Strengthening Police-Community Relationships, Report on the Proceedings*. Washington, DC: U.S. Department of Justice, June 9–10, 1999, at 22–23.

⁴ Address to a Joint Session of Congress, February 27, 2001, President George W. Bush

⁵ "The Persistence of Racial and Ethnic Profiling in the United States, A Follow-Up Report to the U.N. Committee on the Elimination of Racial Discrimination," published by the American Civil Liberties Union and the Rights Working Group, August 2009, page 40.

commander to the desk sergeant to the cop-on-the beat and of all jurisdictions, from federal agents to state and local police, should all be required to be able to not only identify racial profiling, but also to know of its shortcomings and be able to put an end to it while increasing their effectiveness in protecting our communities and our Nation.

Fourth, and last, an effective and aggressive anti-racial profiling agenda must enable citizens and the government alike to hold law enforcement agencies that continue to use racial profiling accountable. In order for anti-racial profiling actions to be effective, and rebuild the trust between law enforcement and the communities they are charged with protecting, people must know that we are serious about eliminating the scourge racial profiling.

Mr. Chairman, we are all aware that the Constitution of the United States guarantees to all people equal protection under the law and the right to pursue life, liberty and happiness. Implicit in this guarantee is the ability to walk down the street, to drive one's car down the road, or to enter into our own homes without fear of arrest or interference.

The majority of law enforcement officers are hard working men and women, whose concern for the safety of those they are charged with protecting is often paramount, even when their own safety is on the line. However, if and when even one of their colleagues engages in racial profiling, whether it be conscious or subconscious, the trust of the entire community can be, and will be, lost. Law enforcement agents should not endorse or act upon stereotypes, attitudes, or beliefs that a person's race, ethnicity, appearance or national origin increases that person's general propensity to act unlawfully.

Not only is racial profiling morally wrong, and ineffective, but it is also a misuse of government resources and detrimental to effective policing. The concept that we must somehow choose between public safety and the protection of our civil rights is misguided, at best and woefully unconstitutional. There is no tradeoff between effective law enforcement and protection of the civil rights of all Americans; we can and must have both.

Thank you again, Chairman Sensenbrenner and Ranking Member Scott, for holding this important hearing and for soliciting the thoughts of the NAACP. I would again also like to thank Chairman Smith for his support of our efforts to have a hearing on this issue. I would welcome any questions you may have at this time.

Mr. GOODLATTE. I neglected to say at the beginning that all of your entire statements will be made a part of the record, and we ask that you limit your comments to 5 minutes.

And we will now turn to Ms. Mac Donald. Welcome.

**TESTIMONY OF HEATHER MAC DONALD, SENIOR FELLOW,
MANHATTAN INSTITUTE FOR POLICY RESEARCH**

Ms. MAC DONALD. My name is Heather Mac Donald. I am a fellow at the Manhattan Institute, a think tank in New York City. Thank you, Chairman Goodlatte and Members of the Committee,

for inviting me to testify today about data-driven policing. I have studied policing extensively, including from my book, *Are Cops Racist?*

Since 1991, crime in New York City has dropped 80 percent. New York's crime decline is unmatched anywhere in the country or in history. It represents the greatest public policy success of the last half century. The New York Police Department accomplished this unprecedented feat by the managerial revolution known as CompStat. Under CompStat, which was pioneered by Police Commissioner William Bratton in 1994, the department started analyzing crime data daily and deploying officers where crime patterns were emerging. If officers observed suspicious behavior in a violence-plagued area, they were expected to intervene pursuant to their legal authority before a crime actually occurred. Precinct commanders were held ruthlessly accountable for crime in their jurisdictions, and the department stopped tolerating the disorder that had engulfed so many public spaces.

The benefits of the resulting crime decline have been disproportionately concentrated in the city's poorest neighborhoods since that is where the cost of crime hit the hardest. Blacks and Hispanics have made up 79 percent of the drop in homicide victims since 1990. Over 10,000 Black and Hispanic males are alive today who would have been dead had homicide rates remained at their early 1990's levels.

With robberies and burglaries plummeting in once desolate neighborhoods in the late 1990's, economic activity and property values there rose dramatically. Senior citizens could go shopping without fear of getting mugged. Children no longer needed to sleep in bathtubs to avoid stray bullets.

Critics of the NYPD, however, cite statistics such as the following to charge that the department is racially biased. In 2009, 55 percent of the pedestrian stops made by the New York police had Black subjects, even though Blacks are only 23 percent of the city's population. Whites, by contrast, were 10 percent of all stops, though they make up 35 percent of the city's population.

Here is what you will never hear from the activists, however. In 2009, Blacks committed 66 percent of all violent crimes in New York City. How do we know this? That is what the victims and witnesses of those crimes, most of them minorities themselves, tell the police in making their crime reports. Blacks committed 80 percent of all shootings in 2009, according to victims, and 71 percent of all robberies. Whites, on the other hand, committed 5 percent of all violent crimes in 2009. They committed 1.4 percent of all shootings and less than 5 percent of all robberies.

Given such disparities in crime rates, disparities which are replicated in every city in the country, the NYPD cannot target its resources where they are most needed without generating racially disproportionate stop-and-arrest data, even though the department's tactics are colorblind.

Community requests for assistance are the other main driver of police strategy, and the overwhelming demand coming out of high-crime precincts is for more cops and less tolerance of street disorder. If residents of an apartment building ask their precinct commander to eliminate the drug dealing on their streets, officers will

likely question people hanging out around the building and increase the enforcement of quality-of-life laws in order to drive away the dealers. Such requests for a crackdown on street sales come far more frequently from minority neighborhoods because that is where most open-air drug dealing occurs. The resulting stops will be based on behavior, not race, but each stop will count against the department in the activists' racial profiling litigation tally.

Under data-driven policing the police go where the crime and the victims are. Race has nothing to do with it. No government program over the last 50 years has had as positive effect in minority neighborhoods as proactive policing. Its successes should be more widely recognized.

Thank you, Chairman Goodlatte and Committee Members. I look forward to answering any questions that you may have.

Mr. GOODLATTE. Thank you, Ms. Mac Donald.

[The prepared statement of Ms. Mac Donald follows:]

Testimony of Heather Mac Donald, Senior Fellow, Manhattan Institute
“21st Century Law Enforcement: How Smart Policing Targets Criminal Behavior”

November 4, 2011

House Judiciary Committee

Subcommittee on Crime, Terrorism and Homeland Security

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The benefits of the resulting crime decline have been disproportionately concentrated in the city's poorest neighborhoods, since that is where the costs of crime hit the hardest. Blacks and Hispanics have made up 79 percent of the drop in homicide victims since 1990. Over 10,000 black and Hispanic males are alive today who would have been dead had homicide rates remained at their early 1990s levels. With robberies and burglaries plummeting in once desolate neighborhoods in the late 1990s, economic activity and property values there rose dramatically.

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Under data-driven policing, the police go where the crime and the victims are. Race has nothing to do with it. No government program over the last fifty years has had as positive effect in minority neighborhoods as proactive policing; its successes should be more widely recognized.

Thank you for your attention, Chairman Goodlatte and committee members. I look forward to answering any questions that you might have.

Mr. GOODLATTE. Mr. Conlon, welcome.

**TESTIMONY OF EDWARD CONLON,
FORMER NYPD DETECTIVE AND AUTHOR**

Mr. CONLON. Thank you, Chairman Goodlatte, Ranking Members Scott and Conyers, for inviting me here to address this hearing.

When I retired at the end of this summer, it brought to an end 104 years of my family serving in law enforcement in New York, which began with my great-grandfather in 1907. I hope that by offering a few observations on crimes, cops, community and culture that it may be of service in the national discussion of these issues. The views I express here are my own.

There is an exercise that I have seen a number of times in police training in which the instructor sets up by calling out a number of Black and White officers from the audience, all of whom are in civilian clothes. First, the instructor asks the Black officer to put his hands up against the wall and for two White officers to stand on either side of him. He then asked the audience, what do we have here? The answer usually comes back quick and casual: an arrest or a stop. The instructor then reverses the positions with a White officer against the wall flanked by two Black officers. Now what do we have? There is usually hesitant, nervous laughter as all are reluctant to say a mugging.

There is a lesson, of course, in the power and danger of stereotypes, but I would always look around at that point to see the faces of the officers, Black, White or Hispanic, to see whether there seemed to be any difference in the reactions. They tended to be the same across the color line; a little chastened, but not much. It is a reminder to be careful not to jump to conclusions, rather than a repudiation of a lifetime of personal and professional assumptions.

In my experience, in that classroom and outside of it, cops tend to think like other cops regardless of ethnicity. Decades of studies have borne this out, from the Kerner Commission onwards. Residents of minority communities have not reported significant differences how they are treated by Black police officers or White. In Kerner, Black support for increasing the diversity of police departments was seen as a matter of economic opportunity. There was no expectations that relations would necessarily be improved.

Studies of cops of different races have shown some variety in their attitudes. Whites tend to have a more generalized view of people living in the ghetto, Blacks a more nuanced one, but the correlation between attitude and behavior is weak, even inverse. Black officers were more likely to use force against suspects of their own race and faster to arrest them. In the major cities that have had majority-minority police officer—forces for a generation, Detroit, Washington, Atlanta, Miami, police-community relations are not immune to conflict and upheaval.

The history of race and racial discord in this country has largely been irrational, and I have always been surprised to see where race mattered and where it didn't in policing. Where I worked in the South Bronx is overwhelmingly Black and Hispanic with exceedingly high rates of poverty. As a beat cop, the most inspiring and surprising revelation was seeing how many people in the projects were happy to see me. In the middle class or suburban neighbor-

hood, cops are notional in a sense, a kind of insurance policy that most people won't really need. In the poor neighborhood, a cop is routinely and vitally necessary. Older people, families, men and women making their way to and from work knew that they wouldn't be bothered by troublemakers when I was around. Confrontations with younger guys, mostly in groups, beginning in their teen years and going on through their 20's and beyond if they were unemployed, were commonplace, too. But whether the interaction was grateful or hostile race didn't seem to factor much in ordinary workdays.

In my narcotics unit, which was equally mixed between White, Black and Hispanic cops, we engaged in racial profiling with enthusiasm. The arrival of White faces on our corners and streets in our tenements and projects almost invariably meant that they were there to buy crack and heroin. They were easy pickings. We called them "strays," as in stray dogs, because they often came over to us when we called them. And I will never forget listening to a wiretap of a drug dealer complaining about the racism of a White cop who stopped him in the lobby to ask him what he was doing there. I could see if I am some young thug selling drugs, he said. His indignation barely faded when he went on to say how lucky he was to have just dropped off his 400 grams of cocaine.

As a detective the best you can hope for is that only half the people you meet wish they had never seen you. The most routinely dispiriting part of my job was not the homicides, not even the baby autopsies. What was awful was the nonfatal shootings, most of which involved me begging young Black and Hispanic men to tell me who shot them, sometimes for weeks and months at a time. I have lost count of the number, and I still can't believe the reasons for the gunfire. The gang shootings and the drug shootings made sense compared to the shootings over dirty looks, accidental brushes on the sidewalk, rumors of insults, and brawls where no one was quite sure how they started.

Quite a few of the victims were thugs, to put it bluntly, who had made other kids bleed before and would again as soon as they got out of the hospital, but many were not. They were kids who had never been arrested, church-work-and-school kids with church-work-and-school mothers crying at their bedsides. They couldn't tell on their idiot friends who may have helped instigate a conflict, which was frustrating, or they couldn't be seen as cooperating with the police under any circumstances, which was heartbreaking. Sometimes there was fear of retaliation, reasonable or not, but quite often reflected a kind of moral position, a selective form of civil disobedience. It is a catastrophic attitude.

Gun violence in America is, in effect, a segregated phenomenon. African Americans comprise approximately one-eighth of the population of this country——

Mr. GOODLATTE. Mr. Conlon, you will need to sum up your testimony as well.

Mr. CONLON. Beg your pardon?

Mr. GOODLATTE. You need to summarize your testimony.

Mr. CONLON. Okay.

Last year 6,000 Black people were murdered in the United States, mostly men, mostly young, mostly by guns, mostly by kill-

ers who can be described exactly the same way. The casualty count is as if there were two 9/11s every year for Black people. I don't know if it makes anyone feel better to point out that 20 years ago it was almost twice as bad.

Very quickly, the practice of stop, question and frisk, it has been criticized in New York both because of the disparate impact of the people stopped, and it has been held that the low rate of arrests or weapon recovery—6 percent of arrests, about 1 percent with weapons recovery—shows its failure. I think it has changed the way people carry guns. A drug dealer on the corner used to have his gun in his waistband. If somebody stepped on his toe, or he saw a rival, that was a 2-second decision from the insult to the act. Now, because the police have been harassing these guys for a generation in New York, that gun is now on a rooftop, or it is in a bedroom, and the decision to pull the trigger is now 10 or 15 minutes, and tempers can cool off, and people can walk away. So that practice has, I think, saved lives in New York City.

Thank you very much.

Mr. GOODLATTE. Thank you, Mr. Conlon.

[The prepared statement of Mr. Conlon follows:]

House Judiciary Committee
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"Now, what do we have?"

There is usually hesitant, nervous laughter, as all are reluctant to say, "A mugging."

There is a lesson, of course, in the power and danger of stereotypes. But I'd always look around the room at that point to see the faces of the officers, black, white or Hispanic, to see whether there seemed to be any difference in the reactions. They tended to be the same across the color line, a little chastened, but not much more than that. It is a reminder to be careful not to jump to conclusions, rather than a repudiation of a lifetime of personal and professional assumptions. In my experience, in that classroom and outside of it, cops tend to think like other cops, regardless of ethnicity.

Decades of studies have borne this out, from the Kerner Commission onwards. Residents of minority communities have not reported significant differences in how they are treated by black or white police officers. In Kerner, black support for increasing the diversity of police departments was seen as a matter of economic opportunity; there was no expectation that relations would be

improved. Economics are certainly a factor in police-community interactions, with favorable opinion rising with the income scale. A more recent survey in the *Journal of Criminal Justice Studies* found that poorer black communities felt that black and white cops are equally bad, and a middle-class black community thought black and white cops are more-or-less equally decent. Studies of cops of different races have shown some variety in their attitudes---whites tend to have a more generalized view of people living in the "ghetto," blacks a more nuanced one---but the correlation between attitude and behavior is weak, even inverse: black officers were more likely to use force against suspects of their own race, and faster to arrest them. In the major cities that have had majority-minority police forces for a generation---Detroit, Washington, Atlanta, Miami---police-community relations are not immune to conflict and upheaval.

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As a detective, the best you can hope for is that only half the people you meet wish they'd never seen you. The most routinely dispiriting part of my job was not the homicides, not even the baby autopsies. What was awful was the non-fatal shootings, most of which involved me begging young black and Hispanic men to tell me who shot them, sometimes for weeks and months at a time. I've lost count of the number, and I still can't believe the reasons for the gunfire---the gang shootings and the drug shootings made sense, compared to the shootings over dirty looks, accidental brushes on the sidewalk, rumors of insults, and brawls where no one was quite sure how they started. Quite a few of the victims were thugs, to put it bluntly, who'd made other kids bleed before and would again, as soon as they got out of the hospital. But many were not. They were kids who'd never been arrested, church-work-and-school kids with weeping church-work-and-school mothers crying at their bedsides. They couldn't tell on their idiot friends who may have helped instigate a conflict, which was frustrating; or they couldn't be seen as cooperating with the police under any circumstances, which was heartbreaking. Sometimes, there was a fear of retaliation, reasonable or not, but quite often it reflected a kind of moral position, a selective form of civil disobedience. It is a catastrophic attitude.

Gun violence in America is in effect a segregated phenomenon: African Americans comprise approximately one eighth of the population of this country, but they represent approximately half of the homicide victims and half of the perpetrators. Last year, six thousand black people were murdered in the United States, mostly men, mostly young, mostly by guns, mostly by killers who can be described exactly the same way. The casualty count is as if there were two 9/11's every year for black people. I don't know if it makes anyone feel better to point out that twenty years ago, it was almost twice as bad.

Roughly speaking, the murder rate across the US has dropped in half over the last twenty years, while in New York City, it has been reduced by three quarters. I'll leave it for the academics to argue about the reasons. But I do want to defend one particular police practice in New York which has generated a measure of controversy. "Stop, Question, and Frisk" is fairly self-explanatory, though the last part, the frisk---a patdown for a weapon outside the clothing---happens less than half the time in these encounters. The standard of proof required for these stops is a "reasonable suspicion" of criminality. Half a million of these stops can take place in a single year, and the large majority of them involve young black and Hispanic men. Various civil liberties advocates have charged that the practice is discriminatory on that basis, and it cannot be doubted that the frequency of the contacts are a source of strain between the police department and communities of color. The advocates generally hold that the stops should reflect census data as a whole, rather than perpetrator descriptions or rates of criminality. Under that presumption, age discrimination and gender discrimination are far more acute problems. A more profound misunderstanding of the practice is evident in the charges that the low rates of arrest and weapons recovery---6% and 1.3%---respectively, prove it to be a failure.

If the police stop a man who appears to be casing a house for a burglary, or looking at cars to see if they are unlocked, a crime may be prevented. If the suspect is not arrested, it's not a failure. If they stop the manager of a crack spot, or the lookouts, they don't necessarily expect to find drugs. If they stop a group of young men hanging out in the lobby of a housing project at night and have them move on without anyone wearing handcuffs at the end, it is not a failure. It is vigilance. Few people would argue that the infinitesimal number of explosives recovered at boarding gates make airport security irrelevant. It can be insulting, it can seem foolish, and it doubtless can be improved. But the fact is it changes behavior.

And I am convinced that the NYPD policy has saved lives. Guns still abound in New York, but they're not carried as they once were. A drug dealer on the corner used to have his gun in his waistband. In his daily conflicts, large and small---a customer's debt, the appearance of a rival, or a dirty look from a passerby---the

duration of the process from deciding to shoot to pulling the trigger took seconds. With the aggressive implementation of "Stop, Question, and Frisk" in the early nineties, however, the police were confronting him and his crew for drinking beer, or loitering, and they were being repeatedly checked for weapons. The dealer still had a gun, but it was kept upstairs in his apartment, or hidden on a rooftop. Now, if he wanted to shoot someone, it might be ten minutes instead of five seconds between the impulse and the act, during which time tempers can cool, and misunderstanding can be settled, and people can just walk away.

Thank you very much for your time.

Mr. GOODLATTE. Professor Harris, welcome.

TESTIMONY OF DAVID A. HARRIS, PROFESSOR OF LAW, ASSOCIATE DEAN FOR RESEARCH, UNIVERSITY OF PITTSBURGH LAW

Mr. HARRIS. Thank you very much, Chairman Goodlatte, Members of the Subcommittee. I appreciate very much the opportunity to talk to you here today. Thank you very much. My apologies.

Mr. Chairman, Members of the Subcommittee, thanks for the opportunity to speak to you here today. The topic of smart policing, the subject of this hearing, is a very important one, because more and more the police have success by using information. It is all about the use of data. Whether it is data to locate the places in which there is criminal activity, or it is data to target the right people through intelligence work, or if it is data about best practices, it is all about information for the successful police departments in the United States today. To me, that is what smart policing means.

Now, the most important source of information for any police department when we are talking about routine law enforcement tasks, routine enforcement of law on the streets, the most important source of information is the people who live in those neighborhoods, who make their homes on those streets, who work in those neighborhoods. Those are the people who are always there. Those are the people who can tell the police what is happening, because the police cannot always be there. They can't. There are just not enough of them. And because of that, it is crucial, absolutely crucial, that the police strive to have the best possible relationship with those in our communities that they serve.

Relationships have to be built on trust, they have to be built on a long history of working together, but it is that relationship that allows information to flow from the people who have it to the people who need it. And it is that that has awakened in law enforcement the realization that they cannot do the job themselves; they need the partnership, the help and the information they can get from the community. Without that they are flying blind. At the very least they are not able to do the job they could otherwise.

A couple of very quick examples. The first terrorism cell broken in the United States after 2001 was in Lackawanna, New York. That cell was uncovered, the case was broken because people in that community, people who happen to be from Yemen, came forward and gave information to the FBI and to their local police officers, their community-policing officers. That was what set that case in motion.

The second example, Cincinnati, a place where there was civil unrest 3 days long just a decade ago, a 5-year consent decree followed by years of working between the police and the community to build a relationship. Now the police are getting information, now crime is falling, now homicide is coming down in Cincinnati. So it is that relationship that is all important in affecting crime.

Now, the problem as I see it with racial profiling, there are many facets to this problem, but one of the chief issues is that when people feel targeted, when certain communities feel that they are getting stopped, stopped and stopped again all the time, that relation-

ship begins to break down. It begins to corrode. People begin to feel that the crime effort is not being done for them, but to them, and that has the effect of substituting for trust and for good relationships fear. And when fear is there, when resentment is there, what happens is communication breaks down, information stops flowing. And you can't have smart policing unless you are getting information from the people who are there. They are a vital part, an absolutely critical part of the success of any police department.

If you don't have the cooperation, help and alliance of those you serve, you are really in a bad position as a police department. You are not doing everything you can. That is why so many police departments across the United States that have also experienced large drops in crime have made building these relationships and partnerships a centerpiece of their efforts to make their community safer, make the streets safe for everyone.

With that in mind, if you want to have smart policing, think in terms of that relationship. Without it you are flying blind.

Thank you very much for the opportunity to speak to you, and I look forward to your questions.

Mr. GOWDY [presiding]. Thank you, Professor Harris.

[The prepared statement of Mr. Harris follows:]

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
HEARING OF THE SUBCOMMITTEE ON CRIME, TERRORISM AND HOMELAND
SECURITY ON
21ST CENTURY POLICING: HOW SMART POLICING TARGETS CRIMINAL
BEHAVIOR
TESTIMONY OF
DAVID A. HARRIS
DISTINGUISHED FACULTY SCHOLAR AND ASSOCIATE DEAN FOR RESEARCH
UNIVERSITY OF PITTSBURGH SCHOOL OF LAW

**WHY SMART POLICING MEANS BUILDING STRONG
PARTNERSHIPS BETWEEN POLICE AND THE
COMMUNITIES THEY SERVE**

Nov. 4, 2011

Room 2141 Rayburn House Office Building

Washington, D.C.

Chairman Smith, Ranking Member Conyers, I am honored to have the opportunity to speak to both of you and other members of the Subcommittee today. Targeting criminal behavior is fundamental to assuring public safety in every American city and town. Smart policing means that we must get the maximum public safety benefit for every bit of effort our brave police officers put forth. Thus smart policing, and the ability to target criminal behavior effectively, we must begin with an understanding of what makes police work as effective as it can be. One central part of the answer to this question is too often overlooked: police and the

communities they serve must take on public safety challenges together. To do this, they must have strong relationships and real partnerships, based on trust in each other. Anything that undermines that relationship ultimately harms public safety.

LAW ENFORCEMENT THINKING, THEN AND NOW

Twenty-five years ago, if we had asked the police leadership in America what makes law enforcement effective, we would have gotten answers focusing on resource inputs: more officers; more squad cars; more and better weapons. Surely, law enforcement needs more resources now, as it did then; having adequate tools for the job always plays an important role in success. But in the last twenty years, we have learned that this is not enough to put police and communities ahead of crime, instead of just responding to it.

What makes for the most effective policing possible – what makes policing “smart,” to use the word in the title of this hearing – is targeted, precise, and fresh information and intelligence. Only with the best information about the criminals and predators on our streets can our police officers do the most effective job of which they are capable. With it, our police leaders and officers can act preemptively, to solve problems and address the communities’ needs. Without it, our officers are flying blind, and are left to respond to crime, violence or terrorism after it occurs and the damage is done.

SOURCES OF REAL INTELLIGENCE FOR SMART POLICING

Police have different possible sources of information about the activity of criminals on the streets. It can come from patterns observed in reports of crimes already committed; this is the foundation of the Compstat model, and of the “hot spots” approach to deploying police

resources. Police may also use confidential informants. At times, they may use the tools of electronic surveillance. But in today's world, in the second decade of the twenty-first century, police across the country know that the best, most consistent, and most reliable source for information on the current and future activities of criminals on the street are the people who live there: community residents themselves.

The reason that police everywhere understand this stems from the fact that among the most innovative anti-crime initiatives of the last twenty years is the idea of community policing. This idea, one of the most effective and important parts of policing in our era, has taken many forms in many places. Where it has been successful, community policing has been not a one-off effort or an add-on to what police already do, but a philosophy that permeates the entire department. And at the heart of that philosophy is the realization is that neither the police nor the community can create public safety alone. Rather, they can only do this together, in partnership. And this is largely because only a community policing partnership can assure that police receive a continuous stream accurate and targeted information about what is really happening on the street. That information is only in the possession of the people who live in that community.

This approach has made a difference in crime fighting, and even in fending off terrorism. For example, the first terrorist cell broken up on American soil after September 11, 2001, was found in Lackawanna, New York, a small community outside of Buffalo. Law enforcement did not detect the members of the cell and their activities through confidential informants planted in the community. They did not discover the terrorists through electronic surveillance, or through sneak-and-peek searches under the USA PATRIOT Act. Rather, law enforcement became aware of the men because the community in Lackawanna – immigrants and U.S. citizens who hailed

from Yemen -- came to both the FBI and to their local community police officer and gave them the information. Before that, neither the FBI nor the police department had any awareness of the cell in Lackawanna. The community members knew, and they came forward.

THE IMPORTANCE OF CREATING THE PROPER CLIMATE AROUND ROUTINE LAW ENFORCEMENT ACTIVITY

The central importance of accurate, timely information to the success of smart policing means that we must pay close attention to how our police officers perform routine law enforcement activities around the nation every day. If we do not, there is little question that our ability to launch and sustain effective smart policing initiatives will be handicapped, or may even fail.

Think about routine aspects of police procedure – for example, making traffic stops, conducting stops and frisks on persons, and questioning people deemed suspicious. All such activity involves a personal, face-to-face encounter with a citizen. In each, the police officer exercises his or her power over a civilian, putting the civilian in a potentially embarrassing position, often in public. Police are required to meet legal standards to take these actions – for example, there must be “reasonable suspicion” about the suspect’s criminal activity involving a weapon to perform a stop and frisk. But we do not expect police to always be correct about their suspicions. So some number – usually most – of those people stopped and frisked will not be guilty of anything and will be allowed to leave. Thus it is easy to understand how treatment by police that those undergoing stops or searches see as improper could create a deep negative impression and a long memory about the incident, likely to be passed from person to person within families and communities.

If those involved in these personal encounters with police see the police action as unjustified, disrespectful, or unlawful, this will begin to break down and corrode any relationship with the community – both its individual members and the community as a whole. It will erode trust; instead, it will sow fear. And when people do not trust a police officer or police department, or when they begin to fear contact with police officers because of the way they have been treated, communication becomes difficult. Fear and distrust lead to the end of communication. When fear replaces trust, when distrust replaces partnership, bonds between police and those they serve disintegrate. The flow of information slows or stops, and officers are back to “flying blind.”

THE PROBLEMS RAISED BY RACIAL AND ETHNIC PROFILING

Among the practices by police that are likely to do the greatest damage to relationships between police and communities they serve is the use of race or ethnic appearance as one factor among others in deciding who officers stop, frisk, search or question. Using race or ethnic appearance as a way to describe a suspect who has been seen by a witness presents no problem; race is one of a number of visible, salient and permanent aspects of appearance that should be used by police in physical descriptions whenever a witness can supply these facts. But when race or ethnic appearance are used not to describe a suspect someone has seen but to predict who is more likely to have engaged in as-yet-undiscovered crimes, real dangers emerge.

Chief among these dangers is that people in the community who are subjected to routine police investigation based on racial or ethnic profiling will come to distrust and fear the officers who operate in this way. If being stopped when driving or frisked when on foot becomes a common negative experience for a large percentage of an identifiable group, stories of those

experiences are passed around the community, to all of its members. This makes those who might otherwise share information with police less likely to do so. They see the police as, at best, not to be trusted as partners, and at worst as targeting not criminals but members of certain racial or ethnic groups. This diminishes or cuts off the ability of police to learn anything from those they serve.

RACIAL PROFILING ANALYSIS AND STUDIES

There are those who raise objections to the idea that racial profiling should be taken seriously. They have pointed out that some methods of analysis used in some places to determine whether racial profiling has taken place are flawed, or that some methods used cannot determine whether racial disparities seen in the data in many studies constitute discrimination. Still others make the argument that police are simply reacting to higher levels of offending by minorities. They also argue that criticism of racial profiling is itself racist, because police success in using profiling and related tactics has only made minorities safer, and therefore those who want to do away with racial profiling would actually harm minorities who now enjoy the fruits of police success using the tactic, and are therefore safer when police are allowed to use race. All of these arguments fail.

It is, of course, true that some of the methods used to measure profiling have been flawed. For example, the comparison of the racial composition with those drivers stopped by police in a location with the census population of minority citizens in that location – a technique used in some studies – does not measure what it should; the correct comparison is not with census population, but with the racial composition of the location's driving population. Other methods may also have their flaws. But no serious researcher or authority in this field contends

that none of the methods work; clearly, some do. For example, the observational methods pioneered by John Lamberth, formerly of Temple University, have been replicated and have been accepted as evidence in court. Moreover, the use of poor methods in some cases does not define a problem away.

While some of the analytical methods in use cannot distinguish well between mere disparity and discrimination, others do. For example, the analysis of consent searches – searches in which officers need no probable cause, but ask to search anyway – gives a clear indication of how and against which demographic groups police use this completely discretionary tactic, and there is no denominator or comparison problem involved. Further, the use of consent search “hit rates” – the rate at which police succeed in finding evidence in a search, when the search is done by consent – shows just how productive these searches are. In almost all hit rate studies of which I am aware, the hit rates for whites exceeds the hit rates for other minorities, proving that the use of these stops and searches, which begin with the use of racial or ethnic characteristics, are not effective crime-fighting tactics. More recently, the work of Dr. Phillip Goff of UCLA and the Consortium for Police Leadership in Equity and his colleagues has shown a definitive link between measured attitudes toward other racial groups, and the actions that police take with regard to members of those groups. This work, which consists of field studies, laboratory research, and studies that combine field and laboratory work, closes the link between racially biased attitudes and action in police work: in short, there is now little doubt that racial bias can influence police behavior. I commend to you Dr. Goff’s own written testimony submitted to the Subcommittee for this hearing, and his voluminous work on the subject. Given the quality of his research and its strong ability to help law enforcement make positive changes, it is no accident that the Major Cities Chiefs, an organization of the leaders of the largest police departments in

the U.S., has endorsed the work of the Consortium of Police Leadership in Equity, which Dr. Goff directs. Many of those police departments have begun active research partnerships with the Consortium.

As for the idea that stops, searches and frisks have only been motivated by higher offending rates by minorities, this is belied by years of data showing that a report by a witness who saw the race of a perpetrator was a factor in who was stopped and frisk very infrequently – not often enough to account for the differences between white and minority stops and frisks. If the argument is not that police are responding to descriptions by witnesses (the most frequent form of the argument) but rather that officers simply rely on who usually gets arrested and incarcerated and therefore is most likely to be involved in crime, what we quickly get is a self-fulfilling prophecy. Because more blacks and Latinos get arrested and jailed, police stop and frisk more of them, which of course leads to more of them being arrested and jailed.

As for those who argue that profiling, as a successful crime-fighting tactic, actually serves communities of color by improving their safety, this view rests on two faulty assumptions. First, there is no evidence that using race or ethnic appearance actually improves police work. As discussed above, it actually hurts the ability of police to get criminals off the street; race distracts, and has police stopping and searching by appearance instead of according to criminal behavior, and this results in the lower hit rates for minorities that we see across virtually all studies. Second, the argument assumes that subjecting minority communities to disparate treatment is the only way to make them safe, and that therefore, it is just common sense to accept this method. In fact, this is not true. Drops in crime in communities of color have been true in

cities and towns across the nation – and not all police departments in these places utilize racial or ethnic targeting.

CONCLUSION

In order to engage in smart policing, law enforcement must use every advantage and asset it has. Chief among them is the intelligence and information about current and future criminal activity that police can get – actually, that they can only get – from the people who live in these places. Thus it is of paramount importance that police avoid unnecessarily damage to their relationships with those they serve. Racial and ethnic profiling can only serve to injure the ability of police to have real partnerships with minority communities, and will cut off the flow of accurate and timely intelligence from those communities to law enforcement. Thus failing to address the profiling issue is something our country and our public safety cannot afford.

Mr. Chairman, Ranking Member Conyers, and members of the Subcommittee, I look forward to your questions.

Mr. GOWDY. Mr. Ship.

TESTIMONY OF JILES H. SHIP, NATIONAL PRESIDENT, NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES (NOBLE)

Mr. SHIP. Thank you, Mr. Chairman, Ranking Member Conyers and Ranking Member Scott, and the Members of the Committee. I am Jiles Ship, national president of the National Organization of

Black Law Enforcement Executives. Thank you for the opportunity to testify and submit testimony for the record regarding the problem of racial profiling and the use of suspect classifications in law enforcement policies.

First and foremost I am a proud American, and I am a former United States marine with 6 years of honorable service, and I want to thank all of you for supporting and honoring the Montford Point Marines.

As national president of NOBLE, I am here representing over 3,500 chiefs of police, commissioners, superintendents, directors of public safety, and law enforcement executives, predominantly African American, but our membership also includes law enforcement officials from other communities. NOBLE has been a leading national voice on community policing, hate crimes, racial profiling, racial and religious tolerance, and law enforcement accreditation standards. As a founding association for the Commission on Accreditation for Law Enforcement Agencies, better known as CALEA, along with the International Association of Chiefs of Police, the Police Executive Research Forum and the National Sheriffs' Association, we work to improve the delivery of public safety services primarily by maintaining a body of standards developed by public safety practitioners covering a wide range of up-to-date public safety initiatives, establishing and administering an accreditation process, and recognizing professional excellence.

I have spent over 25 years as a State and local law enforcement official, starting my career first serving as an officer in the Edison, New Jersey, Police Department, patrolling a roadway more commonly known in the law enforcement profession as "Cocaine Alley." I was also selected by the New Jersey attorney general to serve on a working group to develop a statewide eradicating racial profiling training.

Racial profiling is one of the most critical issues facing law enforcement today. The continued denial and refusal to address this issue has led to the deterioration of public trust and confidence in the criminal justice system, and has strained police and community relations even more so in our post-9/11 society.

The need to embrace smart policing as a philosophy is even more important. There are numerous cities throughout this Nation in crisis, powder kegs waiting to be ignited by a single incident of racial profiling. We cannot ignore the warning signals. We must respond immediately and develop strategies to eliminate this practice.

To be clear, racial profiling means the practice of law enforcement officials or agencies relying to any degree on race, ethnicity in selecting which individuals to subject to routine or spontaneous investigatory activities, or in deciding upon the scope and substance of law enforcement activity following the initial investigatory procedure, except when there is trustworthy information relevant to the locality and the timeframe that links a person of a particular race or ethnicity to an identified criminal incident or scheme.

Race, ethnicity, national origin or religion should never be used as a predictor of a person's conduct. The general rule of prohibiting law enforcement officers from using racial profiling as a factor in

determining the likelihood that a person is engaged in criminal activity makes sense from a practical perspective because it is unambiguous and thus will help police officers to avoid many of the legal pitfalls and land mines that would arise were they to try to build race, ethnicity, national origin or religion into the equation of suspiciousness. Rather, law enforcement must look to conduct and behavior as indicators of criminal activity. Law enforcement officials must never use racial profiling as a factor in deciding that a person is involved in a criminal activity unless an officer is responding to a subject-specific or investigative-specific be-on-the-look-out—what we call BOLO—situation. A person's race, ethnicity or national origin should play no part in police discretion. Our citizens deserve nothing less.

There are many lasting effects that stem from the use of racial profiling. One of the most significant is the loss of public support in the form of community trust and engagement. The use of racial profiling has resulted in a culture in which everyday citizens mistrust law enforcement officers, the same people they should look to for protection. Rather than serving as a valuable source of intelligence information—

Mr. GOWDY. Mr. Ship, I hate to interrupt you. Your entire statement will be made part of the record. If you could maybe find a concluding point—and, trust me, everything will be made part of the record. But if you could find a point at which to maybe conclude because of the red light.

Mr. SHIP. Yes, sir. All right.

I would just like to say lastly, in addition to destroying a valuable pipeline of information, the resulting erosion of community trust undermines our law enforcement and prosecution efforts in other ways.

Our law enforcement officers are hard-working men and women and are the backbone of our criminal justice system. They need to instill public trust within our communities to protect and serve. That is not a partisan issue. The National Organization of Black Law Enforcement Executives encourages you to enact legislation because it is important to our organization's mission of ensuring justice, fairness and effectiveness in law enforcement.

Thank you for your leadership on this critical issue.

Mr. GOWDY. Thank you, Mr. Ship.

[The prepared statement of Mr. Ship follows:]

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TESTIMONY BEFORE THE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

**FOR THE HEARING ENTITLED “21ST CENTURY LAW ENFORCEMENT: HOW
SMART POLICING TARGETS CRIMINAL BEHAVIOR”**

NOVEMBER 4, 2011

BY

JILES H. SHIP

NATIONAL PRESIDENT

NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES (NOBLE)

Chairman Smith, Chairman Sensenbrenner, Ranking Member Conyers, Ranking Member Scott and members of the Committee: I am Jiles H. Ship, national president of the National Organization of Black Law Enforcement Executives. Thank you for the opportunity to testify and submit testimony for the record regarding the problem of racial profiling and the use of suspect classifications in law enforcement policy.

The National Organization of Black Law Enforcement Executives, better known as NOBLE, was founded in September 1976, during a three-day symposium to address crime in urban low-income areas. The symposium was co-sponsored by the Police Foundation and the Law Enforcement Assistance Administration (LEAA). The goal of NOBLE is to be recognized as a highly competent, public service organization that is at the forefront of providing solutions to law enforcement issues and concerns, as well as to the ever-changing needs of our communities. NOBLE works to ensure equity in the administration of justice in the provision of public service to all communities, and to serve as the conscience of law enforcement by being committed to justice by action.

As national president, I am here representing over 3,500 chiefs of police, commissioners, superintendents, directors of public safety, and law enforcement executives – predominantly African Americans, but our membership also includes law enforcement officials from other communities. NOBLE has been a leading national voice on hate crimes, community policing, racial and religious tolerance, and law enforcement accreditation standards as a founding association of the Commission on Accreditation for Law Enforcement Agencies (CALEA), along with International Association of Chiefs of Police (IACP), Police Executive Research Forum (PERF), and the National Sheriffs’ Association (NSA). CALEA works to improve the delivery of public safety services, primarily by: maintaining a body of standards developed by public safety practitioners, covering a wide range of up-to-date public safety initiatives; establishing and administering an accreditation process; and recognizing professional excellence.

Testimony of the President Jiles H. Ship
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I have spent over 25 years as a state and local law enforcement official. I started my career in law enforcement in 1985, first serving as an officer on the Edison Police Department, patrolling a roadway more commonly known in the law enforcement profession as "Cocaine Alley." During that time I also served as a bias investigator and an Instructor for the Middlesex County Police Academy. Most recently I served as the Director of Public Safety for the City of Plainfield, New Jersey. As Chief Executive Officer of the Department of Public Safety, I oversaw the Police Division, Fire Division, and the Office of Emergency Management, having responsibility for 254 sworn personnel and 51 civilian employees and managing a budget of over \$23 million. Prior to that appointment, I served in the State of New Jersey Attorney General's Office – Division of Criminal Justice as the Special Assistant to the Director and as a Supervising State Investigator, Lieutenant State Investigator and Administrator of Investigations. Following my tenure as Director of Public Safety for the City of Plainfield, I returned to the Division of Criminal Justice, where I served as an Administrator of Investigations, in the Medicaid Fraud, Anti-Trust, Special Prosecutions, Fraud and Public Protection Units. There I oversaw and directed investigations, including multimillion dollar investigations, conducted by assigned investigative personnel to prepare for prosecution cases involving violations of New Jersey state statutes.

Racial profiling is one of the most critical issues facing law enforcement today. The continued denial and refusal to address this issue has led to the deterioration of public trust and confidence in the criminal justice system, and has strained police and community relations – even more so in our post 9-11 society. The need to embrace smart policing as a philosophy is even more important; there are numerous cities throughout the nation in "crisis" – powder kegs waiting to be ignited by a single incident of racial profiling. We cannot ignore the warning signals. We must respond immediately and develop strategies to eliminate this practice.

To be clear, "racial profiling" means the practice of a law enforcement officials or agency relying, to any degree, on race, ethnicity, national origin, or religion in selecting which individual to subject to routine or spontaneous investigatory activities or in deciding upon the scope and substance of law enforcement activity following the initial investigatory procedure, except when there is trustworthy information, relevant to the locality and timeframe, that links a person of a particular race, ethnicity, national origin, or religion to an identified criminal incident or scheme.

Racial profiling should never be used as a predictor of a person's conduct. The general rule of prohibiting law enforcement officers from using racial profiling as a factor in determining the likelihood that a person is engaged in criminal activity – makes sense from a practical perspective because it is unambiguous and thus will help police officers to avoid many of the legal pitfalls and landmines that would arise were they to try to build race, ethnicity, national origin, or religion into the equation of suspiciousness. Rather, law enforcement must look to conduct and behavior as indicators of criminal activity. Law enforcement officials must never use racial profiling as a factor in deciding if that person is involved in criminal activity – unless an officer is responding to a suspect-specific or investigative-specific be-on-the-lookout (B.O.L.O.) situation. A person's race, ethnicity, national origin, or religion should play no part in police discretion. Our citizens deserve nothing less.

There are many lasting effects that stem from the use of racial profiling. One of the most significant is the loss of public support in the form of community trust and engagement. The use of racial profiling has resulted in a culture in which everyday citizens mistrust law enforcement officers – the same people they should look to for protection. Rather than serving as valuable sources of intelligence information,

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these citizens, their family members and friends are less likely to support law enforcement efforts. It is both ironic and regrettable that in our zeal to protect our citizens from criminal activity, we may inadvertently have alienated large segments of our society who otherwise could have provided valuable information to law enforcement authorities. In other words, in our efforts to create a safer society, we may have unwittingly choked off our supply of the kind of information or "tips" that we need in order to target our resources and apprehend the most dangerous and predatory criminals.

In addition to destroying a valuable pipeline of information, the resulting erosion of community trust undermines our law enforcement and prosecution efforts in other ways. For the police to be effective, they must have the trust and cooperation of the citizens they serve. Progressive police executives have come to understand that, in order to generate community support, the police must think and act like they are a part of the community they serve. Police must engage the community as partners and be responsive to community concerns. Racially-influenced policing can result in some jurors being mistrustful of law enforcement officers, and therefore less willing to accept the credibility of police witnesses. This can happen when a police officer does something during an encounter to make a citizen (or the citizens close friends and relatives) mistrustful of police. When certain communities view the criminal justice system as unjust, they are less likely to be cooperative, and more likely to withhold information, to fail to appear as witnesses, and to withhold guilty verdicts in important cases and question the credibility of police witnesses in criminal prosecutions.

Our law enforcement officers are hard working men and women who are the backbone of our criminal justice system. The need to instill public trust with our communities "to protect and serve," is not a partisan issue. The National Organization of Black Law Enforcement Executives encourages you to enact legislation because it is important to our organization's mission of ensuring justice, fairness, and effectiveness in law enforcement.

Thank you for your leadership on this critical issue.

ATTACHMENT



**NATIONAL ORGANIZATION OF
BLACK LAW ENFORCEMENT EXECUTIVES**

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Jessie Lee
Executive Director

Jiles H. Ship
National President

Dear Member of Congress:

On behalf of the thousands of members of the National Organization of Black Law Enforcement Executives (NOBLE), we urge you to co-sponsor the End Racial Profiling Act of 2011 (ERPA). On Thursday October 6, 2011, Senator Ben Cardin (MD) introduced (S.1670), the "*End Racial Profiling Act of 2011*" and we expect Rep. John Conyers (MI) to introduce the bill in early November.

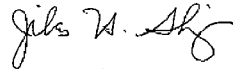
Racial Profiling occurs when law enforcement rely on race, ethnicity, national origin and religion to target the subject individuals to criminal investigations. Racial profiling violates our constitutional right against unreasonable search and seizures and our right to equal protection under the law. This practice has humiliated and antagonized African Americans and Latinos for many decades. After the attacks of September 11, Arab Americans, South Asians and Muslims have increasingly become victims of racial profiling. Racial profiling deepens racial tensions in America and feeds into the sentiment among communities of color that the criminal justice system is unfair and that some people are not treated equally under the law. This practice undermines the respect and trust between law enforcement officials and communities that is necessary to solve crime and keep us safe. The National Organization of Black Law Enforcement Executives believes that racial profiling is an ineffective law enforcement tool.

Racial profiling also perpetuates the use of racial stereotypes. Black police officers themselves have suffered from these stereotypes, where thirty years ago, they were unable to make arrest on their own, they could not change uniform in the locker room, and they could not ride in the same police car as white officers even if the seat next to them was empty. In a nationwide study, a majority of Black officers indicated that they had been victims of racial profiling themselves, some even during their careers as police officers.

If enacted, the ERPA would prohibit any federal law enforcement agency or officer from engaging in racial profiling. In addition, the legislation would provide state and local police departments that adopt policies to prohibit the practice with federal funding. Also, the bill would ensure that victims of racial profiling are able to report complaints against police officers. ERPA is a comprehensive approach to end racial profiling, instituting both compliance and enforcement mechanisms to combat its practice.

ERPA is the critical first step to addressing racial profiling on the national level. The National Organization of Black Law Enforcement Executives encourages you to support this legislation because it is important to our organization's mission of ensuring justice, fairness, and effectiveness in law enforcement. **Please contact Sen. Cardin and Rep. Conyers office to co-sponsor the End Racial Profiling Act of 2011.**

Sincerely,



Jiles H. Ship, M.A.
Director of Public Safety (Retired)
NOBLE
National President

Mr. GOWDY. The Chair would now recognize the gentleman from California Mr. Lungren.

Mr. LUNGREN. I want to thank all of you for your testimony. I appreciate it very, very much.

And I found Dr. Mac Donald's testimony interesting. I know you are proud of New York and so forth. We have got similar results in California. From 1991 until 1999, when I left as attorney general, we had reduced the overall crime rate by 50 percent, the homicide rate by 30 percent. That has continued. I am not sure it is exactly as much. We did get the benefit of Chief Bratton coming to Los Angeles. And I happen to think the use of technology, the use of computer data has helped array the resources of law enforcement to those communities that are most subjected to violence and serious crime. I think that is a positive.

Mr. Conlon, thank you for your service and the service of your family over the years. I found your testimony very, very affecting, not only because my brother was a police officer of LAPD for 5 years, and at least in one assignment in his squad car he was paired with an African American officer whom he was training.

And I just wonder, over the time you were on the force, did you see a change the effect in the communities you were serving as a result of the application of smart policing? And by smart policing, I mean as the application of information collected to give you a better understanding of where the violent and serious crime was occurring and the developments therefrom.

Mr. CONLON. Yes. Really from a management standpoint, a captain or a precinct commander would be called to the carpet every month downtown in CompStat, and they would point out you have robberies every other Tuesday at this corner which is by a school, what are you doing about it? And they could assign officers there. So knowing the patterns allows you to predict the future to a certain degree.

Mr. LUNGREN. Is that reflected in the community? In other words, I appreciate the fact that racial profiling can have a debilitating effect on those to whom it is directed. And if there is a belief of that in the community, there is a less likelihood, Professor Harris, that members of that community are going to cooperate with the police. But this is my general observation. I may be wrong, but my general observation is that tension and the corrosiveness of the relationship between police and the minority communities is not as bad today as it was 20 years ago, in part because the amount of violent crime visited upon members of the minority community is less than it was before. Is that a fair statement? I am not suggesting there isn't racial profiling going on amongst some individuals, but, Mr. Shelton, would that be a fair statement?

Mr. SHELTON. I have not sure it is fully informed. If we look at the number of calls and reports that we receive at the NAACP throughout 2,200 membership units, I would have to say that we are getting as many calls, if not more. And if we are looking at areas as we added some new challenges by local law enforcement, including some of the anti-immigration policies that are now in place in which racial profiling becomes a necessary tool for enforcement, what we are seeing is the challenges are equally as much, if not more, expanded now. We are getting more calls, believe it or not, also from not only our Latino friends, but our Arab and Asian friends, our Muslim friends—

Mr. LUNGREN. That is interesting. The thing that resonates in my mind is a conversation I had with a young African American

teenager about 14 or 15 years old when, in my position then, we went down and held a forum at a high school in Los Angeles where a young man had been killed. And it was a violence-prevention conference. And my belief is you are not just worried about crime, you are worried about violence, so we had a violence and crime prevention unit.

I went down there. We had the presentation. This young girl came up to me, and she said, why is it you adults never show up until after one of our young people have been killed? And that resonated with me. And that is why I thought that if, in fact, we had been successful in bringing the crime rate down, particularly the violent crime rate down, across the board, but because of the disproportionate number of criminals in the minority communities, the bringing of the crime rate down disproportionately benefits in that sense. And I just wonder if that is reflected at all in a community. If I don't have to say to the attorney general or the police chief as often, why don't you guys come down here until after someone is killed, because you are actually here, that is a positive for me.

And I am not trying to say there isn't some racial profiling. On the POST Commission in California, you know, we have a number of different training programs for police officers. Racial profiling is not to be allowed. And I think we are human beings, we have to work on that.

But in terms of using some of the data, I am a little worried about that, because I have always thought some of the best data is, if you want to look about racial disproportionality, the testimony of witnesses or, more importantly to me, the testimony of victims. And we have a crisis in this country of the disproportionality of violent victims being minorities, and that is a problem that we have not been successful totally in, even though I think we have made some progress. But those statistics cry out to me to say why can't we do a better job of making these minority communities safer as we say with the whole community? It is a frustration, I guess.

Ms. MAC DONALD. Congressman Lungren, may I respond, please? Thank you.

There was a Quinnipiac poll done in New York City in 2010 that found that Black support for Commissioner Ray Kelly, who is the current commissioner of the NYPD, was about 70 percent approval of the job he was doing.

Mr. LUNGREN. Is that higher than Congress?

Ms. MAC DONALD. I am afraid he may be taking your job soon. This is a man with political ambitions. The White support was about 80 percent, so it was not a huge difference.

Philadelphia has been sued by the ACLU for stop-and-frisks. A recent poll there found that the vast majority of Black residents of Philadelphia found that the police used force appropriately.

So there is support, because I have been to so many community meetings in Harlem and in Brooklyn, and, again, what you hear is, we want more cops. You don't hear brutality allegations; you hear, why aren't you getting the drug dealers off the street and keeping them off the street? So if there was a huge backlash against the police, you would not be finding a demand for more cops.

As far as the effect on minority communities, I just cannot stress enough that CompStat is colorblind. If you go to a CompStat meeting in downtown New York where those precinct commanders are being grilled about crime patterns on their streets, because the New York Police Department wants to save everybody's lives equally, the crime dots on the map say nothing about race, they just show you where the victims are. Nobody is talking about race at CompStat, they are saying, where are the patterns of crime happening, and they are happening overwhelmingly in minority neighborhoods.

Mr. CONYERS. Mr. Chairman, could the gentleman from California be yielded a couple of minutes, please?

Mr. GOWDY. I was just going to tell Ms. Mac Donald, because of many reasons, including the fact that he is a former attorney general in California, the clock ran a little bit. It is not your fault, it is not his fault, but you may get another question about CompStat at which point you can answer that.

But I would now thank the gentleman from California and would now turn to the gentleman from Virginia.

Mr. SCOTT. You have a request of unanimous consent.

Mr. CONYERS. I asked for a couple more minutes for Dan Lungren so he could yield to me.

Mr. GOWDY. So he can yield to you? Without objection.

Mr. CONYERS. He doesn't have to.

Mr. LUNGREN. I would always yield to you, yes, sir.

Mr. CONYERS. Well, thank you.

Look, the only point I want to make, and I thank you for allowing me to ask this, is in referring to the crime reduction that occurred when you were there and was following this on a day-by-day basis, there were social programs that collaborated with police programs, the violence prevention program being one. But in your case I wanted to ask you about that, because in New York there are studies that show that the social programs combined with the police work, it is not CompStat alone, it was—and I want to find out what happens in L.A. I will be asking her about the New York experience.

Mr. LUNGREN. Well, reclaiming my time, we instituted a number of things in California at the time, COPS program, community oriented policing, problem solving, which goes to the point that Professor Harris made. But I would also say we implemented three strikes and you are out, we implemented a victim's bill of rights, we instituted truth in sentencing. And I know this is controversial, but we did increase substantially our prison population trying to get the career criminals off the street, in addition to the things the gentlemen have said.

So I am not suggesting there is any one single thing, but I will say there was a marked change in attitude toward law enforcement during those years, and I happen to be one that thinks that it was successful. But young people not only talk to me about not wanting to be killed in their high schools, but they wanted to have an education, they wanted to have some other things. I think the gentleman is correct on that.

Mr. SHELTON. Mr. Chairman, if I might also respond to Mr. Lungren's question. What we have seen is if—we don't want to get

across the point that we want less police officers. We do want more police officers. We want them on our streets, we want them visible, but we also want them well trained.

We believe the effectiveness of our police officers is also deeply rooted in the relationship they have with the communities they serve. As long as we allow racial profiling to continue, or the perception of racial profiling, as we are seeing now, without the accountability of measures in which we actually take into account what is going on in our neighborhoods, we don't have that trust or relationship.

Mr. LUNGREN. I would agree with you. The only concern I have is I might say you might—and I apologize. I don't want to—well, is the misuse or the misunderstanding of statistics. And I think we have to be very careful about that. And, to me, the most meaningful statistic is the disproportionate impact of violence on the minority community, which is not as bad as it was 20 years ago, but still is one of the identifying characteristics of a young person trying to grow up in those communities, and we ought to do a better job on that.

Mr. SHELTON. Well, absolutely. And certainly prevention requires that trust factor of a police officer that has been well trained. As a matter of fact, from California there is a police chief named Lansdowne, who I believe is retired now, but was the chief of San Jose. Lansdowne actually implemented anti-racial-profiling policies by actually taking the count, counting the number of traffic stops, looking at races, seeing if there was a problem. He said as a chief administrator he had a responsibility to collect data. If you are going to have data-driven policing, you have to collect the data.

What we would like to see happen to try to stop racial profiling is a collection of data that can be analyzed. One of the things he did to prevent the misunderstanding or misanalysis of that data was actually to pull together citizens from the community of all races, genders and ethnicities so they could process the data, understand it and make recommendations to the chief. That is the accounting we would like to see happen. That is the kind of legislation, quite frankly, we would like to see Congress implement.

Mr. GOWDY. I thank the gentleman from California.

I now recognize the gentleman from Virginia Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

And one of the things we know that can significantly reduce crime, particularly juvenile crime, are prevention initiatives. The Youth Promise Act, which I have talked to the gentleman from Pennsylvania about a little bit earlier, has been studied and looked at by experts and has been viewed as an excellent strategy to significantly reduce crime by getting young people on the right track and keeping them on the right track so they don't get in trouble to begin with.

I want to start with Mr. Ship. If you don't have—if you have profiling, it seems to me that you are wasting a lot of time on innocent people and not enough time on guilty people. If you do not have profiling, how will police be more—policing be more effective?

Mr. SHIP. Mr. Scott, you are exactly right. Progressive police executives have come to the understanding that in order to generate community support, which I don't know if I heard that loudly here,

but in large part why we are noticing the reduction in the crime numbers now is because of the fact that community policing was heavily driven into a number of different communities.

The computer statistics are a tool that I use as a director of a police department to more so hold my subordinates accountable. It is data driven, it is information that can be used to hold people accountable, but that is all it is. That is all it is. And I am not diminishing the importance of it.

We have to—but—and I just want to touch on another thing, too, with Commissioner Ray Kelly. I was with him 2 weeks ago. The reason why that people are in so great support of him is because of the fact that when he sees cops acting out in ways that they should not, he takes swift action to address that and to rid them out of his department, which builds community trust. If the community trust is built, you are going to have more people coming forth to participate in trials, you are going to have them acting as witnesses, and when they serve on juries, if they trust and have faith in their local law enforcement, they will be more willing to render a just verdict and not put the police under question.

Mr. SCOTT. And how does a perception in the community—how is the perception affected if the community believes that the police are picking on people because of their race?

Mr. SHIP. It will just have the countereffect. Racially-influenced policing would result in some jurors being mistrustful of law enforcement officers, therefore lesswilling to accept the credibility of police witnesses. And this can happen when a police officer does something during an encounter to make a citizen or a friend or a relative mistrustful of that police officer. So it will have the countereffect.

Mr. SCOTT. And what kind of training would tend to minimize racial profiling?

Mr. SHIP. The best training—and some agencies are getting their people trained in that area now; as a matter of fact, right here at metro and on a Federal level, TSA—is we have to look at it from a behavioral science standpoint. We have to police conduct and behavior, not a person's—based on their ethnicity or their race.

Mr. SCOTT. And is that training effective?

Mr. SHIP. That training has been very effective. As a matter of fact, in the long run we will find that it is going to be more effective, because those are the indicators that we need to know in order to really thwart criminal activity.

Mr. SCOTT. Professor Harris, on the stop-and-frisk right now, what is the legal standard right now?

Mr. HARRIS. I couldn't hear all of your question.

Mr. SCOTT. On the stop-and-frisk cases, what legal standard—what do the cases say that—when you can do it and when you can't?

Mr. HARRIS. Stop-and-frisk is well understood. It has been used in the law for a long time. The standard in place has been there since 1968. Police must have reasonable, fact-based suspicion that the person they are observing is involved in some kind of criminal activity. It is less evidence—less evidence is required than probable cause, but it does require some evidence that would give you a factual basis for reasonable suspicion.

If there is also reasonable suspicion that the person might be armed, either because there is some outward indication of presence of a gun or because the crime that they suspect requires a gun, armed robbery, they may then also do a frisk.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. GOWDY. The Chair would now recognize the gentleman from Pennsylvania Mr. Marino.

Mr. MARINO. Thank you, Chairman.

Lady and gentlemen, thank you for being here. I am going to ask you questions based on my experience. I was a prosecutor for 18 years, a district attorney, and a United States attorney. And let me preface by saying that I am proud of our record in my county and in the Middle District of Pennsylvania to combat racial profiling, because we follow the crime.

So based on that, Mr. Shelton, you quoted some statistics of the number of calls that you received from individuals about racial profiling. Is there a way that you were able to follow up to determine the legitimacy of those calls, and did you find very many that were not legitimate?

Mr. SHELTON. What we usually do as a volunteer organization is actually transmit those complaints with concerns to their race to local law enforcement. Many people are afraid to actually go to the local law enforcement agency. Unfortunately, in too many cases it is the same entity that actually receives the complaints for the activities, so they are fearful to go into some of these offices in many cases. We forward it there, and if we find those that are particularly problematic, we also forward those to the U.S. Justice Department's Pattern and Practice Division here in Washington.

Mr. MARINO. One of my biggest complaints was—and I am going to bring the media into this somewhat—the media doesn't hesitate to show a bad situation with an officer and—of a person that is potentially going to be arrested. I wish we would see more positive aspects of a police officer. In exchange for programs that we put into our county and in our district, we even had police stations in a housing project where we rented one of the apartments, and the police officers were there on a 24/7 basis, where the neighbors came in and out. And we also did receive a great deal of requests for more police officers to be working with individuals. We had neighborhood watches. As the district attorney, U.S. attorney, I actually went in to all my neighborhoods on a monthly basis on a rotation and sat and talked with people. Do you find that being effective? Anyone can answer.

Mr. SHIP. Absolutely. And that is what I was alluding to earlier when I was talking about the community policing initiatives that really had an impact on reducing the rate of crime, especially, especially in urban centers, but not limited to. Even in the suburban communities the numbers have been greatly reduced because of that initiative.

Mr. MARINO. It looks like Mr. Harris wanted to——

Mr. HARRIS. I was going to say, sir, that is a very effective way of doing it, and it is all because you are having communication on a regular basis. When you have some kind of a conduit for that, when you have a procedure for it, when people see that you are not there just to be there once, but you are coming back and you are

coming back, that is what builds the relationship, and the relationship brings in the information, and everybody can succeed.

Mr. MARINO. Let me ask the former police officers. And please respond to this. Do you see or have you seen particular crimes associated with particular ethnic backgrounds based on a scale of economics; for example, the use of cocaine versus the use of crack?

Mr. SHIP. Well, let me just make sure I am clear on that, sir. More than not it is generally based on the socioeconomic environment more so than the ethnicity or the race of the individual. And there was a study done in Georgia with the Secretary of Labor.

Mr. MARINO. That is why I bring in the economics.

Mr. SHIP. Yes. Yes, sir.

Mr. MARINO. Okay. So would you agree with me that, at least in my experience, when it came to cocaine, we were prosecuting and putting people in prison who were from Caucasian backgrounds, from upper middle-class and wealthy individuals who could afford to purchase the cocaine, but also African Americans who didn't have the money to purchase the cocaine, but could purchase and manufacture the crack at a cheaper price. Is that, in fact, true? Have you experienced that as police officers? And, sir, you may jump in, too.

Mr. SHELTON. I would just add in many of those cases there is an issue of the process in which police target communities they think are having the biggest problems. As we look at issues along those lines, we begin with the data, understanding what the Department of Health and Human Services says about crack cocaine, the use of cocaine, and other drug use, and have a situation where 60 percent, according to the Department of Health and Human Services, of illegal crack cocaine users are White Americans, but over 80 percent of all the prosecutions of crack cocaine convictions are African Americans. We know there is a little data problem along those lines.

If the question is how can we be most effective at being able to prevent these crimes from happening in the first place, which I think is what all of us want, it does require that trust of those law enforcement officials again. It requires those law enforcement officials to have the kind of relationship with the communities they serve in which the communities feel that they can actually give them the information quietly and trustfully that will help prevent the crime from happening.

Being accountable to those communities is one of the most important things we can have in those neighborhoods for those community members to feel that indeed they had the respect of those law enforcement officials, and that they will be treated fairly throughout the process.

Mr. MARINO. Go ahead, sir, please.

Mr. CONLON. I would like to—I think that the community relations and community policing are essential and valuable on their own terms. I would also like to point out that the major drops in crime in New York City during the 1990's were at a period when racial relations, certainly compared to now, were fairly adversarial, certainly between the mayor and various minority leadership in the city. The fact that relations were often quite poor didn't seem to be an impediment to very, very rapid drops in crime.

Mr. MARINO. Chair, is my time running out? May I have 1 more minute?

Mr. GOWDY. Without objection.

Mr. MARINO. Let us switch to juveniles, which my good friend Mr. Scott, I think, is setting me up for something down the road.

I am very passionate about getting involved in working diligently with our kids. As a district attorney I handled the juvenile caseload pretty much myself, because our purpose there is to get them on the right road, and not so much punishment, although punishment has to be a part of it.

What are we doing? We have to start with our kids; education, aware of what is right and wrong, and a good environment. Let us just for a moment not think about the money side of it, let us just think about what we have to improve on or change concerning our relationship—law enforcement's relationship with our children. Anybody chime in.

Mr. HARRIS. The relationship between kids and the police officers who serve in those communities is crucial. And when it is good, when the kids see the same officer, and the same officer is assigned over a long period of time, when the officer is in the schools, when the officer is at the neighborhood festival, when the officer comes to their homes, even lives in their neighborhoods, though I don't think that is strictly necessary, that kind of a person can be a presence, and then that officer will know what kind of a kid he is dealing with. And so if you got 10 kids in hooded sweatshirts, they will know which one is the bad one and which of the other 9 are just kids.

Mr. MARINO. Quickly, anyone else want to respond to that?

Ms. MAC DONALD. I would definitely support Professor Harris in that. I would just say that the best thing that an officer can do for children is to keep them alive. And the fact is that the crime drop in New York has been highest in minority neighborhoods. There are children now who are alive who would have been killed by stray gunfire had crime not dropped. And if we are going to delegitimate data-driven policing because it generates racially disproportionate data, we are going to hurt minorities most of all.

The question that this Committee has not really addressed is does racial profiling exist on the scale in which it is alleged. The evidence that is provided for it again and again is statistical, and it looks at police activity which is disproportionately concentrated in minority neighborhoods. But you cannot have police activity that goes after crime that does not generate disproportionate data. Police stops can either mirror census figures, or they can go after crime. They cannot do both.

The shooting rate in Brownsville, Brooklyn, where a woman was just killed at 2:30 on a Friday afternoon by stray gunfire by youth gangs, the shooting rate in Brownsville is 81 times higher per capita than in neighboring Bay Ridge, Brooklyn. Given that reality, the police stops are going to be higher in Brownsville than they are in Bay Ridge. And if you are going to delegitimate policing by saying that they are racially profiling because the stop rate is higher in Brownsville than it is in Bay Ridge, while ignoring the under-

lying crime rates, you are going to be leading to more minority deaths and crime.

Mr. CONYERS. Would the gentleman yield for just a moment on that point, because I would like to find out who she suspects on the Committee may be delegitimizing those numbers. Unfortunately, I regretfully have to agree with them. But I haven't heard anybody suggest what you are saying, that we don't understand that. I think everybody here does.

Ms. MAC DONALD. Well, then, I am glad to hear that, Congressman Conyers, and I am sure that you do with your understanding of reality. But the fact of the matter is that the evidence that the ACLU routinely puts forward for racial profiling is based on a very primitive analysis, which is that, as in New York City, for instance, the stop rate for Blacks is higher than it is for the population. It is 55 percent of all stops are of Blacks, whereas Blacks are only 23 percent of the population. Without look at crime rates——

Mr. CONYERS. Well, I am just hoping that Chairman Gowdy will entertain in the future, either this year or early next, a criminal justice hearing in which we have ACLU and you as panelists before us.

Mr. GOWDY. Temporary Chairman Gowdy will be happy to pass that on to permanent Chairman Sensenbrenner. And this seems like a wonderful time to recognize the gentleman from Michigan for his time of questioning.

Mr. CONYERS. Well, I am going to yield to Sheila Jackson Lee, sir.

Mr. GOWDY. Very well.

Ms. JACKSON LEE. Thank you very much. And let me thank the temporary Chair for the indulgence that he has given all the Members, and I ask his indulgence as well as I proceed. And I thank the Ranking Member for yielding because of an early departure.

Let me just say I am so glad that the Ranking Member clarified that numbers speak for themselves. If the police department reports numbers of 60 percent crime and numbers dealing with the numbers of the percentage or the racial description of the individual arrested, then those are the numbers. And what I would say to you, Ms. Mac Donald, it is easy to be dispassionate on numbers. You are an analyst, and I respect your talent for that, but you speak in a tone that is tone deaf on the societal issues that, even though we are a Judiciary Committee, many of us have to take into consideration.

So let me speak to the issue that I think is glaring in front of all of us. Let me, first of all, lay on the record my deep respect for Commissioner Ray Kelly, who we both served together, myself and the Congress, many Members here, and he in his capacity when he served in the Federal Government. Give him my greetings. And I certainly appreciate his work.

But the burden of race is one that, except for a few panelists, has been completely ignored. If history speaks to the treatment of the Irish that may have been classified as petty criminals, but we don't stop Irish Americans today randomly. History would speak to what many Italians will push back, rightly so, of the Mafia, but we don't go into Italian neighborhoods and ask, are you part of the Mafia?

I believe that we have a way of addressing the questions that Ms. Mac Donald has raised and our former New York NYPD on the issue of behavior. None of us are denying that you can get a random neighborhood of African Americans, and I am so glad you are saying that these individuals are propolice. Hallelujah. Let us put that on the front pages of the New York Times. The NAACP and ACLU have been trying to say that for a very long time. Those of us who are African Americans, we are glad that our young men and young women are part of the police department law enforcement. We are delighted of our leadership at NOBLE. My dear friends are police officers.

But the question is that if you took an individual family and said, would you like to have your son shot in your driveway while the mother is screaming, this is my son and he is in our car, while a law enforcement officer says, you have stolen the car, most would say not. They will come to the NAACP, they will come to the ACLU. Or if you ask the bride whether she wanted her bridegroom on the night before their marriage to be shot down in a gunfire that seemed to have been provoked, probably still a debate in New York, they will probably argue not. So the organizations like the NAACP, like those of us on the Judiciary Committee, ACLU, we handle the unique cases.

I would venture to say, Mr. Shelton, do you have hardened criminals coming into your office saying, we have been discriminated against, or are the kinds of people that are coming into your office those who may be victimized simply on the basis of race as they interpret it? Is that what you are seeing?

Mr. SHELTON. What we see is those who feel they have been victimized. These are usually good, law-abiding citizens that just cannot understand how it is that themselves and, in most cases, sons, but daughters as well—their sons have been victimized along these lines. They are trying to figure out how they can explain to their children how important these law enforcement officers are in the overall when they feel that they are victimized simply because of their physical characteristics, the color of their skin.

Ms. JACKSON LEE. And if I might pursue this line of questioning, a few years ago Ranking Member Conyers and a number of us pursued the issue of police brutality around America. I, frankly, believe we had an impact. We had an impact by raising the issue, and police departments themselves began to self-police and find better ways.

So let me go to Professor Harris. I am on Homeland Security. We have had a series of incidences and hearings dealing with the Muslim community and the way you figure into that community. Frankly, I believe we have got to move the thermometer up on the behavioral assessment and education of our officers, because if one of our children wants to go out for a loaf of bread or drive a car to get a loaf of bread dressed in the attire of the basic hip-hop community, and they are just home from Yale, but they happen to be African American, that child—or maybe walking down a Brownsville street—had a scholarship at Yale or Harvard, that child, that African American boy, can be stopped and frisked.

The question we ask is whether or not that is the best use of police resources. Can you explain or comment on that behavioral as-

pect that we can begin to work with you on even legislatively to the extent of resources? I call it best practices. Would you respond to that, how that would differ on maybe that particular student that is going down the block?

Mr. HARRIS. Yes, ma'am. The use of police power and resources must be channeled in the most effective possible way. When race or ethnic appearance is one of the factors that police use to target people, the effectiveness of the law enforcement effort goes down.

And when you say behavior, you are exactly right. Behavior is the thing that we all want to be focusing on because behavior predicts behavior. Appearance does not predict behavior. And that is true whether we are talking about homeland security work, whether we are in an African American community, or whether we are talking about Muslims. It is all about focusing on behavior, and the agencies that have led the way on that have figured out that behavior is what will give the best police results over time; that putting race or ethnic appearance, except for a description of a known suspect, which is not profiling——

Ms. JACKSON LEE. Obviously. Not profiling.

Mr. HARRIS. That is not profiling. Except for a description of a known suspect, appearance confounds the ability of the human mind to make decisions about what people are doing. It is a conflicting and confusing factor. So if we can look mostly to behavior, that is where we are going to get our best police work, our highest level of results, and it is going to in the bargain bring police and communities onto the same page instead of having them alienated from each other.

I am glad, I could not be more glad, that crime has fallen in so many American communities, and especially in African American, Latino and other communities. And it just makes me wonder why, then, is there still a gap in satisfaction with the police at the level that it has persisted for so many years. And I have to believe that part of the answer to that is this historical relationship in which there has been a feeling that people are not served, but are disserved, and it may continue in some places in some departments. It may continue in the form of using race or ethnic appearance as a way to target people.

Ms. JACKSON LEE. Mr. Chairman, I would like just to have the president of NOBLE just respond very quickly and ask for an additional minute just for him to respond to that line of reasoning.

Mr. GOWDY. The gentlelady via the gentleman from Michigan is yielded an additional minute.

Ms. JACKSON LEE. I thank you.

And to the president of NOBLE, let me thank you for your leadership. But respond to—that is a very good question. And what we say on this side of the table—let me just say what I say, having been involved in a lot of police incident cases, that doesn't for me label all of the police. Wouldn't that be better, wouldn't that begin to redefine the relationship if we use behavior, we did training, and we begin to dumb down or lower down these dispassionate statistics that talk about it is great to stop and frisk people, such as the complaints in New York—if we had a behavioral and then began to develop a better eye of police to get the guys that would have shot that lady on a Brownsville street in gang fire, which no one

would oppose, versus the kid getting a loaf of bread trying to get an education?

Mr. SHIP. That is exactly right, madam. And the—all of the chiefs of police that I have spoken to encourage their people to train, get additional training in behavioral science as a way to best combat and predict that criminal activity is going to occur before it occurs. We do need help. It is—it is a costly undertaking. And unfortunately, enough State and local law enforcement officers are not afforded that opportunity. So that would definitely help.

But if I may, if I could just share a New Jersey experience with the Committee also. In the State of New Jersey in 2009, the attorney general—we drafted at the attorney general's office, and I was part of that working group—we drafted a policy to eradicate racial profiling, and the legislature outlawed it in the State of New Jersey. That training that those officers got, it was mandatory that every law enforcement officer in the State of New Jersey get this training. Since that has occurred, the number of incidents and calls that we have gotten from motorists and other individuals in the State of New Jersey has reduced drastically. So that training that the officers were giving and also the monitoring now that the commanders and supervisors are doing with respect to racial profiling has had a dramatic impact.

Ms. JACKSON LEE. Thank you very much. I yield back.

Mr. GOWDY. I thank the gentlelady from Texas.

I will recognize myself.

Mr. Ship and Mr. Conlon, I want to first thank you for your service within law enforcement and armed services.

Mr. Ship, I was a prosecutor for 16 years, and the thing I liked most about the job is very little politics among law enforcement officers, prosecutors. It is as depoliticized as any environment can be. The thing I liked least about it was sitting with the parents of African American youths who had been shot and explaining to them that while there were witnesses, none of them would cooperate with the police, and none of them would cooperate with prosecutors. So it is almost as if it is a self-fulfilling prophecy that you lose confidence in the criminal justice system because you have a child that has been murdered, and you can't do anything about it because we don't have witnesses that are willing to help. So how do we fix that?

Mr. SHIP. And, Mr. Chairman, that is one of the lasting effects also that stem from the use of racial profiling and other bad police practices within a community.

Mr. GOWDY. But these aren't drug cases, and they are not property crime cases. These are murder cases.

Mr. SHIP. Yes, sir. I agree with you wholeheartedly, and I understand your passion in that area, but if you are in a community that do not trust the police, it is going to be very difficult and extremely difficult to get those individuals to cooperate with the criminal justice system.

Mr. GOWDY. Ms. Mac Donald, do you think it is a wise expenditure of police resources to put them in the neighborhoods with the most 911 calls?

Ms. MAC DONALD. With the most what?

Mr. GOWDY. The most 911 calls or the most reports of crime. Is that a wise investment to put most of your police resources where the most number of 911 calls are or the most number of reports of crime?

Ms. MAC DONALD. I think that police should go where the crime is, yes, I do, because that is where people need the most protection.

Mr. GOWDY. And if they are there, then why would you not have a disproportionate amount of police-citizen interactions if they are already there?

It strikes me that the police really can't win, because if they don't go into the neighborhoods where the crime is taking place, which oftentimes in South Carolina are indigent neighborhoods or sometimes minority neighborhoods—if they are not there, they are blamed for ignoring crime in minority neighborhoods. If they do go, and they spend a disproportionate amount of time there, there are going to be more interactions between police and the citizens or the residents of that community. So how do police win?

Ms. MAC DONALD. You are absolutely right, Congressman Gowdy. It used to be that the rap against the police was that they ignored crime in minority neighborhoods, and that may well have been the case.

Again, CompStat is utterly colorblind. It has nothing to do with race. Officers are already using behavior, not race, to determine whom to stop. If they were using race, they would literally be stopping every single person in Brownsville. That is not the case. What they are looking for is are you hanging out on a known drug corner at 2 a.m. And possibly hitching up your waistband in a way that would suggest that you have a gun. They are targeting their resources where crime is high so when the cops are there, they are looking for behavioral cues to determine who they stop.

Given what the disparities are in crime rates, they cannot help but generate disproportionate stop data because that is where the cops are, and that is also where the criminals are.

Mr. GOWDY. Well, I want to say this. I want to just take a moment and brag on my sheriff, Chuck Wright, who employed CompStat a couple years before I left as the D.A. And still uses it. And, Mr. Ship, I will tell you, my chief of police, and I intentionally didn't say it when I asked the question, is an African American chief of police, who has been there since before I went to the U.S. Attorney's Office in 1994. I think he is the best police chief in the country. And he had the exact same frustration I did; he just has more gravitas and standing to express it than I do. The same frustration: As an African American in law enforcement, I get blamed for not doing it, and then when we need to make the prosecution, we need to make the arrest, I can't get folks to help.

Professor, I am going to do what everyone who graduated from law school up here has always wanted to do, which is ask a law professor a question since we had them asked of us for 3 years. I want you to assume for the sake of argument that Whites are disproportionately likely to commit crimes of exhibitionism, indecent exposure, peeping Tom. And at least in my jurisdictions that is true, they are more likely to do it. I want you to assume that a victim, a woman, sees a masked man at her window. Is it appropriate

for law enforcement to pull the files on White sex offenders in the neighborhood to begin their investigation?

Mr. HARRIS. Yes, it is, Congressman. It is appropriate because you have related a behavior to prior behavior. That is what makes that an absolutely appropriate move.

If you wanted to go further and be a little more thorough, though, I would pull all the sex offender files, not just the ones of White people, because the person is wearing a mask. So it is a good first step, but I would take it further.

Mr. GOWDY. Agreed. But when I hear the term “racial profiling,” it is not—and I listen very carefully to all of the explanations, and I know that there are exceptions made when there is a credible indication of the ethnicity or race of the perpetrator. In my hypothetical the person was masked. But because the statistics in that area indicate that Whites are more likely to commit that crime, which is true in the area I came, you see nothing wrong with police beginning their investigation with White sex offenders in the neighborhood?

Mr. HARRIS. As long as that is only the beginning. To stop there would be a big, big mistake.

Mr. SCOTT. Mr. Chairman, I am not sure he understood your question. Your question is whether you would pull just White sex offenders, not all sex offenders. Would it make more sense to pull all the sex offenders?

Mr. HARRIS. It makes more sense to pull all the sex offenders.

Mr. GOWDY. I was actually asking do you consider it to be racial profiling if the police just pull the White sex offender files?

Mr. HARRIS. As long as what we are talking about is a relationship of behavior and behavior, and you have some reason to suspect those files, the people in those files, I don't see any reason that you can't begin an investigation that way. But if you stay with it, you are going to cut off your possible pool of suspects in a way that may take you off the track.

Mr. GOWDY. All right. I am, in keeping with the custom, out of time.

I would now recognize the gentleman from Michigan Mr. Conyers.

Mr. CONYERS. Thank you, Chairman Gowdy.

I wanted to hopefully introduce to Attorney Mac Donald the head of the Washington bureau of the American Civil Liberties Union. I don't know if you two had the pleasure of meeting. I was hoping I could be the first to have introduced you, because notwithstanding Chairman Gowdy's modesty, we are going to try to get you all together as soon as we can in the Committee to continue this discussion.

Ms. MAC DONALD. I look forward to that.

Mr. CONYERS. She is in the audience, of course, but has not been able to participate in this very interesting discussion. And I am very pleased that you five were selected. And, of course, Hilary Shelton is a regular, as is our Toledo professor, who we enjoy coming back. But, to me, Detective Ed Conlon has been incredibly reserved in his participation in this activity as we bring it to a close with Judy Chu.

Let me ask you, and you have—of course, many of you are authors, but you have not only practiced police work, but you have written about your observances from that experience. And I would like to begin our discussion with you taking the time you need to reflect on the rich variety of opinions that have arisen over this discussion this morning, Detective Conlon.

Mr. CONLON. Thank you, Congressman.

I think the police are not in the business of making people happy. I think somebody who lives a long lifetime and never speaks to a cop doesn't wish they had. They are—sometimes they are the bringers of bad news, and sometimes they are the proof of it.

Also, I think there is a tendency to—at least there was in New York—to view either the mayor or the police commissioner as sort of the incarnation of the police. There certainly was during the Giuliani era, as if every cop was a mini Giuliani. Now we certainly benefit by having Commissioner Kelly at the top, who has long and distinguished service, and I can speak honestly about him because I don't work for him anymore.

It is an acutely painful subject, that of race in America. The Congresswoman made mention of the Sean Bell case in New York where this young man was killed by police on the night before his wedding. Now, three New York City police officers were put on trial in relation to that death. Two of them were African American, and one of them was Arab American.

Now, the circumstances of that death were that Mr. Bell was with his friends at basically a warehouse. His friends were criminals. There was a fight. They went outside. An undercover officer said there was an allegation that guns were being brought back. Mr. Bell and his friends got in a car. They ran over one of the officers. The question at issue was whether an undercover identified himself as a police officer before they were shot. And that officer and several others opened fire on Mr. Bell.

You have a situation of a young African American man being killed by police, which is a tragic circumstance, a young man with promise. On the other hand, you had officers who were exactly the kind of officers who you want to be drawing into the police, two African Americans and an Arab American, who I don't think can be in conscious accused of acting in malice, being put on trial for murder. And I do not believe those officers got sufficient support during that trial.

Mr. CONYERS. Now, if I can have just a little more time for this last question, sir.

Mr. GOWDY. The gentleman from Michigan is recognized for an additional 2 minutes.

Mr. CONYERS. Thank you very much.

Detective Conlon, 3 days ago the New York Police Department, already saddled with corruption scandals, saw its image further tainted on Tuesday with the conviction of a detective for planting drugs on a woman and her boyfriend. Are you familiar with that?

Mr. CONLON. The report lines of the story, yes.

Mr. CONYERS. Right. I am reading directly from the New York Times, and I will put this in the record.

[The information referred to follows:]

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November 1, 2011

Detective Is Found Guilty of Planting Drugs

By **TIM STELLOH**

The New York Police Department, already saddled with corruption scandals, saw its image further tainted on Tuesday with the conviction of a detective for planting drugs on a woman and her boyfriend.

The bench verdict from Justice Gustin L. Reichbach in State Supreme Court in Brooklyn stemmed from acts committed in 2007 by the defendant, Jason Arbeeny, a 14-year veteran of the department who worked in the Brooklyn South unit.

Before announcing the verdict, Justice Reichbach scolded the department for what he described as a widespread culture of corruption endemic in its drug units.

"I thought I was not naïve," he said. "But even this court was shocked, not only by the seeming pervasive scope of misconduct but even more distressingly by the seeming casualness by which such conduct is employed."

The case against Detective Arbeeny was rooted in a far larger tale of corruption in Police Department drug units: several narcotics officers in Brooklyn have been caught mishandling drugs they seized as evidence, and hundreds of potentially tainted drug cases have been dismissed. The city has made payments to settle civil suits over wrongful incarcerations.

During the trial, prosecutors described the corruption in the drug units that Detective Arbeeny worked for. One former detective, Stephen Anderson, who did not know the defendant, testified that officers in those units often planted drugs on innocent people. Mr. Anderson has pleaded guilty to official misconduct over a 2008 episode involving drug evidence and now faces two to four years in prison.

Detective Arbeeny was convicted of official misconduct, offering a false instrument for filing and falsifying business records. Charles Guria, a prosecutor, described this latest case of police corruption as an abuse of power.

"It's a sad day when a police officer misuses his authority," Mr. Guria said.

On Jan. 25, 2007, prosecutors said, Detective Arbeeny planted a small bag of crack cocaine on two innocent people.

The detective's lawyer, Michael Elbaz, tried to discredit the most important prosecution witnesses, Yvelisse DeLeon and her boyfriend, Juan Figueroa. Ms. DeLeon had testified that the couple drove up to their apartment building in Coney Island and were approached by two plainclothes police officers. She said she then saw

Detective Arbeeny remove a bag of powder from his pocket and place it in the vehicle.

"He brought out his pocket," Ms. DeLeon told the court. "He said, 'Look what I find.' It looked like little powder in a little bag."

Later in 2007, the detective was accused of stealing multiple bags of cocaine from the prisoner van to which he had been assigned; Justice Reichbach found Detective Arbeeny not guilty of those charges.

Though there had been conflicting testimony during the trial about the existence of quotas in the department's drug units, Justice Reichbach said, a system of flawed procedures in part led to the charges against Detective Arbeeny.

In the department's Brooklyn South narcotics unit, for instance, drugs seized as evidence are not counted or sealed until they reach the precinct and can be handled by multiple officers along the way, Justice Reichbach said, adding that such unacceptable practices "pale in significance" to the "cowboy culture" of the drug units.

"Anything goes in the never-ending war on drugs," he said, "and a refusal to go along with questionable practices raise the specter of blacklisting and isolation."

Sentencing is scheduled for January. Detective Arbeeny faces up to four years in prison.

Mr. CONYERS. The bench verdict stemmed from acts committed in 2007 by a 14-year veteran of the department who worked in the Brooklyn South unit. In announcing the verdict, the judge scolded the department for what he described as a widespread culture of corruption endemic in its drug units. I thought I was not naive, he said, the judge, but even this court was shocked not only by seeming persuasive scope of misconduct, but even more distressingly by the seeming casualness by which such conduct is employed.

Your comments, please.

Mr. CONLON. It is a disgrace, and it is a shame. I worked in narcotics. I have been with the police department, and very proud of my time there. That, to me, is the worst scandal in recent memory,

even though there were a number of former and present officers in a different part of Brooklyn arrested for guns.

To arrest somebody without cause is, in effect, to kidnap. It is a truly, truly awful thing. And to do it just to not get yelled at by your boss or to have enough activity is absolutely appalling. And I certainly don't agree with the categorization as widespread in any way. It certainly was not my experience. But I agree that it is appalling and shameful.

Mr. CONYERS. Thank you, Mr. Chairman.

Mr. GOWDY. I thank the gentleman from Michigan.

Ms. Chu.

Ms. CHU. Thank you, Mr. Chair.

I have a question for Mr. Shelton, but before I begin with my questions, I would like to take a moment to say that the title for this hearing is rather ironic: 21st Century Law Enforcement: How Smart Policing Targets Criminal Behavior. We are using the phrase "smart policing" as a synonym for racial profiling, and I don't think it is very smart at all to profile individuals based on their race.

In order to properly address the issue at hand, we have to really get to the root of the problem, and we must first be honest with each other and acknowledge what we are truly discussing here, and that is the question of whether it is ever acceptable to single people out for heightened scrutiny based on their race, ethnicity, religion or national origin.

And as a chair of the Congressional Asian Pacific American Caucus, I am glad we have this opportunity to discuss this issue, because Asian Pacific Americans, like other minority communities, have felt the significant effects of it, from the Chinese Exclusion Act to the Japanese internment, to post-9/11 racial profiling of Arab Americans, Muslim Americans, South Asian Americans and Sikh Americans. I believe racial profiling is a hurtful, ineffective, and a destructive law enforcement method, and it hurts us all.

So, Mr. Shelton, do you believe that it is ever justifiable to treat law-abiding citizens differently in the name of carrying out the law?

Mr. SHELTON. Absolutely not. There is no excuse for it. Again, it clearly undermines the trust that is absolutely necessary for effective policing.

Congresswoman, one of the issues that hasn't been discussed here that we may have to have a second hearing on to raise is how often these pretextual traffic stops, as we talk about the use of racial profiling, end up also being accounted as we look at issues of what we call the hit rate. That is, as we talk about stops and their being effective in actually preventing crime, how often do we find those stops actually result in actually some paraphernalia, some illegal substance being found in automobiles and cars? We find yet again we have another process which undercuts that trust and integrity.

To be able to be effective, to be able to prevent crimes, which is what we all want, we know that law enforcement, a presence in our communities, is very helpful, but it also has to come along with the trust of those community people they serve. When you have situations in which people choose who their suspects are simply because

of the race of the person, the pretextual reason for stopping them is because they believe that because of their race, they either probably just committed a crime or are on their way to commit a crime, and they find that indeed when they stopped them, none of that has happened.

It is a misuse of resources. It again undercuts that very, very important tenet with effective law enforcement. So there actually is no reason, no acceptable reason, for choosing someone simply because of the race, ethnicity or point of national origin.

Ms. CHU. And you are saying that the hit rate is actually low?

Mr. SHELTON. Absolutely. When you look at the hit rates, particularly if we look at our Department of Justice, our Department of Justice does collect data, but only with Federal law enforcement agencies that have law enforcement encounter responsibilities. When you overlap those stops, the times that they detain people, and you look at how often that ends up resulting in them actually finding that there was a wrongdoing, something illegal is happening, you see that it becomes even worse. The problem is even worse than they perceived.

If we looked at that data—and data is important for effective law enforcement—what you find is there are fewer reasons, less reasons to stop African Americans, because we are less likely to have that stop result in there being that kind of paraphernalia in our car, the illegal substances.

Ms. CHU. Well, Mr. Harris, I would like to ask you about a new type of profiling that seems to be occurring, because it seems to have extended itself to immigration status profiling. And under Alabama H.B. 56, law enforcement is encouraged to profile minorities, many of whom are of Hispanic descent, by stopping them and inquiring as to their immigration status. In fact, many Alabama residents are now taking profiling into their own hands and asking minorities for proof of citizenship when they renew their leases, try to open up a utility account or even go shopping.

What is the danger of civilians racially profiling other civilians?

Mr. HARRIS. The danger of civilians engaging in behavior like that is that to the extent that law enforcement does it, it has some of the effects we have discussed, but if they are civilians, there is no training whatsoever, none whatsoever. So whatever would happen in an interaction like that, the person is not trained to recognize any documents, is not trained to know what to do if something is discovered.

It seems, to me, like the worst of all possible worlds. We raise the stakes on people who appear to be of Latino or appear to be from one group or another, and then people come along who have no way to know whether anything that they learn is useful. And they have no way—nothing upon which to base their actions.

The problem with laws like Alabama and the Arizona law, which require police to inquire about immigration status, is that there is nothing that they can do to see immigration status. They must fall back on appearance and accent, and that just leads them into profiling. I would not want to be a police officer in those places.

Ms. CHU. Thank you. I yield back.

Mr. GOWDY. I thank the gentlelady from California.

On behalf of all of us, that melodious sound you just heard is summoning us to vote on the floor. But on behalf of all of us, thank you for your expertise, your perspective, your collegiality, frankly, toward one another and toward the Members of the Committee.

Without objection, all Members will have 5 legislative days to submit to the Chair additional written questions for the witnesses, which we will forward and ask the witnesses to respond to as promptly as they can so their answers may be made part of the record.

Without objection, all Members will have 5 legislative days to submit any additional materials for inclusion in the record.

With that, again on behalf of all of us, thank you, have a good weekend, and we are adjourned.

[Whereupon, at 1:27 p.m., the Subcommittee was adjourned.]

