

Statement of Mr. Ronald L. Davis
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Subcommittee on The Constitution, Civil Rights and Human Rights

Hearing on Ending Racial Profiling in America

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Introduction

Good Morning Mr. Chairman and distinguished Subcommittee members. I am Ronald Davis, Chief of Police, for the City of East Palo Alto, California. I am both honored and humbled to provide testimony at today's hearing on "Ending Racial Profiling in America." I also had the honor of testifying at the last Senate hearings on racial profiling in 2001. When asked to come before this Subcommittee today, the first thought that came to mind was actually a question: what has changed since 2001 when then-President George W. Bush stated, "Racial profiling is wrong and we will end it in America"? My testimony today, which I hope will provide some answers to this question, is based on three diverse perspectives: 1) as a nationally recognized racial profiling and police-reform expert; 2) as a police executive with over 27 years experience working in two of the greatest and most diverse communities in the nation – the cities of Oakland and East Palo Alto; and 3) as a Black man and father.

First, from my perspective as a racial profiling expert, I think it is fair to say that law enforcement has made some progress, albeit limited, in addressing racial profiling and bias-based policing. Over the past ten years, the United States Department of Justice, Civil Rights Division, through its "pattern and practice" investigations, has worked with law enforcement agencies nationwide to provide guidance on racial profiling policies and promote industry best-practices such as stop-data collection, training, use of force, and other critical aspects of police operations that impact fair and constitutional policing. Recent efforts by the COPS Office and the National Network for Safe Communities to promote racial reconciliation between the police and communities of color have led to improved police and community relations and achieved dramatic crime and violence reductions in these communities. Today, there are very few police agencies in the United States that do not have some type of policy prohibiting racial profiling and bias-based policing.

This progress, however, is seriously undermined by two focal facts. First, there exists no national, standardized definition for racial profiling that prohibits all uses of race, national origin, and religion, except when describing a person. Consequently, many state and local policies define racial profiling as using race as the "sole" basis for a stop or any police action.

This definition is misleading in that it suggests using race as a factor for anything other than a description is justified, which it is not. Simply put, race is a descriptor not a predictor.

To use race along with other salient descriptors when describing someone who just committed a crime is appropriate. However, when we deem a person to be suspicious or attach criminality to a person because of the color of his or her skin, the neighborhood they are walking in, or the clothing they are wearing, we are attempting to predict criminality. The problem with such predictions is that we are seldom right in our results and always wrong in our approach. The same holds true within the immigration context. Because a person “looks” Latino or Mexican does not mean that person is undocumented nor should it result in that person being detained and asked for his or her “papers.” Yet, according to recent laws in Alabama and Arizona, the police are not just encouraged to make these types of discriminatory stops; they are expected to do so. Most police chiefs will agree that engaging in these activities are counter to positive community relations and will ultimately make our communities less safe. That is one reason why I joined the Major Cities Chiefs of Police Association, the Police Executive Research Forum, the National Latino Peace Officers Association, and 17 current and former chief law enforcement officers in filing a brief challenging the constitutionality of SB 1070, the Arizona immigration law.

In order to truly curtail the destructive practice of racial profiling, we need passage of the “End Racial Profiling Act of 2011.” This legislation puts forth a standard definition for racial profiling, requires evidence-based training to curtail the practice, and provides support in developing scientific-based data collection and analysis practices. We also need the U.S. Department of Justice to revise its “Guidance Regarding the Use of Race by Federal Law Enforcement Agencies” to close several loopholes that could permit unlawful and ineffective profiling. Specifically, the Guidance’s prohibition on profiling for “traditional law enforcement activities” does not apply to profiling on the basis of national origin and religion and it does not apply to national security and border security investigations. It makes no sense to exclude religion and national origin from the prohibition on profiling or to treat anti-terrorism and immigration enforcement differently from other law-enforcement efforts.

Without this legislation and revisions to the Justice Department's racial profiling guidance, I fear the challenges associated with racial profiling cannot be effectively addressed, as evidenced by our limited progress over the past ten years.

For example, in 2001, I authored a report: "*A NOBLE Perspective: Racial Profiling – A Symptom for Bias-Based Policing*" on behalf of the National Organization of Black Law Enforcement Executives (NOBLE). This report, which I have provided to the Subcommittee, describes the issues surrounding racial profiling and bias-based policing and provides recommendations for effective racial profiling legislation. Although it has been over ten years since its publication, the issues outlined in the report still exist and the recommendations, such as defining racial profiling and mandating data collection and training for law enforcement agencies, remain relevant and applicable today. In many ways, this report serves as prima facie evidence of just how little has changed since 2001 and underscores the need for legislation.

I also fear that without this legislation and updated Department of Justice guidance we will continue business as usual and only respond to this issue when it surfaces through high-profile tragedies such as the Oscar Grant case in Oakland, California, and the Trayvon Martin case in Sanford, Florida. Both cases strike at the heart of our country and my thoughts and prayers are with their families and communities.

The second factor that undermines our progress is the dire need to reform the entire criminal justice system. The last top-to-bottom review of our system was conducted in 1967 through the President's Commission on Law Enforcement and Administration of Justice. Although society has changed drastically over the past 45 years, many aspects of the criminal justice system have not. We must examine the entire system through a new prism that protects against inequities such as racial profiling, disparate incarceration rates, and disparate sentencing laws. If the criminal justice system is to be accepted, it must be viewed as fair, legitimate and effective. I strongly encourage passage of the National Criminal Justice Commission Act of 2011 to achieve this goal.

According to Senator Jim Webb, the bill's author, this legislation "establishes a national criminal justice commission to bring together the best minds in America to examine our broken and frequently dysfunctional criminal justice system, and to make recommendations as to how we can make it more effective, more fair and more cost-efficient." Congress took an important first step in this direction when it passed the bipartisan Fair Sentencing Act, which reduced the sentencing disparity between crack and powder cocaine, but more must be done.

From my perspective as a police executive with over 27 years of experience, I know first-hand just how ineffective racial profiling is and how it actually serves as a barrier to enhancing public safety. As an example, East Palo Alto is a community with more than 95 percent people of color, including 60 percent Latino, approximately 30 percent African American, and a rapidly growing Asian and Pacific Islander population. Like many communities in the United States, East Palo Alto faces a scourge of gangs and violence while enduring dramatic reductions in law enforcement staffing and resources. In 2005, the city experienced the second highest murder per-capita rate in California and the fifth highest rate in the United States. Instead of responding to this violence with strategies that resulted in disparate treatment of minorities, such as racial profiling, we focused on establishing strong police and community relations; we used these relationships to implement effective problem-solving programs.

For example, in January 2006, East Palo Alto police officer Richard May was shot and killed in the line of duty by a parolee just a few months out of prison. The city responded to this tragedy by creating a parole reentry program in partnership with the California Department of Corrections and Rehabilitation (CDCR) and numerous community and faith-based organizations. This program provided rehabilitation and support services to parolees including cognitive life skills training, drug awareness and education classes, financial management, and a job preparation, training and placement program with the California Department of Transportation. The city's efforts were unique in that it was the only state-funded program operated by a local police department. For many in both the program and community the image of the police department changed from an organization that was primarily responsible for the disparate incarceration rate of young men of color to an organization now working stop these inequities. The effort was supported by the family of Officer May.

It should also be noted that during the 3 year program, the city's recidivism rate – the rate at which parolees return to prison – dropped from over 60% to less than 20%.

The overall results of the city's efforts in this program and many others designed to strengthen police and community relations are compelling: murders in 2011 dropped 47% when compared to 2005; overall crime dropped by over 20% during the same period. I am confident in saying police and community relations have dramatically improved during this same period.

As a community, we recognize that the more people of color, especially young men, are profiled and unfairly incarcerated, the more likely it is that their communities will lose trust and confidence in the criminal justice system, and the less likely those communities will partner with the police to fight crime. One of the core principles of policing attributed to Sir Robert Peel, the founder of modern-day policing, is that “the ability of the police to perform their duties is dependent upon public approval of police actions.” Communities are not likely to give the police that approval—even for police actions that are legal—if they do not trust that the justice system is fair and unbiased. These very same principles apply to our efforts to fight terrorism and stem illegal immigration as well.

The notion that we, as a nation, must sacrifice civil liberties to achieve a false sense of security is not just wrong; it is unsafe and reeks of hypocrisy. If national security truly outweighed our constitutional rights, which it does not, there would be an equally loud call from the supporters of racial profiling to restrict gun ownership, especially considering well over 100,000 Americans have been killed by gun violence in this country since 2001 – a rate 10 times greater than the number of Americans killed by terrorism and the wars in Afghanistan and Iraq combined.

Are we suggesting that the 2nd Amendment of the Constitution is more important than our security, but the 4th Amendment, protecting against unlawful searches and seizures, and the 14th Amendment which ensures equal protection and due process of the law, are not? President Abraham Lincoln answered these questions when he stated: “Those who are ready to sacrifice freedom for security ultimately will lose both.

What is equally troubling and unsettling with the idea of using race, national origin or religion in the “national security” context is that it suggests the most powerful nation in the world equipped with law enforcement and national security experts second-to-none must rely on bias and sloppy guess-work to secure the nation, rather than rely on human intelligence, evidence-based strategies, science, technology, and industry expertise. I want to strongly emphasize this point: there is no reason to profile on the basis of race, religion, national origin, or ethnicity, whether it is justified as an effort to protect our communities from terrorism, illegal immigration, or violent crime. It is an ineffective tactic, it wastes scarce law-enforcement resources, and it harms our relations with communities whose cooperation we need.

Lastly, and probably most importantly, I am a Black man who is subject to increased scrutiny from my community, my profession, and my country because of the color of my skin. I am extremely proud to be a police officer and believe there is no more noble profession in our society. I have the utmost respect and admiration for my esteemed colleagues who place their lives on the line everyday in our service.

However, as a Black man with a 14-year old son, Glenn, I know that when I teach him how to drive a car I must also teach him what to do when stopped by the police – a mandatory course for young men of color. I must also prepare him for the bias he is likely to face and the reality that, despite the strength of his character or his contributions to society, there will be those who will attach criminality to him simply because of the color of his skin, and do so under the veil of national security.

As I end my testimony I want to thank you, Mr. Chairman, and this Subcommittee, for your leadership. I only ask that this Subcommittee, Congress and the Executive Branch take action to achieve the important goal of ending racial profiling as a systemic problem in America. As much as I am honored to be here today, I’d prefer if there was no need for me to testify in another ten years.

Thank you.