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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 THE CONSTITUTION, CIVIL

RIGHTS AND CIVIL LIBERTIES

on

Racial Profiling and the Use of Suspect Classifications

in Law Enforcement

June 17, 2010



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Good morning Chairman Nadler, Ranking Member Sensenbrenner 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.

My name is Hilary Shelton, and I am the Director of the NAACP Washington Bureau, the legislative and 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. Many NAACP units report receiving hundreds, if not thousands, of complaints of racial profiling each year.

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.

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 means 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 and counter-productive tool.

It is sadly and unfortunately a tool that has further undercut our communities trust and faith in the integrity of the American judicial system. A system that must be challenged when we find cannot drive down an interstate, walk down the street, or even enter into our own homes without being detained for questioning by law enforcement agents merely because of 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 profiling¹. And, according to the Northeastern University's Racial Profiling Data Collection Resource Center, there is on-going litigation involving racial profiling in 33 of the 50 states².

Furthermore, 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 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 is clear that more can and must be done to eliminate racial profiling. Since coming to the NAACP Washington Bureau almost 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 approach to end racial profiling in this country. From my experiences, both on the policy side and the anecdotal side – listening to NAACP 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 definition of what is racial profiling as well as an unambiguous and unequivocal ban on its use by all law enforcement officials.

¹ 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/rp_report.pdf

²The Institute on Race and Justice at Northeastern University, Racial Profiling Data Collection Resource Center <http://www.racialprofilinganalysis.neu.edu/legislation/litigation.php>

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

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 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.