

**Questions for the Record**  
**Senator Orrin G. Hatch**  
**Senate Judiciary Committee**  
**Subcommittee on Oversight, Agency Action, Federal Rights, and Federal Courts**  
**Hearing: “The War on Police: How the Federal Government Undermines**  
**State and Local Law Enforcement”**  
**Tuesday, November 17, 2015**

**Questions for Ms. Heather Mac Donald, Thomas W. Smith Fellow, Manhattan Institute**

1. You’re an expert on policing and crime. How are the administration’s words and actions affecting police morale in this country? How are they affecting citizens’ attitudes toward law enforcement? What are some specific examples of how the administration is making law enforcement’s job more difficult?

There is no precedent in recent memory for President Barack Obama’s relentless attacks on the nation’s police officers and criminal justice system. The president now routinely charges the police and the court system with racial bias. Speaking at the annual Congressional Black Caucus Foundation dinner in Washington DC in September 2014, for example, the President claimed:

Too many young men of color feel targeted by law enforcement, guilty of walking while black, or driving while black, judged by stereotypes that fuel fear and resentment and hopelessness. We know that, statistically, in everything from enforcing drug policy to applying the death penalty to pulling people over, there are significant racial disparities.

Addressing the nation in November 2014 at a moment of extreme racial tension, after a grand jury declined to indict Ferguson, Missouri, Officer Darren Wilson for the death of Michael Brown, the President saw fit to seize the opportunity to accuse the police of discrimination:

The law too often feels like it’s being applied in a discriminatory fashion . . . communities of color aren’t just making these problems up . . . these are real issues. And we have to lift them up and not deny them or try to tamp them down.”

Speaking in the Bronx in May 2015, the President asserted:

The law is not always applied evenly in this country. [Young black men] experience being treated differently by law enforcement — in stops and in arrests, and in charges and incarcerations. The statistics are clear, up and down the criminal justice system. There’s no dispute.

Such examples could be multiplied almost indefinitely.

The negative effect of such rhetoric on the morale of the police, on the perceived legitimacy of the criminal justice system, and on the atmosphere in which police operate is incalculable. The commander-in-chief is repeatedly telling the police that he views them as constitutional blackguards who routinely violate the rights of blacks. Any officer who enforces the law in minority communities is now doing so under a cloud of suspicion that emanates from the highest office of the land. That suspicion cannot help but inhibit officers’ willingness to engage in discretionary, proactive policing, especially when combined with street-level challenges to police authority.

It is bad enough for a president to undercut the legitimacy of the police and the criminal justice system. But the most galling aspect of President Obama's crusade against law enforcement is that it rests on falsehood. Study after study has shown that policing, prosecution, and incarceration are accurate reflections of crime. *Pace* Obama, the criminal justice system is not racist; it is fair. Arrests match the race of offenders as reported by crime victims; those victims are themselves disproportionately minority. Blacks are actually less likely to be charged with a felony following an arrest than whites. The disproportionate representation of blacks in the criminal justice system is a function of their disproportionate crime rates, not of racism. Following is a link to "Is the Criminal Justice System Racist?," from City Journal, which addresses this question in greater detail. [http://www.city-journal.org/2008/18\\_2\\_criminal\\_justice\\_system.html](http://www.city-journal.org/2008/18_2_criminal_justice_system.html) A Slate magazine investigation of race and the criminal justice system in November 2014 confirmed the findings of City Journal: <http://slatestarcodex.com/2014/11/25/race-and-justice-much-more-than-you-wanted-to-know/>

What President Obama fails to say about law enforcement can be as corrosive as what he does say. In March 2015, the Criminal Section of the Justice Department's Civil Rights Division issued a 100-page report demolishing the Black Lives Matter narrative about the August 2014 shooting of Michael Brown in Ferguson, Mo. The Justice Department report eviscerated every lie that had been spread about the shooting and uncritically reinforced by the media. Eyewitnesses who had been previously terrified into silence and extensive forensic evidence confirmed that Brown had assaulted Ferguson police officer Darren Wilson and tried to grab his gun; Wilson reasonably believed that he was facing a lethal threat. Physical evidence demonstrated that Brown had not been shot in the back or while trying to surrender.

President Obama could have provided an enormous service to the nation had he publicized the Justice Department findings. He could have laid to rest once and for all the poisonous narrative that Brown was shot in cold blood by a racist police officer. Instead, Obama publicly claimed that the Brown-Wilson encounter was still shrouded in mystery. "We may never know what happened," Obama said during a town hall at South Carolina's Benedict College on March 6, 2015. This claim is irresponsible and false. The Justice Department report provides a definitive account of the interaction, based on physical evidence and multiple, consistent eyewitness reports. The report supports the grand jury's decision not to indict Officer Wilson and supports the Justice Department's decision not to bring civil rights charges against Wilson. And yet President Obama, following the lead of then-Attorney General Eric Holder, implied in his South Carolina town hall that only an overly stringent standard of proof in civil rights proceedings prevented the Justice Department from bringing civil rights charges against Officer Wilson. In fact, under no standard of proof, no matter how lax, would charges against Wilson be reasonable or justified.

President Obama's failure to whole-heartedly support his own Justice Department's exoneration of Officer Wilson proved catastrophic. Michael Brown has continued to be treated as a martyr to police brutality, providing an endless source of fuel to the incendiary Black Lives Matter protest movement. Brown's ongoing martyrdom, however baseless, makes police protection in inner-city communities increasingly fraught and dangerous.

The police play no more important function than maintaining civil order and preventing the wanton destruction of people's property and livelihoods. Yet as a second round of rioting loomed over Ferguson, Mo., after the non-indictment of Officer Wilson, President Obama chose to chastise the police in advance for their presumed overreaction to whatever was going to transpire:

I also appeal to the law enforcement officials in Ferguson and the region to show care and restraint in managing peaceful protests that may occur. . . . They need to work with the community, not against the community, to distinguish the handful of people who may use the grand jury's decision as an excuse for violence . . . from the vast majority who just want their voices heard around legitimate issues in terms of how communities and law enforcement interact.

Such skepticism about the ability of the police to maintain the peace appropriately was unwarranted; the forces of law and order didn't fire a single shot under fire during the riots that once again tore apart Ferguson, destroying the labor

and assets of small store owners and their employees. Had Obama grasped the seriousness of his responsibilities regarding law and order, he would have confined his remarks to a reiteration of the grounds for not indicting Wilson and thanked the jurors for their service and courage in following the evidence where it led them. He could have concluded by noting that there is no fairer criminal justice system in the world than the one we have in the United States.

The data are clear: police are pulling back from discretionary enforcement and violent crime is going up in major cities across the country, as FBI Director James Comey confirmed in an October address at the University of Chicago law school. To be sure, White House rhetoric is not the only factor leading to depolicing. Other factors include the virulent, sometimes violent, hostility directed at officers in the street, officers' concern that a cell phone video will not capture the reason for their use of force against a resisting suspect, officers' lack of confidence that their police chief or mayor will have the spine to rebut unjustified accusations of bias, and the chilling effect from overreaching criminal indictments, such as were issued against six Baltimore police officers following the death of Freddie Gray in April 2015.

But while it is ultimately impossible to disentangle the multiple causes of officers' reluctance to intervene in suspicious behavior, there can be no question that the President's repeated charge of racism contributes powerfully to that reluctance. The police are uniquely authorized to use force against their fellow citizens. Officers need to know that their lawful use of force will be supported by political leaders. And the public needs to know that political leaders back the police. If officers lose their legitimacy in the eyes of the public, they will face increasing levels of resistance, possibly even murderous resistance. Such resistance increases the chances that officers will have to use force against suspects, possibly even lethal force. And should officers have to resort to deadly force, it will only fuel the false narrative against them.

Policing is political. When officers fail to receive political support, they will shy away from challenged forms of policing. At the present moment, pedestrian and car stops, as well as so-called Broken Windows policing (the enforcement of low-level public order offenses), are most under attack and declining precipitously. This decline in enforcement is an understandable and predictable reaction to the vitriol that has been directed against the cops over the last year. The only mystery is why the Black Lives Matter movement refuses to acknowledge the fall-off in policing, or denounces it while half-acknowledging it. A cessation of proactive policing in inner-city areas is precisely what the Black Lives Matter movement has called for; now that they are getting that cessation and crime is going up, the activists denounce the police for not doing their jobs. Remarkably, the president, too, denies both the crime drop and the reason for it, shamelessly accusing his own FBI director of cherry-picking data and pursuing a political agenda.

2. My staff and I have been told by a number of sources that individuals are feeling increasingly emboldened to stand up to law enforcement and to challenge their authority. As one Utah police chief said, "People are feeling proud to push back against police officers." In your view, what is driving this new sense of resistance, this feeling that standing up to law enforcement is the right thing to do? How have the administration's actions played into this shift in attitudes?

Officers across the country tell disturbing stories of being pelted by rocks and water bottles when they try to make an arrest or conduct an investigation in urban areas. A mini-riot broke out in Cincinnati this July when the police responded to a drive-by shooting whose victims included a four-year-old girl shot in the head. The target of the mini-riot? Not the shooters but the police, who were trying to enforce outstanding warrants to avert a retaliatory shooting. Civilians are refusing to obey officers' lawful requests to clear a crime or accident scene. An emergency services unit officer in the Bronx was trying to free a woman pinned under an overturned car during the summer; a bystander intruded on the accident scene, stuck his cell phone in the officer's face, and refused to get back on the sidewalk when asked to do so. "You can't tell me what to do," the bystander replied hostilely to the officer's request. The cop

recalls: “A few years ago, I would have taken police action. Now, I know it won’t end well for me or the police department.”

This dangerous defiance is fueled by the narrative that the cops are a scourge on black communities. The media and the nation’s political class, from President Obama on down, are sending the incessant message that police authority is unconstitutional and biased; as a result, civilians are emboldened, if not encouraged, to resist that authority. It is impossible to overstate how vicious the hatred directed against the police has been. Black Lives Matter protests inevitably denounce the police as murderers and racists. “Fuck the police” T-shirts are standard attire. Neither the president nor members of his party have pushed back against that rhetoric, leaving the impression that the hatred is justified.

When political leaders undermine police legitimacy by falsely accusing the police of racial bias, it is no surprise that many civilians will take advantage of the situation and defy the police. And let us not be naïve. A portion of the agitation and force directed against police in the streets is committed by criminals and their hangers-on.

3. What can we in Congress be doing to strengthen law enforcement? What can we be doing to rebut the narrative that the police are the bad guys?

Contemporary race-based critiques of the police rest on suppression of the facts regarding racial crime rates and the disorder in inner city communities. The fundamental flaw in all such racial profiling analysis is to compare police activity—stops or arrests, say—to population demographics, rather than to crime rates. In New York City, for example, the New York Police Department is routinely accused of racial bias because a majority of pedestrian stops have black subjects, even though blacks are only 23% of the city’s population. But population ratios are the incorrect benchmark for evaluating police activity. Crime incidents, not population demographics, drive police deployment. The media, however, invariably refuse to disclose the facts of crime. Blacks commit over 75% of all shootings in New York City, for example, and 70% of all robberies, according to victim and witness reports. Add Hispanic shootings to black shootings, and you account for over 98% of all shootings in New York. Whites, by contrast, commit less than 2% of all shootings, though they are 34% of the city’s population. Such crime disparities mean that virtually every time that the police are called out to a shooting they will be going to minority neighborhoods looking for minority suspects. The cops do not wish that; it is a necessity forced on them by the reality of violent crime.

The public remains overwhelmingly ignorant about how great such racial crime disparities are. The public is also ignorant about the data-driven policing revolution that targets police resources to where crime victims are most being preyed upon. Congress could provide a great service by getting the facts out about crime rates and how they affect patterns of policing. Hearings on inner-city crime could feature the many unqualified supporters of the police, people like the elderly woman from the Bronx who blurted out at a police-community meeting I observed in June 2015: “Oh how lovely when we see the police; they are my friends!” Such hearings could foreground the constant requests that the police receive from law-abiding members of inner-city communities to enforce public order laws against trespassers, pot-smokers, and unruly youth hanging out and fighting on street corners. In today’s environment, the police cannot respond to those heartfelt requests for order without generating the racially disparate stop and arrest data that the Justice Department and ACLU will use against them in a racial profiling law suit.

The Obama administration has been calling on police departments to collect racial data on their pedestrian and car stops. Such data is worse than useless since it will invariably be measured against a population benchmark. Congress could demand that the Justice Department sponsor the development of an appropriate benchmark against which to measure police activity, and that until such a benchmark is created, no action be taken against police departments based on faulty statistical models. A proper benchmark would start from crime rates and driving behavior, though it would not end there. Though research on driving behavior has been taboo for decades, the few studies that have been

done show that blacks speed at higher rates than whites. Seatbelt and car seat behavior is also not equal across races. A proper benchmark for profiling analysis would also need to account for the changing demographic composition of roadways, which varies by time of day and day of the week.

Also useful for understanding police activity would be information on different rates of resisting arrest. In Chicago, for example, blacks resist arrest at ten times the rate of whites, and one hundred times the rate of Asians, according to Chicago Police Department arrest data. The Justice Department has found that the biggest predictor of police behavior is civilian behavior; if a civilian resists arrest or uses force against an officer, the officer is likely to escalate his own use of force. Data on homicides of police officers should also be part of the public discourse about policing. Over the past decade, blacks were responsible for 40% of all known homicides of law enforcement officers, though they make up less than a third of all officer fatal shootings of civilians.

Hearings on the paramount role of proactive policing in the nation's now threatened two-decades long crime drop would also be useful. Such hearings would highlight the tens of thousands of black lives saved thanks to the police.

Federal monitoring of police departments for alleged civil rights violations needs reform. The Special Litigation Section of the Justice Department's Civil Rights Division imposes complicated, lengthy consent decrees on police departments then handpicks federal monitors with input from the ACLU and other anti-law enforcement groups. Often those monitors have little experience with big city policing. There are no objective standards for when a department is in compliance with the consent decree. Without benchmarks, these decrees become annuities for the monitor who has sole authority on compliance. It should never take ten years to fix whatever may be wrong in a department, yet federal oversight routinely stretches on that long, at great expense to the city's taxpayers.