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Thank you Chairman Raskin, thank you Ranking Member Roy, and thank you subcommittee members for this honor of speaking with you today.

My name is Vida Johnson and I am an Associate Professor of Law at Georgetown University and one of my specialty areas is policing. Before I begin, I want to make clear that I believe that the vast majority of people who become police officers do so for all of the right reasons, and that includes members of my own family.

Nevertheless, it must be acknowledged that there is a long history of explicit racism on police departments. Sadly, this legacy of racism continues today. Our nation is one of the most diverse in the world and our officers need to be able to protect and serve everyone in our communities.

We know from federal agencies that there is a documented history of police affiliation with white supremacist groups. In 2006, the FBI warned of white supremacists trying to infiltrate police departments.<sup>1</sup> In 2009, the Department of Homeland Security warned that white supremacists were out to recruit former military personnel and called it one of the “biggest domestic terrorism threat in the United States.”<sup>2</sup> Unfortunately these warning went unheeded.

In 2014, several members of a police department in Florida were outed as members of the KKK.<sup>3</sup> In 2015, an Alabama officer was identified as being a member of the League of the South, another white supremacist organization.<sup>4</sup> In 2017, an Oklahoma police chief was discovered to

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<sup>1</sup> See COUNTERTERRORISM DIV., FED. BUREAU OF INVESTIGATION, WHITE SUPREMACIST INFILTRATION OF LAW ENFORCEMENT 3–4 (2006).

<sup>2</sup> See EXTREMISM & RADICALIZATION BRANCH, HOMELAND ENVIRONMENT THREAT ANALYSIS DIV., OFFICE OF INTELLIGENCE & ANALYSIS, U.S. DEP’T OF HOMELAND SEC., RIGHTWING EXTREMISM: CURRENT ECONOMIC AND POLITICAL CLIMATE FUELING RESURGENCE IN RADICALIZATION AND RECRUITMENT 2–3 (2009), <https://fas.org/irp/eprint/rightwing.pdf>; Alice Speri, *The FBI Has Quietly Investigated White Supremacist Infiltration of Law Enforcement*, THE INTERCEPT (Jan. 31, 2017), <https://theintercept.com/2017/01/31/the-fbi-has-quietly-investigated-white-supremacist-infiltration-of-law-enforcement/>.

<sup>3</sup> See Associated Press, *Florida Town Stunned by News of Police Department’s KKK Ties*, TAMPA BAY TIMES (July 21, 2014), <https://www.tampabay.com/news/publicsafety/florida-town-stunned-by-news-of-police-kkk-ties/2189339/>.

<sup>4</sup> See Keegan Hankes, *Anniston Police Department Has Two Hate Groups on the Force*, S. POVERTY L. CTR. (June 16, 2015), <https://www.splcenter.org/hatewatch/2015/06/16/anniston-police-department-has-two-hate-group-members-force>; Hatewatch Staff, *Anniston Police Officer Fired for League of the South Membership Has First Appeal Hearing*, S. POVERTY L. CTR. (Aug. 27, 2015),

be one of the country's most influential white supremacists.<sup>5</sup> He was the owner of a white supremacist website and had even been in two documentaries about hate groups.<sup>6</sup> In 2019, a prospective homebuyer toured a Michigan officer's home and saw a framed KKK application.<sup>7</sup>

In addition to officers who identify with these types of groups, some officers may hold explicitly racist views without any hate group affiliation.<sup>8</sup> DOJ reports on Ferguson<sup>9</sup> and Chicago<sup>10</sup> make plain that officers used the "N" word along with many other disparaging remarks about people of color in the communities they policed. Just this year in Wilmington, NC, white officers were caught on tape looking forward to a race war and dreaming of wiping black people off of the

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<https://www.splcenter.org/hatewatch/2015/08/27/anniston-police-officer-fired-league-south-membership-has-first-appeal-hearing>.

<sup>5</sup> See Hatewatch Staff, *Protect and Serve? Oklahoma Police Chief Bart Alsbrook's White Power Ties*, S. POVERTY L. CTR. (Aug. 30, 2017), <https://www.splcenter.org/hatewatch/2017/08/30/protect-and-serve-oklahoma-police-chief-bart-alsbrooks-white-power-ties>.

<sup>6</sup> See *id.*

<sup>7</sup> See Mariel Padilla, *Michigan Police Officer Is Terminated After K.K.K. Application Was Found in His Home*, N.Y. TIMES (Sept. 13, 2019), <https://www.nytimes.com/2019/09/13/us/officer-charles-anderson-ku-klux-klan.html>.

<sup>8</sup> See Vida B. Johnson, *KKK in the PD: White Supremacist Police and What to Do About It*, 23 Lewis & Clark L. Rev. 205 app. at 243-261 (2019) (list of states and police departments with incidents of officers expressing explicitly racist views).

<sup>9</sup> See U.S. DEP'T OF JUST. CIVIL RIGHTS DIV., INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 5 (Mar. 4, 2015), [https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson\\_police\\_department\\_report.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf); Ray Sanchez, *Ferguson's Ugly, Racist Emails Released*, CNN (Apr. 4, 2015), <https://www.cnn.com/2015/04/03/us/ferguson-justice-department-report-emails/index.html>.

<sup>10</sup> See Radley Balko, *The Damning Justice Department Report About Chicago Police Also Helps Explain the City's Murder Rate*, WASH. POST (Jan. 14, 2017), <https://www.washingtonpost.com/news/the-watch/wp/2017/01/14/the-damning-justice-department-report-about-chicago-police-also-helps-explain-the-citys-murder-rate/>.

map.<sup>11</sup> Texting scandals involving multiple officers in San Francisco<sup>12</sup> and Miami<sup>13</sup> also make plain that explicitly racist speech is routine between officers not just in rural areas or the south, but all over the country. We know that no community is safe - north, south, east, west, rural or urban.

In my 2019 article I compiled accounts of 178 instances of explicit racial bias by members of the police in 48 states.<sup>14</sup> We know that this is just the tip of the iceberg. I suspect these numbers are low for several reasons. First, many of these incidents were revealed in news articles. Some officers are not so careless as to wear a racist t-shirt or text a racial slur, but they nevertheless hold those views.<sup>15</sup> Further, confidentiality statutes in many states make issues of police discipline private, so incidents may not have made the news.<sup>16</sup> Finally, and perhaps most obviously, the blue wall of silence keeps many of these officers on the force because others fail to report them.<sup>17</sup>

We care about this problem because racist views might translate into racist deeds. For instance, officers may stop citizens based on their race.<sup>18</sup> Racist views have also been shown to lead to

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<sup>11</sup> See Tim Elfrink, ‘We are just gonna go out and start slaughtering them’: Three cops fired after racist talk of killing black residents, WASH. POST (June 25, 2020), <https://www.washingtonpost.com/nation/2020/06/25/wilmington-racist-police-recording/>.

<sup>12</sup> See Scott Glover & Dan Simon, ‘Wild Animals’: Racist Texts Sent by San Francisco Police Officer, Documents Show, CNN (Apr. 26, 2016) <https://www.cnn.com/2016/04/26/us/racist-texts-san-francisco-police-officer/index.html> (“The chief reiterated he has ‘no tolerance for officers who hold such reprehensible views.’”).

<sup>13</sup> See Jerry Iannelli, Miami Beach Cop Fired for Sending Racist, Sexist Emails Won’t Get His Job Back, MIAMI NEW TIMES (Feb. 13, 2017), <http://www.miaminewtimes.com/news/miami-beachcop-fired-for-sending-racist-sexist-emails-wont-get-his-job-back-9132286>.

<sup>14</sup> See Johnson, *supra* note 8.

<sup>15</sup> See Kenya Downs, FBI Warned of White Supremacists in Law Enforcement 10 Years Ago. Has Anything Changed?, PBS NEWS HOUR (Oct. 21, 2016), <https://www.pbs.org/newshour/nation/fbi-white-supremacists-in-law-enforcement> (2006 FBI memo warned that white supremacists in police departments would not share their views publicly so as not to be discovered).

<sup>16</sup> See Robert Lewis et al., Is Police Misconduct a Secret in Your State?, WNYC (Oct. 15, 2015), <https://www.wnyc.org/story/police-misconduct-records/>.

<sup>17</sup> See Gabriel J. Chin & Scott C. Wells, *The “Blue Wall of Silence” as Evidence of Bias and Motive to Lie: A New Approach to Police Perjury*, 59 U. Pitt. L. Rev. 233, 237–41 (1998); Kami Chavis Simmons, *Stakeholder Participation in Selection and Recruitment of Police: Democracy in Action*, 32 St. LOUIS L. PUB. REV. 7, 14–15 (2012); Rick Bragg, *Blue Wall of Silence: Graft Shield Behind Old Code*, N.Y. TIMES (Apr. 26, 1994), <https://www.nytimes.com/1994/04/26/nyregion/blue-wall-of-silence-graft-shielded-behind-old-code.html>.

<sup>18</sup> See Rachel Weiner, *A Va. Cop Was Fired for Racial Bias After Stopping the Chief’s Brother. A New Chief Hired Him Back*. WASH. POST (May 19, 2017),

violence.<sup>19</sup> We know that the biggest torture scandal in policing involved John Burge, whose “midnight crew” in Chicago extracted confessions from over 100 African American men using torture, including the use of cattle prods on genitalia, putting plastic bags over men’s heads, and putting pistols in men’s mouths.<sup>20</sup>

In Little Rock Arkansas, an officer applying to the police department was honest when he reported that he had attended a Klan rally but did not join.<sup>21</sup> He was hired by the department and shot and killed a 15-year-old black child a few years later while on the force.<sup>22</sup>

What are some solutions to this terrible problem? If we codified a more expansive view of *Brady v. Maryland*, the Supreme Court case that mandates that prosecutors share information with the defense that is favorable to the accused,<sup>23</sup> we might come to a way to ferret out some of these officers. *Brady v. Maryland* makes clear that the government must turn over any information that impeaches a witness’ credibility.<sup>24</sup> It is also important to note that under this line of cases information in the police’s possession is imputed to the prosecutor.<sup>25</sup> To implement these solutions, prosecutors would have to investigate their officers and turn that information over for use at a public trial.

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[https://www.washingtonpost.com/local/publicsafety/a-va-officer-was-fired-for-racial-bias-after-stopping-the-chiefs-brother-a-new-chief-hired-himback/2017/05/18/1f158800-367e-11e7-b412-62beef8121f7\\_story.html?utm\\_term=.4cbbfbce7fe](https://www.washingtonpost.com/local/publicsafety/a-va-officer-was-fired-for-racial-bias-after-stopping-the-chiefs-brother-a-new-chief-hired-himback/2017/05/18/1f158800-367e-11e7-b412-62beef8121f7_story.html?utm_term=.4cbbfbce7fe); Angela J. Davis, *Race, Cops and Traffic Stops*, 51 U. MIAMI L. REV. 425, 432–34 (1997). See also *Whren v. U.S.*, 517 U.S. 806, 818–19 (1996); *Utah v. Strieff*, 136 S. Ct. 2056, 2070 (2016) (Sotomayor, J., dissenting).

<sup>19</sup> See Dan Sewell, *Judge: No Confederate Flag T-Shirt in Officer’s Retrial*, AP NEWS (May 26, 2017), [https://apnews.com/71fa13ca7ecd4e53a20ce327e4707329/Judge:-No-Confederate-flag-T-shirt-in-officer%27s-retrial#:~:text=CINCINNATI%20\(AP\)%20E2%80%94%20The%20jury,the%20garment%20is%20too%20prejudicial](https://apnews.com/71fa13ca7ecd4e53a20ce327e4707329/Judge:-No-Confederate-flag-T-shirt-in-officer%27s-retrial#:~:text=CINCINNATI%20(AP)%20E2%80%94%20The%20jury,the%20garment%20is%20too%20prejudicial). (Cincinnati officer shot and killed a black man while wearing a T-shirt with a Confederate flag); Samuel Vincent Jones, *Law Enforcement and White Power: An FBI Report Unraveled*, 41 T. MARSHALL L. REV. 103, 104 (2015) (Chicago officer with ties to the KKK was convicted of torturing 100 African American men allegedly suspected of crimes).

<sup>20</sup> See Jones, *supra* note 20, at 104; Marwa Eltagouri, *Chicago’s New Center for Police-Torture Victims Is First of Its Kind in U.S.*, CHI. TRIBUNE (May 27, 2017), <https://www.chicagotribune.com/news/breaking/ct-burge-torture-justice-center-met-20170526-story.html>.

<sup>21</sup> See Radley Balko, ‘If you don’t get at that rot, you just get more officers like Josh Hastings,’ WASH. POST (Nov 2, 2018), <https://www.washingtonpost.com/news/opinions/wp/2018/11/02/feature/if-you-dont-get-at-that-rot-you-just-get-more-officers-like-josh-hastings/>.

<sup>22</sup> See *id.*

<sup>23</sup> See *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

<sup>24</sup> See *Giglio v. United States*, 405 U.S. 150, 154 (1972).

<sup>25</sup> See *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

Beyond codifying and expanding the *Brady* doctrine into statute, police departments can perform better background checks of officers in their hiring practices, implement zero tolerance policies, and institute social media policies in which officers agree as a condition of hiring to allow social media searches. Federal licensing of officers would also allow for better screening of officers and would prevent officers from going from one department to another after being terminated.

Ultimately, we must weed out officers who hold racists beliefs rather than sweep them under the rug.