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FEDERAL EFFORTS TO ADDRESS WITNESS INTIMIDATION AT THE STATE AND LOCAL LEVEL

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME AND DRUGS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

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FEDERAL EFFORTS TO ADDRESS WITNESS INTIMIDATION AT THE STATE AND LOCAL LEVEL

FRIDAY, JANUARY 8, 2010

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON CRIME AND DRUGS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:40 a.m., Constitution Center, Philadelphia, Pennsylvania, Hon. Arlen Specter presiding.

Present: Charles H. Ramsey, Commissioner, Philadelphia Police Department; Barbara Clowden, Victims' Rights Advocate; Ted Canada, Victims' Rights Advocate; Michael Coard, Law Office of Michael Coard; Dr. Richard L. Frei, Community College of Pennsylvania; and Erica Hines, Public Participant.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Good morning, ladies and gentlemen. The Criminal Law Subcommittee of the U.S. Senate Judiciary Committee will now proceed with this hearing.

This hearing has been recognized following an extensive series of articles in the *Philadelphia Inquirer*, maintaining major problems in the criminal justice system setting in Philadelphia. This is a subject which I have worked on for decades, going back to my days as an Assistant District Attorney in this city, and then as Philadelphia's District Attorney for 8 years, from 1966 until 1974, and on the Judiciary Committee, where I've served since my election to the Senate in 1980, I've been concerned about the problems of violent crime nationally, and with special emphasis on the problems in my hometown of Philadelphia.

Our hearing today is going to take up the issue of witness intimidation, the question of how to protect witnesses. Criminal trials cannot proceed unless there are witnesses, and if witnesses are subject to intimidation or subject to the ultimate elimination, through murder, obviously criminal cases cannot go forward.

Now, this is one problem of a whole series of problems, and we will consider having additional hearings depending on circumstances. I regret that we were unable to have this hearing when it was first scheduled, but the Senate schedule, as you may know, during December was extended because of legislation on comprehensive health care reform. Yesterday, I just returned from

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a trip overseas where I visited Afghanistan, and that has required the setting of the hearing for today.

We have a distinguished array of witnesses. We have the distinguished Philadelphia police commissioner, who came to this position after 29 years of service on the Chicago Police Department, including being commissioner, and then commissioner in Washington, DC, and brought out of retirement to serve in Philadelphia.

We have two witnesses, Ms. Barbara Clowden and Mr. Ted Canada, who have lost children as a result of murders because they were prospective witnesses. We have a distinguished Philadelphia practicing attorney, Michael Coard, who has a little different perspective, who's had some comments of a critical nature—entitled to those views—on the *Inquirer* series.

And we have Professor Richard Frei from the Philadelphia Community College, who has done some scientific research on the issue of the culture of snitching or ratting. Times have changed significantly since I was District Attorney here, lots of problems. But to have an entire culture is different, and we're going to be looking at this issue from quite a number of perspectives.

I want to especially thank the police commissioner for coming. We've had a change of schedule a couple of times, but he knows what schedule changes are like; he has to change his all the time depending on what happens in his very, very complicated job.

Well, thank you for joining us, Commissioner Ramsey. The floor is yours.

STATEMENT OF POLICE COMMISSIONER CHARLES H. RAMSEY, PHILADELPHIA, PENNSYLVANIA POLICE DEPARTMENT

Commissioner RAMSEY. Thank you, and good morning, Chairman Specter, invited speakers, and guests. Thank you for the opportunity to appear before you today and discuss how the Federal Government can assist local and State law enforcement agencies in preventing, and responding to, witness intimidation.

As police commissioner for the city of Philadelphia and the former chief of police for the Metropolitan Police Department in the District of Columbia for nearly 9 years, I can't overstate the importance of collaboration between the Federal Government and local law enforcement.

What the recent *Philadelphia Inquirer* series on the criminal justice system in our city so clearly demonstrated is that our system is, indeed, dysfunctional. Together, we work to fight crime and make our communities safer. Separately, we often have competing goals and metrics of success, operating different procedures and responding to different political pressures. There is no simple solution to fixing a system-wide problem.

The *Inquirer* pointed out that the conviction rate for felony crime in Philadelphia is the lowest in the Nation. Raising the conviction rate should not be viewed, however, as the cure-all for a broken system, nor should any statistic be interpreted as an indicator of its success or failure. Reducing systemic dysfunction and placing blame squarely with any single agency does a disservice to us all.

In a *New York Times* editorial entitled "Criminal Justice Cube," published on December 9, 1981, the board wrote the following: "It's long been understood that criminal justice is a Rubik's Cube. What

the police do will affect what happens in court, which will affect what happens in the jails and prisons. You can't hope to deal with crime better by focusing on any single part any more than you can solve the Cube by concentrating on one square at a time."

This editorial was published nearly 30 years ago in response to the dysfunction that marked the criminal justice system in New York City and its surrounding boroughs. Its message, however, resonates loud and clear today. Substitute Philadelphia for New York—or any large city, for that matter—and the conversation is just as relevant as it was in 1981.

Now in 2010, we continue to be overwhelmed and under-resourced in terms of how best to approach the deep fissures in our criminal justice system. It is time to change the conversation. The topic of this hearing, witness intimidation—and I would add to that witness non-cooperation—undermines the integrity and reliability of our criminal justice system.

From a financial perspective, the Federal Government can play a meaningful role in guarding victims' rights in proposed House Resolution 1741, the Witness Security and Protection Grant Program Act of 2009. The bill would make competitive grants available to State and local law enforcement jurisdictions to establish and maintain certain protection and assistance programs.

As the *Inquirer* series noted, financial assistance for these programs has been dwindling since 2007. This is an excellent opportunity for the Federal Government to aid State and local law enforcement agencies in combatting the culture of violence around witness intimidation. This is a necessary bill whose value cannot be measured in budgetary terms, and I urge the Committee and the full Senate to enact this bill into law.

Another tangible financial step that the Federal Government can take is investing in law enforcement technology that maximizes data sharing and integration between agencies. "Today's complainant is often tomorrow's defendant," as one of our detectives recently said regarding why he believed witness non-cooperation with police is so pervasive.

The same people committing crimes are frequently the victims of crime themselves. Three out of every four shooting victims in 2008, for example, here in Philadelphia had a previous arrest record. Of those with an arrest record, 1 out of 5 had at least 10 or more prior arrests.

All of our investigators should have access to a database which traces a defendant, his entire criminal history, his associates, the victims involved, the dispositions of his hearings, and his status in the correctional system in one clearinghouse of information. The way in which we deploy technology throughout the various criminal justice agencies is a mirror of the criminal justice system itself: fragmented, decentralized, and lacking coherence of purpose. The overall efficiency with which all agencies perform their jobs will go a long way toward helping police and prosecutors fight witness intimidation and non-cooperation.

On a much broader level, I would also suggest the Federal Government consider the option of establishing a national major crime commission. In the past, the Federal Government has empaneled

crime commissions to accomplish this goal of viewing the entire criminal justice system from a single framework of relevance.

A national crime commission in 2010 could provide an invaluable compendium of best practices and strategies for improvement across the board. The difficulty with addressing system deficiencies in a piecemeal manner is that a small change in one part of the system may result in unintended consequences in another area and we can't continue to operate that way.

Here in this city, the Philadelphia Police Department will continue to work hard, and I believe make great strides, at connecting with many of our diverse communities in reducing crime. In doing so, we will play an important role in combatting witness intimidation and non-cooperation. We can't do it alone, however, changing the system will require a systems approach and it is here that the Federal Government can play an important role in supporting State and local law enforcement agencies.

Thank you.

[The prepared statement of Commissioner Ramsey appears as a submission for the record.]

Senator SPECTER. Well, thank you very much, Commissioner.

Beginning with the issue of the underlying cause of crime, you've been at this line of work for a long time. When did you start at the Chicago Police Department?

Commissioner RAMSEY. December, 1968.

Senator SPECTER. What are your views as to the seriousness of the crime problem now, 42 years later?

Commissioner RAMSEY. Well, for my experience in the 1960s and early 1970s, we had a very serious problem, primarily because of gangs, very large and sophisticated gangs. I'm referring to Chicago, because that's where I'm from and that's where my experience was in dealing with crime at that particular point in time. We did see a lull, if you will, in gang activity in the 1980s, and then a resurgence in the 1990s with crack cocaine and so forth when it came to the forefront.

Senator SPECTER. Have we made any improvements in the intensity of the big-city crime problem?

Commissioner RAMSEY. Well, I think we have. I think we've made significant progress. I think that police departments, working with communities, have gotten a lot more sophisticated in being able to target crime specifically through analysis of data, deploying our resources in a more effective manner, and the like, building stronger bridges to the community. A lot of work still needs to be done in that area, there's absolutely no question about that.

Senator SPECTER. How about on the issue of the underlying causes of crime, the issues of education, poverty, housing, job training?

Commissioner RAMSEY. I don't think we've made nearly enough progress. I think our educational system——

Senator SPECTER. Not nearly enough, or any, or much?

Commissioner RAMSEY. Well, I don't think much. I'd hate to say we've not made any. I'm not an expert in education, for example, but certainly many of our children are graduating from elementary schools, high schools, and in some cases even colleges, and still are not prepared to deal with the kinds of jobs that are available in the

21st century. They don't have the kind of skills to compete for the jobs that are available oftentimes.

Too many drop out, especially in our public schools in inner cities. We have too high a rate of drop-outs. We have dysfunctional families, and now we have generations of dysfunction within families. So we've got a lot of social problems that need to be addressed, because crime is the end result of a lot of these things.

We can't solve it by adding more cops, adding more prisons, adding more of those kinds of things without taking a look at the front end of what's driving it to begin with and taking aggressive steps to correcting that, so that from the beginning all the way to the end we've taken a comprehensive view of crime and what's driving crime in order to have a real lasting impact.

Senator SPECTER. When you call for a national commission, Senator Webb and I have introduced the Webb-Specter bill calling for such a commission. I believe that, before this year is up, we will have legislation accomplishing that.

Commissioner RAMSEY. Good.

Senator SPECTER. And when you are looking for grants, I'm cosponsoring the legislation to provide the grants. That is more problematic because of the shortage of funding, but where would you like to see those grants directed?

Commissioner RAMSEY. Well, I mean, in the area of technology, I think, is really essential. We all have information systems, most of which are outdated, but many aren't really able to communicate effectively so we can share information. Witness protection programs, for example, which is why we're here today. Certainly there's been some funding cut. We've averaged about $1 million a year; last year I think it was like $800,000 available.

Senator SPECTER. How far? How far does that go?

Commissioner RAMSEY. Well, it doesn't go far enough. I mean, it's going to come to a point. The DA's office administers that, but in speaking with people from that office, the fear is that a time will come when some people may have to, in fact, be turned away simply because there's a shortage of funding. We should be in a position where anyone who has information to help us in a criminal matter, we ought to be able to provide that support, should it be needed.

Senator SPECTER. We're going to take a look, before we're finished on these hearings, at the Federal Witness/Victim Protection program. That's a pretty good program, but it's a very expensive program. When there have been criticisms directed at the Philadelphia District Attorney's Office on the conviction rate, it ought to be noted that it's not the prosecutor's fault when there is not a conviction when there's not a witness, when the witness has been intimidated or killed. That has happened, regrettably, too often. We're going to hear some specifics from two parents, who will tell specifics illustrative of this kind of a problem.

Another course is to have Federal legislation which would make it a Federal crime to intimidate a State court witness. Right now, our legal research shows we do not have such an offense. That would bring the FBI into the case. As an experienced police officer, what impact do you think that would have if these hoodlums who intimidate or murder knew that it was a Federal matter and that

the FBI would be in the case? Would that make a difference in their approach to witness intimidation?

Commissioner RAMSEY. I think it would make a tremendous difference. We find, even in cases outside of just witness intimidation, whenever we're able to bring it to a Federal court, it does have a different impact on individuals. They really are fearful of going into Federal court, in many instances. I think the fact that it would be a Federal offense, and hopefully with a very, very harsh penalty if convicted, I think that would make a tremendous difference and make people think twice before they did it.

Senator SPECTER. Would you support a mandatory sentence on witness intimidation?

Commissioner RAMSEY. I would. Hopefully it would be a sufficient penalty. I think that there needs to be a real strong message sent that it's just not OK to do that.

Senator SPECTER. Well, I have been pressing for mandatory sentences on Medicare and Medicaid fraud. It's estimated that we lose about $45 billion a year on Medicare fraud, when we're searching for dollars to provide health coverage to 47 million more Americans. But there is a reluctance today to impose mandatory sentences, going back to the mandatory sentences on crack cocaine, which have been out of line, leading to discretion. But I'm interested in your view as a law enforcement officer, a police officer, of the value of mandatory sentences.

Commissioner RAMSEY. Well, I think you have to be very careful with mandatory sentences, personally. But I think something as serious as witness intimidation, and in many cases leading to murder, I think that's an exception. I think the fact that someone would actually intimidate or kill an individual to keep them from testifying against them in court, I can't think of many things that are more serious than that.

I think if ever there were a crime where consideration ought to be given to a mandatory sentence, that falls into that category. I think we do have to be careful. I think that we did go overboard with mandatory sentencing in some regards years ago, but there is a place for it, and I think witness intimidation is one of those areas.

Senator SPECTER. You commented that you think a defendant brought into Federal court takes it more seriously. Why do you think that is?

Commissioner RAMSEY. I don't know why, other than the fact that, you know, because the system doesn't move as—it doesn't have the same volume that the State system has, that the sentences that are imposed in many instances, whether it's a gun offense or what have you, tends to be longer.

I just think the whole environment or atmosphere when you go into a Federal court versus a local court is just somewhat different, and they haven't been exposed to it that often. I just think it has an impact in the feedback I've gotten from people on both sides, whether it's another law enforcement agency or from a person who's been in the criminal justice system. They do not want to go into Federal court.

Senator SPECTER. Do you think it has anything to do with the quality of the Federal court judges contrasted with the quality of the State court judges?

Commissioner RAMSEY. I don't know. I think we've got good judges at the State level, we've got good judges at the Federal level, and we've got some that aren't so good at both levels, having worked in Washington, DC, which is largely a hybrid of a Federal system. I've seen some judges that left a little to be desired on the Federal side as well. So, it's up to the individual judge. I think, by and large, most of them are fair and most of them do a very good job. But there are some that, quite frankly, leave something to be desired.

Senator SPECTER. Do you think there's any inherent superiority in the appointing process with judicial commissions and appointments as opposed to the electoral process?

Commissioner RAMSEY. Well, the problem I have with the——

Senator SPECTER. And do you think we ought to elect police commissioners?

[Laughter.]

Commissioner RAMSEY. Well, I mean, you do have sheriffs that get elected. I mean, there's pros and cons to both. The biggest problem I have with elected judges, and even being in law enforcement, when I walk into that voting booth, 80 percent of the names on that ballot, I don't know who they are, I know nothing about their record. It'll be Democrat or Republican, and I don't know what that has to do with their effectiveness as a judge, what political party they happen to be in. I'd rather see, what's their conviction rate? What court do they sit in, what's their conviction rate, what's their track record? Then I can make a judgment.

I don't see any of that, so to me it's almost a joke, going in, voting for judges, because you have no personal knowledge. You look at an editorial section and they may print what they think is a good judge versus a bad judge, and you have no idea of how they even arrived at that conclusion. So I think an appointment system might be better for the average person going to vote. But no system is perfect.

Senator SPECTER. We use the expression from time to time "tougher judges." It's hard to quantify what makes a tougher judge, but you have the judicial discretion pick up on continuances. Do you think that there's a difference? And I realize you haven't gotten a whole lot of experience of going into a Federal court, even as a State court. But do you have any sense of the difficulty of getting a continuance in a Federal court contrasted with a State court?

Commissioner RAMSEY. I know the continuances at the State level happen far more frequently than, in many cases, they should. A lot of witnesses get tired, they have jobs, they've got to take off work in order to get to court, and that just goes on, and on, and on. I think there needs to be a limit.

But again, this whole notion of "tough judges," judges should be fair, should be impartial. But I do think that people with long criminal histories, that are constantly coming before the courts, constantly committing crimes, you know, something has to be done about it.

We have people that have 10, 20, 30, 40 different prior arrests. At some point in time you have to recognize that that individual just needs to be taken off the streets. There have to be consequences and the consequences have to be significant in order for people to get the message. You just cannot shoot people, rob people, and do things of that nature and cause harm to others without having an expectation that there will be some consequences if you're convicted.

Senator SPECTER. To what extent—if you know, Commissioner Ramsey—do witnesses come to you and complain that they're being threatened, intimidated by defendants in criminal cases where they're scheduled to testify?

Commissioner RAMSEY. I think that it's not even—you know, I get feedback from our detectives, and that's basically where it comes from. Sometimes it's not even the overt act, it's just the fear. People have to live in the neighborhood, they have children that they fear for. It's not so much sometimes the individual themselves, it's their family. It's just a way in which they're viewed within a community, whether that's real, perceived, or what have you.

But there is a legitimate intimidation factor that's out there, there's no question about that. We've got to find a way to do something to make people feel safe and secure if they do step forward and provide information, because the only way we're going to deal with crime in communities is when the community steps forward, but they have to feel comfortable in doing so and know they have support.

Senator SPECTER. And when you say within the community, is there some stigma of disapprobation for people who testify?

Commissioner RAMSEY. There's no question, and that's not just recent. I mean, that's been for a period of time. I mean——

Senator SPECTER. Why is that?

Commissioner RAMSEY. Well, I don't know specifically. I just know that even—you know, you watch an old movie made in the 1930s and they'll refer to an informant as a rat, you know. I mean, we use derogatory terms toward people who provide information, who cooperate with authorities.

I think that that's something that has to stop because it creates a mind-set that it's wrong, so it puts you in a situation where you need cooperation, yet there's pressure not to provide any kind of information or cooperate with authorities at all, and it just goes on and on and on and things never get better.

Criminals take advantage of that. They take full advantage of it, there's no question about it. And if they do get caught or charged with intimidation and get convicted, I mean, what happens to them? I mean, it has to be something that is very, very severe, in my opinion, so that the message is there that you just can't do that.

Senator SPECTER. When some prospective witness comes to complain to the police department about intimidation or threats, do you have the manpower to begin to cope with witness protection?

Commissioner RAMSEY. Our District Attorney's Office does a very good job. I mean, the DA actually runs the witness protection program. They do a very good job. People who are in the program and who comply with the rules, we don't have an issue. It's when people

decide, you know, to go back to a neighborhood or don't comply. And it's hard not to. I mean, you've got family, you've got school, you've got all kind of issues that cause people to do it, and I'm certainly not blaming them. But it's just a complicated situation to be in.

But the DA's office, I think, does a very, very good job when it comes to providing the protection for people who are in the program. But again, without funding, then they have to really establish some kind of priority as to who would be eligible for the program, who wouldn't be, how long can we keep them in the program, all those kinds of things, and that's where you start running into problems and issues.

Senator SPECTER. To what extent does the District Attorney's Office have resources to provide protection?

Commissioner RAMSEY. Well, they'd be in a better position to say that. I know they've had some cuts. I think the last couple of years, they've had about $1 million to work with. It was cut last year; $880,000, I believe is what was available. Possibility of future cuts. The funding comes through the State Attorney General's Office.

But again, as more cases go before the courts, as more people feel comfortable in testifying, then you're going to have a greater demand for people who are going to need some kind of protection and you're going to have to have some funding in place for the DA's office to be able to provide that. That's where we'll run into some issues. We solved one problem, but we can create another one for ourselves if we don't have the resources in place.

Senator SPECTER. Commissioner Ramsey, thank you for coming in today to testify.

Commissioner RAMSEY. Thank you, sir.

Senator SPECTER. I thank you for being our police commissioner.

Commissioner RAMSEY. Thank you. Appreciate it.

Senator SPECTER. We know you have other duties to attend to, so we would understand if you wish to move on to take care of those duties.

Commissioner RAMSEY. Well, thank you. I do have a couple. Thank you.

Senator SPECTER. Thank you very much.

We turn now to our panel of civilian witnesses. We're going to begin with two parents whom we have here who lost children as a result of murders of prospective witnesses. I want to turn, first of all, to Mrs. Barbara Clowden, the mother of Eric Hayes, who was murdered in November of 2006, just 2 days before he was to testify in an arson trial.

Because Eric Hayes' life had been threatened in January of 2006, Mrs. Clowden signed a contract with the city, agreeing to place Eric and the family in the city's witness relocation program. Funds for relocation were insufficient to support the family to the time of the trial. Mrs. Clowden now says that entering the program was "the worst thing I ever did in my life." She is suing the city for failing to protect her family and says her son's death was the result of a "State-created danger." She now says that she wishes her son had never agreed to testify, understandably so.

Thank you for coming in to testify today, Mrs. Clowden, and to tell us what your experiences have been. Push the microphone very close to you and speak into it. Thank you.

STATEMENT OF BARBARA CLOWDEN, VICTIMS' ADVOCATE, PHILADELPHIA, PENNSYLVANIA

Ms. CLOWDEN. Good morning. Thank you for the opportunity to be here today. I lost my son Eric on November 22, 2006. Eric and my family entered the Witness Relocation Program as a result of Eric testifying in a trial—scheduled to testify in a trial of a young man that tried to burn down our house because they wanted Eric to sell drugs for the local guy there. And the boy came around to set fire to our house on November 13, 2005, and Eric looked out the door——

Senator SPECTER. Why did the boy want to burn down your house?

Ms. CLOWDEN. Because earlier, like a couple weeks before, they came around to fight Eric and he was fighting them. And I guess they felt he—he could be a threat to them, because he wouldn't sell drugs for them.

Senator SPECTER. Did the boy who tried to burn down the house want Eric to participate with him in selling drugs?

Ms. CLOWDEN. Yeah. It was him and another guy.

Senator SPECTER. And did your son Eric refuse to participate in drug sales?

Ms. CLOWDEN. Yes.

Senator SPECTER. And was that the reason he tried to burn down the house?

Ms. CLOWDEN. Yes.

Senator SPECTER. Uh-huh. And what did he do specifically with respect to trying to burn down the house?

Ms. CLOWDEN. He—he was saturating the door with gasoline. He was pouring a lot of gasoline on the door. At the time that Eric looked down and seen him, he was getting ready to light the match.

Senator SPECTER. And he wanted to burn the house down?

Ms. CLOWDEN. Yes.

Senator SPECTER. Uh-huh. That's a little hard to comprehend, Mrs. Clowden. I don't doubt that you are laying out the facts, but isn't that extreme, to commit an arson, take people's lives, over the disagreement with that man—I won't call him a boy, that man—had with your son?

Ms. CLOWDEN. I would say it was a bit extreme, but that's what happened.

Senator SPECTER. I'm asking you the question to try to understand what happens there. Can you give any insight into why somebody would do something so drastic under those circumstances?

Ms. CLOWDEN. No. I guess it's just, when people want things done the way they wanted to do it and you don't—they—people don't do what they want them to do, everybody do things in a different way.

Senator SPECTER. No regard for human life.

Ms. CLOWDEN. Well, he didn't have none.

Senator SPECTER. Or suffering. To be burned to death is a pretty horrible fate. But that's what he was doing, lighting—pouring gasoline to light the house on fire.

Ms. CLOWDEN. Yes. That's what he was doing.

Senator SPECTER. Then what happened with respect to the Witness Protection Program?

Ms. CLOWDEN. Well, we entered into the Witness Protection Program and they put us in a hotel.

Senator SPECTER. Mrs. Clowden, I can hear you, but they can't hear you all the way in the back.

Ms. CLOWDEN. OK. We entered into the Witness Protection Program.

Senator SPECTER. Your picture is going to be on television, but your voice won't be, so speak up.

Ms. CLOWDEN. They put us in a hotel and they said that we were going to have to look for another place to live, and they said they were going to assist us in that. So we went to one hotel and we stayed there.

Senator SPECTER. You went to the DA's office and they made arrangements for you to go to a hotel?

Ms. CLOWDEN. Yes. The District Attorney's Office.

Senator SPECTER. And what happened next?

Ms. CLOWDEN. And we went to the hotel and we lived in the hotel for a lot of months.

Senator SPECTER. For how long?

Ms. CLOWDEN. From January the 13th to the end of October 1906.

Senator SPECTER. Do you have any idea why it took so long for the trial to come up?

Ms. CLOWDEN. No. I don't know why it took so long for the trial.

Senator SPECTER. And then what happened?

Ms. CLOWDEN. While we were in the hotel, looking for a place to stay—it's kind of hard to look for a place to stay. We had to move all of our things. We went to the hotel and we were looking for a place to stay, but a lot of problems came from having to do that, look for——

Senator SPECTER. What happened? Who came?

Ms. CLOWDEN. A lot of problems. We had a lot of problems finding another place to stay.

Senator SPECTER. Why did you have to find another place to stay?

Ms. CLOWDEN. Because Eric was being threatened after the guy got arrested and we had to go to——

Senator SPECTER. Did the guy know where Eric was in the hotel?

Ms. CLOWDEN. Before we went to the hotel.

Senator SPECTER. Huh?

Ms. CLOWDEN. Before we went to the hotel, we was at our house and that's why we left our house.

Senator SPECTER. Right.

Ms. CLOWDEN. Because they kept coming near to fight him and telling him, don't go to court. And they told me that if he kept going to court, I was going to have a dead son.

Senator SPECTER. Then what happened?

Ms. CLOWDEN. So when we went to the preliminary hearing, I told the District Attorney what had happened and they suggested that we leave—leave the house.

Senator SPECTER. And then you left the house and went to the hotel?

Ms. CLOWDEN. Yes.

Senator SPECTER. What happened next?

Ms. CLOWDEN. We—we lived in the hotel. Like I said, we was in the hotel and I was trying to find another place to live, since I couldn't go back to my house.

Senator SPECTER. And did you find another place to live?

Ms. CLOWDEN. No. I couldn't find a place to live because I still had the responsibility of my house, and my income was limited. The city didn't have no—no resources to help you if you came into that situation.

Senator SPECTER. So what did you do? Did you go back to your house?

Ms. CLOWDEN. No. They—they put us in another hotel and they said that they would help me—give me a subsidy program called Transitional Housing, and with that program you have to stay in Philadelphia. And I kept saying, well, I think we need to leave Philadelphia, because if we don't they're going to kill my son. And they was like, the city of Philadelphia, OESS, was like, well, we'll just give you transitional housing and you just move to another part of Philadelphia, and that's what we did. And 2 weeks after we moved into the house that they helped us get, he got shot. That's when they shot Eric.

Senator SPECTER. The man found your son and shot him?

Ms. CLOWDEN. Yes. We were two—yeah. Two weeks after we moved into the house.

Senator SPECTER. Uh-huh. What were the circumstances, if you know, as to how he found your son and how he shot him?

Ms. CLOWDEN. I'm not sure how they found out where we were at.

Senator SPECTER. And what happened to the shooter?

Ms. CLOWDEN. The police department said they didn't have enough evidence to arrest anyone. They did arrest someone, but then they said he confessed to the murder, but then they came back and said that he didn't do it because he was in a lock-up facility in another part of the city on that day, and so it wasn't him.

Senator SPECTER. So has anybody been prosecuted for the murder of your son Eric?

Ms. CLOWDEN. No. They said they don't have—they don't have enough evidence to really get a conviction.

Senator SPECTER. Well, thank you for providing that testimony, Mrs. Clowden.

Ms. CLOWDEN. Thank you.

[The prepared statement of Mrs. Clowden appears as a submission for the record.]

Senator SPECTER. We turn now to Mr. Ted Canada, Philadelphia resident, SEPTA bus driver, single parent. In 2005, his son, Lamar Canada, was shot 12 times and killed by Dominick Peoples and another unidentified shooter in Philadelphia over a gambling debt. One witness to the shooting, Johnta Gravitt, 17 years old, was

murdered 10 days after he testified at the preliminary hearing and identified Peoples as one of the shooters. Another witness, Martin Thomas, initially cooperated, but after his statement to the police was publicly posted, the neighborhood identified him as a snitch and he recanted. Peoples was convicted.

Mr. Canada is active in the anti-violence group, Men United for a Better Philadelphia.

Mr. Canada, thank you for coming in. Pull the microphone close and tell us what happened to your son here.

STATEMENT OF TED CANADA, VICTIMS' ADVOCATE, PHILADELPHIA, PENNSYLVANIA

Mr. CANADA. Good morning, everyone. Thanks a lot for having me.

In 2005, my son, he was drastically murdered. It was very senseless violence that we see that's taking place in the city, not only in the city of Philadelphia, but all over the world. The part that got to me mostly was losing a son at such a young age, and after that, losing another young man that was trying to do the right thing. This young man, Johnta Gravitt, to me and my family, was basically a hero because we were able to get some closure in our son's murder. Unfortunately, Ms. Barbara Clowden was not. That was—came from Johnta and other people stepping up to testify.

However, I don't feel as though Johnta got a good deal out of it because he was murdered 10 days later, and the police obviously said it had no connection to him testifying at my son's hearing. However, our family felt different.

When he came to the hearing to testify, he basically was on his own. When we left the hearing, ironically, the police did not even escort Mr. Gravitt home. He was actually headed for a bus stop when my uncle and myself and our family members noticed that he was getting ready to catch the bus and we offered him a ride home. And in the statement, if you read the statement and article in the *Inquirer*, one of the officers stated that it was safer for Johnta to catch the bus than it would be for two white officers to take him home in his neighborhood.

So I just came up with a few common-sense examples of things that you can do, because generally what happens is, everybody tries to turn everything over to a budget and they start thinking, well, it's the budget, we don't have money to do this, we don't have money to do that. That's what it usually boils down to every time you want to make changes or every time you want to do something different.

A lot of times it just takes common sense, such as—you know, my suggestion was, you know, you can come up with the answer of two white officers. Why wouldn't you just allow two black officers, or just officers in general that can fit the job that needs to be done? I mean, you have different—I've been down to the courthouses and I've seen officers who look as young as 18 years of age and younger. I mean, why not utilize the correct people to do the correct job? I mean, it doesn't take money. I mean, and also, we need to stop making it so easy for these witnesses' information——

Senator SPECTER. Mr. Canada, I'm not following you on the distinction you made between the two black officers and the two white officers. Could you amplify what you mean?

Mr. CANADA. Sure. What I mean is, if you're going to have—if you're dealing in a black neighborhood, yes—what the officer was trying to say, that if two white officers bring a black youth home, it's going to stand out like a sore thumb. So what I'm saying is, why not use two black officers so it doesn't make it so obvious?

Senator SPECTER. I see.

Mr. CANADA. Black, young, youth officers that can probably assist these gentlemen.

Senator SPECTER. So it doesn't stand out that the young man may be cooperating with the police.

Mr. CANADA. Right. That is correct.

Senator SPECTER. OK. I've got you now.

Mr. CANADA. That is correct. And also, stop making it so easy. How was it that that gentleman's testimony posted up in a Chinese restaurant right in his very own neighborhood? Someone had to get that testimony for them to have that and point it up, to start calling the gentleman a snitch or a rat. So, his life was threatened.

And it's so many different ways that we probably could utilize the witness intimidation without being—you know, putting a financial burden on the State, such as, I mean, simple stuff. Maybe, why not let the witnesses testify via video? I mean, you can testify via video, whereas you're not feeling unsafe, you're not probably at the place. I mean, I'm sure with today's technology, that could be done.

Also, you know, the postponements of the court hearings. It's like, it's amazing how, you know, a court case drags on for years and years and years. And for a prime example, my son had two shooters. One shooter was brought to justice, and just recently it took all these years to bring the other shooter to justice. And everybody knew who this gentleman was, however, after Johnta was murdered and the other witness was intimidated, no one stepped up.

So now it took all the way until New Year's Eve for me to get a call from the detectives, letting me know—which was very courteous of him, to let me know that they got the other shooter. However, they did not get him on my son's case, they got him on another murder because they couldn't get him on my son's case because everybody was afraid to step up. So if you start protecting these witnesses more, ensuring them some type of safety, I'm sure more witnesses would step up and speak out. But if you're not going to—if you're just going to take them and get the testimonies and throw them to the wolves, you know, it's obvious that nobody wants—like you say, you know, everybody has a life. You know, people want to live their life and people want to go on with their normal lives. They don't want to have to relocate, move, and take their children from one school to another and live in fear. Who wants to live in fear? I mean, I don't, you know. And I'm just grateful that, you know, the detectives and the police department did a great job on, you know, handling my son's murder to give us closure. And I really, you know, appreciate the fact that they kept in touch, and I kept on—on them myself. And instead of me, you know, going ballistically crazy and wanting revenge, I chose to do

it another way by, you know, joining an organization that we basically are against violence, and we go out to try to stop, you know, violence.

And I'm actually starting another organization myself, Fathers Fed Up. I can always let gentlemen of my character, people who have gone through what I've gone through, have a place to come and listen and talk and we can all, you know, have different opinions on what we need to do about going out, trying to get these youths. Because it starts at home, like Commissioner Ramsey was saying. It starts at home. And I don't want to give my age, but when I came up, the whole neighborhood was in charge of a child.

Senator SPECTER. Why don't you want to give your age?

[Laughter.]

Mr. CANADA. Because, you know, when we had that kind of stuff going on where your neighbor could discipline you or your teachers could discipline you, it was less. We had less violence. Now it's just like, a lot of people come from broken homes, a lot of people come from drug-infested homes. And a lot of that starts at the house and it escalates into violence.

Senator SPECTER. Mr. Canada, have you noticed any improvement in the crime problem in Philadelphia since you were, say, a teenager to the present time?

Mr. CANADA. The only improvement that I could say that I've really noticed, because I actually was a part of the gang era—I grew up in the 1960s and 1970s—and I do commend them for stopping the gang wars. However, anything after that, it doesn't seem like it's so much of a difference.

Senator SPECTER. When were you a teenager, without prying too much?

[Laughter.]

Senator SPECTER. Just to give an idea of the span of your experience.

Mr. CANADA. Back in the 1970s and 1980s.

Senator SPECTER. Uh-huh. Uh-huh.

When you said his picture was posted, amplify what you meant by that.

Mr. CANADA. No. I said his statement, the statement of one of the witnesses was actually posted up in a Chinese restaurant in his neighborhood. And what it looks like right now——

Senator SPECTER. The statement, the testimony he gave?

Mr. CANADA. The testimony. That's correct. It was posted.

Senator SPECTER. They were trying to expose him?

Mr. CANADA. Yes. And they were basically calling the gentleman, you know, a snitch or a rat, and so on and so forth, like the Commissioner was stating earlier. I'm trying to figure out why, or how could anyone even get, you know, a copy of something like that to—to post it up, which means, you know, somebody's not being held accountable for, you know, things that they're doing because——

Senator SPECTER. The Commissioner testified about going back to the movies in the 1930s, using the comment "rat," somebody who told on somebody else. Has that gotten any worse, say, today than it was when you were growing up in the 1960s and 1970s?

Mr. CANADA. No, sir. No, sir. It's changed. It's just a different slang. It's the same terminology, it's just put in a different way.

Today they call them snitches. They have a phrase out there, "snitches get stitches." And, you know, it's just a different terminology. Our group, Men United, we were—we held a big protest about those tee shirts being printed up. We went to several stores and caused a lot of commotion and we got a lot of merchants to take those tee shirts—they had tee shirts printed up about snitches, don't—stop snitching, and don't be a snitch. So it's just different terminology, that's all. It's the same.

Senator SPECTER. Your son was shot 12 times?

Mr. CANADA. That's correct.

Senator SPECTER. Uh-huh. Because he was going to be a witness?

Mr. CANADA. No, my son wasn't going to be a witness.

Senator SPECTER. Why was he shot?

Mr. CANADA. My son was shot—I got two different—two or three different reasons, but one of the reasons they print mostly was over a gambling debt. Two young men were arguing over a gambling debt. But——

Senator SPECTER. And so who was the witness who was intimidated?

Mr. CANADA. Johnta. That's the gentleman that I was speaking about. He—he got shot, Johnta Gravitt. He was shot and killed 10 days later, after testifying.

Senator SPECTER. Because he was going to be a witness on your son's murder?

Mr. CANADA. He had already testified.

Senator SPECTER. He testified at the preliminary hearing?

Mr. CANADA. That's correct. Which gave—which they were still able to use his testimony, even though they had killed him.

Senator SPECTER. They could use the testimony at the preliminary hearing.

Mr. CANADA. That is correct. They used his testimony, which was enabling us to get closure and bringing one of the gunman to—you know, to justice.

Senator SPECTER. OK. Thank you very much, Mr. Canada.

Mr. CANADA. Thank you as well.

[The prepared statement of Mr. Canada appears as a submission for the record.]

Senator SPECTER. We'll turn now to Mr. Michael Coard, Esq., criminal defense lawyer, more than 15 years of State and Federal trial experience, formerly worked at the Charles W. Bowser Law Center after he served as legal counsel for State Senator Hardy Williams. Let me pause and express my regret about the passing of Senator Hardy Williams yesterday.

Mr. COARD. Thank you, Senator.

Senator SPECTER. A friend of mine for decades, outstanding lawyer.

Mr. COARD. Yes.

Senator SPECTER. Outstanding public official. Also an outstanding basketball player, going back quite a few years.

Mr. COARD. Absolutely.

Senator SPECTER. Mr. Coard is an adjunct professor in the African Studies Department and the Urban Studies Department at Temple, as well as an instructor in the Criminal Justice University's Pan-African Studies program.

He is the recipient of many awards, including the prestigious Cecil B. Moore award. Did you know Mr. Cecil B. Moore?

Mr. COARD. I did not, no.

Senator SPECTER. Well, he was a distinguished trial lawyer.

Mr. COARD. I heard so much about him, Senator. Yes.

Senator SPECTER. He was quite a personality. Head of the NAACP.

Mr. COARD. I've heard all the war stories.

Senator SPECTER. And probably had more continuances than any defense lawyer in the history of Philadelphia.

Mr. COARD. They had a courtroom set up specifically for him.

Senator SPECTER. It was more than a courtroom, it was a special program. Because he had so many cases, he could have been in any one of 20 courtrooms. So while I was DA, we decided to put in the one courtroom, so he sued me in the Federal court for violating his civil rights. The judge said, no, a District Attorney is within his rights, and you've got to go to trial and we've got to figure out where you are, because he'd have 20 listings and he wouldn't try any of them. And when he had 20 listings, we thought we ought to try one of them, so we did set up the special courtroom.

But notwithstanding those differences, we were good friends and we had quite a professional relationship. He had a very unusual accident: he fell down an elevator shaft. Did you know that?

Mr. COARD. I did not know that.

Senator SPECTER. Yes. Yes. A very handsome man, before he fell down the elevator shaft. OK. Enough of history.

Mr. Coard, we look forward to your testimony.

STATEMENT OF MICHAEL COARD, LAW OFFICE OF MICHAEL COARD, PHILADELPHIA, PENNSYLVANIA

Mr. COARD. Thank you, Senator Specter.

First of all, I gratefully thank you for inviting me to testify before this Senate Committee on the Judiciary, Committee on Crimes and Drugs, regarding "Federal Efforts to Address Witness Intimidation at the State and local Levels." I am honored, as I am sure the other invitees are, to be here.

I've been a trial lawyer for nearly 20 years, a civic activist for more than 15 years, a local radio show host for over 10 years, and a university adjunct professor for approximately 5 years. It is because of those roles that I can unequivocally say that the best—in fact the only—way for the Federal Government to address witness intimidation at the State and local levels is by adhering to the Constitution of the United States of America.

Stated another way, the Federal Government must make sure that it does not break the law in order to make the law. The United States Constitution, the Sixth Amendment, and the Pennsylvania Constitution, Article 1, Section 9, mandate that a person accused of a crime has the fundamental right to be confronted with witnesses against him or her.

I mention this because one of the first actions always considered in the commendable attempt to protect against witness intimidation is the condemnable attempt to allow illegal hearsay in as evidence in a trial or hearing. The erroneous rationale is that the most effective way to stop witness intimidation is to allow police of-

ficers or other persons to testify in court about what they allegedly heard someone else who is not in court say. Not only is that unconstitutional, it is also unfair.

In Pennsylvania, including, obviously, Philadelphia, there is case law and statutory law already on the books that, under certain legally-sanctioned circumstances, allow for non-testifying witnesses'—i.e., hearsay issue-related witnesses—statements to be entered into evidence. One example is Rule 803 of the Pennsylvania Rules of Evidence.

Moreover, numerous longstanding Pennsylvania public court decisions permit such throughout the criminal court process, most notably, interlia, at preliminary hearings wherein hearsay objections by defense counsel are often a complete waste of breath.

Furthermore, in cases wherein witnesses do appear in court but purportedly are so intimidated that they testify in a manner that contradicts their previous statements to police against defendants, there also are laws already on the books that, once again, under certain legally-sanctioned circumstances, allow for those earlier inculpatory prior inconsistent statements to be used against defendants regardless of what those witnesses later testify to in court. Two examples are Rules 607 and 613 of the aforesaid Pennsylvania Rules of Evidence, and there are longstanding Pennsylvania public court decisions that also allow such.

Accordingly, there is absolutely no need for Federal involvement in terms of creating law or expending limited resources, neither is there absolutely any need for creating more State law. Instead, there is simply a need to more intelligently, hence efficiently, enforce State law that already exists.

In addition to the aforementioned State laws that already permit certain hearsay statements or hearsay issue-related statements to be entered into evidence, there are also State laws that already protect victims of witness intimidation, and those laws are found in Pennsylvania Crimes Code Section 4925, "Intimidation of Witnesses or Victims," and 4953, "Retaliation Against Witness, Victim, or Party," both of which can be charged as felonies. We all must, and should, have genuine sympathy for victims of witness intimidation, certainly when violence results, and especially when death results.

But the Federal Government should not be in the business of engaging in unlawful—i.e., unconstitutional—behavior in an attempt to protect the public from criminals' unlawful—i.e., murderous and otherwise violent—behavior. The Constitution must, and should, apply to all law-abiders, as well as to law-breakers; after all, this is America.

I would be remiss if I failed to address what actually led to this hearing, and that is the *Philadelphia Inquirer's* apparently well-intentioned, but frightfully inflammatory and journalistically incomplete four-part series from December 13 through December 16, 2009. It was frightfully inflammatory in its unnecessary use of phrases such as "blood-splashed," "witness intimidation as an epidemic in Philadelphia that pervades Philadelphia criminal courts, which are in a crisis," and also defendants "beating cases and escaping convictions with stunning regularity." It was journalistically incomplete in its failure to fairly acknowledge an essential prin-

ciple of American criminal jurisprudence, which is that a person who is arrested is always presumed innocent.

As stated to me by Troy H. Wilson, Esq., a noted criminal and civil court litigator and the former chairman of the Philadelphia Bar Association's Criminal Justice Section, "The *Inquirer*'s articles were based on a flawed premise, which is that people released on so-called technicalities were guilty. However, the presumption of innocence is paramount and continues even after a person's case has been discharged, whether due to the District Attorney's delay, or any other reason."

In addition, asserted Wilson, "Defendants do not automatically get off scot-free during those actually relatively few times when cases are dismissed as a result of witnesses' failure to appear." As he makes clear, "The District Attorney has the legal wherewithal to merely file, and easily file, a motion to rearrest the defendant on the very same dismissed charges in such cases. It's as simple as that."

The *Inquirer* directed most of the blame for this supposed epidemic and crisis on criminal defense attorneys, the men and women who serve as vigilant watchdogs to make sure that the State and Federal Constitutions are respected and that the local, State, and Federal Governments are barred from unconstitutional violations. The newspaper claimed that, "Defense lawyers routinely exploit the court system's chaos by delaying cases to wear down victims and witnesses and seek spurious postponements if they know the prosecution witnesses are in court and ready to go."

The moniker, "Philadelphia Special" was used in the four-part series to describe this kind of unethical behavior. However, prominent defense counsel George H. Newman, Esq. indicated to me that in his more than three decades as a criminal trial lawyer, he has never heard of such a name or concept. In my nearly twenty years, neither have I, and that is because it does not exist.

Mr. Newman made another, much more key point about the series in general when he said that, "The *Inquirer's* statistical analysis is unrealistic, since it precludes preliminary hearings. As all lawyers and judges know, the District Attorney consistently overcharged arrested persons, filed baseless criminal accusations, and prosecuted unprovable cases."

"Moreover," remarked Newman, "the articles are filled with statistical misrepresentations, panicky innuendoes, and some worst-case anecdotes." In connection with baseless criminal accusations and unprovable cases, another distinguished criminal trial attorney, namely Charles A. Cunningham, who was first assistant in the Defender Association of Philadelphia and has been a member of the Pennsylvania Bar for 35 years, pointed out to me that the District Attorney often accuses and jails factually innocent people.

He noted the recent case wherein someone allegedly claimed to have been attacked by three persons, which resulted in three men being arrested, detained, and jailed when they could not afford to pay bail. However, after 3 months—i.e., about 90 days—when the preliminary hearing was finally held, the complainant identified only one of the three as an attacker. The second defendant was actually a Good Samaritan who had attempted to intervene on behalf

of the victim, and the third defendant was merely present with 20 others near the scene.

Why didn't the District Attorney investigate the facts before, in effect, sentencing these two defendants to unwarranted and lengthy jail time? Although these two were ultimately released as a result of the unrebutted exculpatory evidence at the preliminary hearing, they lost a quarter of a year of their lives that can never be replaced and for which they will never be compensated, and they, as well as many other similarly situated persons, are cavalierly lumped into the *Inquirer's* gang of defendants who are supposedly "beating cases and escaping convictions with stunning regularity."

As mentioned in Mr. Cunningham's final comments, even if the criminal justice system is completely broken, it is not because of what the *Inquirer* contends. Instead, it is because of a system that refuses to address "the real issues that cause crime to occur in the first place," obvious issues, such as the lack of education and employment.

While there is no crisis, there is a problem, even if just a comparatively few witnesses are intimidated. But with every problem, there is always a solution, and that solution, without the need for a journalistic hair-on-fire-sky-is-falling alarmism, is quite simple.

In fact, any, some, or all of the following could immediately be implemented: (1) housing, transportation, protection, and/or financial incentives for witnesses before trial; (2) relocation for witnesses after trials; (3) separate courtroom waiting rooms for witnesses; (4) community police/community prosecuting, coalition-building with ex-cons, local athletes, and local hip-hop celebrities in order to persuade citizens, especially those in the approximately 15 to 25 age range, that cooperating with law enforcement to protect one's neighborhood does not constitute snitching; and, finally, (5) education, job training, and employment opportunities in high-crime neighborhoods in order to discourage criminality, which would reduce crime and which would in turn reduce even the need for witnesses.

In conclusion, I again thank the esteemed Senator Arlen Specter for inviting me to testify at this Committee hearing regarding primarily the purported crisis of witness intimidation in Philadelphia.

I end my testimony with a question. If there is so much witness intimidation, meaning evidence ostensibly substantial enough to justify arresting, charging, and jailing so many persons with that serious crime, why then are more than 7 out of 10 persons accused of that offense found not guilty or otherwise freed?

Thank you, Senator.

Senator SPECTER. Thank you very much, Mr. Coard.

[The prepared statement of Mr. Coard appears as a submission for the record.]

Senator SPECTER. When you criticize the *Inquirer* article, don't you think that there are major problems in the system which need action, such as the fugitives—estimated, one figure, 47,000 fugitives—with the need to have resources devoted to apprehending those individuals? Isn't that one issue which it's useful to have some spotlight on?

Mr. COARD. Absolutely. In fact, I think the *Philadelphia Inquirer* did a great service to the community by provoking this discussions. The primary criticism that I have, Senator, is that the *Inquirer* simply went for the easiest target, which seems to be defense attorneys, that if bad guys get off, it's because of some trick being played by defense attorneys, which could not be further from the truth.

Senator SPECTER. So you would concede that, as in your own words, the *Inquirer* did do some real public service in some lines?

Mr. COARD. Absolutely.

Senator SPECTER. And with respect to the issue of Federal grants to be able to assist a city like Philadelphia, which has a very low tax base and grave difficulties allocating funds on housing, education, et cetera, if the result is to have some Federal money, isn't that a desirable consequence, too, as a result of the spotlight?

Mr. COARD. Absolutely, positively. In fact, that was one of the suggestions that I included in my proposals as to how this issue could be addressed. So, absolutely, positively, Senator. No doubt about it.

Senator SPECTER. Do you think it would be appropriate to have Federal legislation which would make it a Federal crime to intimidate a State court witness?

Mr. COARD. No, and I'm glad you asked that. There's absolutely no need for it, as we have now in Pennsylvania—we have two laws on the books where persons who commit that type of egregious crime could be charged with a felony. So it simply seems to me that the Philadelphia District Attorney's Office could go after the people, and go after them vigorously, for this type of crime.

Senator SPECTER. Mr. Coard, there are many offenses which are Federal crimes, even though they are State court crimes as well. The Armed Career Criminal Act, for example, a law that I wrote in 1984. I had experience on so many burglary and robbery cases where probation was given, and we defined a career criminal caught with a firearm, giving a mandatory sentence. Perhaps you don't think that was a good bill. Let me start by asking you if you think that was a good bill.

Mr. COARD. Well, absolutely. The distinguishing factor here is that, why have two good laws when you already have one great law? We already have the laws in Pennsylvania. They cover precisely what you're talking about and what the *Inquirer* is talking about. If there were no felony law to go after these bad guys who intimidate witnesses, then I wouldn't be complaining as I am. But we already have it.

Senator SPECTER. But you thought the Armed Career Criminal bill was a good bill?

Mr. COARD. I think—the answer is yes. And I think any bill that goes after violent criminals in a way that the State law can't do is always a good thing. But in this case, the State law can do it, and do it well.

Senator SPECTER. Well, Mr. Coard, you practice in both the Federal and the State courts.

Mr. COARD. Yes.

Senator SPECTER. Isn't it true that if it's a Federal offense and the FBI is on the case and you're going to be called into a Federal

court, that there's considerably more concern by a prospective defendant of being prosecuted there than in the State courts?

Mr. COARD. Yes. But—and the but is a big one—with all due respect to the Federal prosecutors, who do a great job, the county prosecutors in the Philadelphia District Attorney's Office do just as great—I won't say better, but as good a job, if not better. I think the distinguishing factor is the resources that the Federal Government has that the State government doesn't have. If we flipped it——

Senator SPECTER. That's a big distinguishing factor.

Mr. COARD. And so to me, that's the issue. And not only do they have more resources on the Federal level, if you gave that same money to the District Attorney's Office in Philadelphia, they could show you the same stats that the Feds do. But apart from the financial resources, there's the type of cases.

Senator SPECTER. Is it easier to get a continuance in the State court than in the Federal court?

Mr. COARD. It's difficult in both. But to answer your question directly, it's almost impossible in the Federal court to get a continuance. But one thing, one point——

Senator SPECTER. I take that as a yes answer.

Mr. COARD. Absolutely. One quick point I did want to make is that in every case I've had, mostly armed robbery cases that have left the State courts and gone to the Federal courts, the evidence has been overwhelming. So it seems unfair to say that the State prosecutors can't get a conviction but the Federal prosecutors can get a conviction.

The point is, in my experience over 20 years, the Feds get the better cases, the stronger cases. In my experience, I've never had a case as weak in the Federal level as I've had in the State level. So it seems to me that because the resources of the Federal Government, because they get stronger cases, it's easier to get more convictions.

Senator SPECTER. You gave some testimony on the use of hearsay and you dealt with prior inconsistent statements, and you can impeach a witness on a prior inconsistent statement. But isn't that testimony on impeachment limited by the judge's instruction on the credibility of the witness as opposed to the substantive testimony on the underlying offense?

Mr. COARD. Well, I'd argue, respectfully, no. In situations where the Commonwealth——

Senator SPECTER. You don't have to be respectful. Why do you argue no?

Mr. COARD. Thank you. In every case I've ever had where the Commonwealth has attempted to bring in prior inconsistent statement, the judge would rule based on whether or not one statement was directly contrary to the other statement, not so much about the issue of credibility. But if the witness today is saying no, but the prosecution can show that yesterday he said yes, the judge has always allowed that in, regardless of whether the judge thinks that the witness was lying before.

Senator SPECTER. But doesn't the judge give limiting instruction? Let me rephrase the question: shouldn't the judge give a limiting

instruction on cross examination going to credibility as opposed to substantive evidence?

Mr. COARD. Well, yes. In fact, defense attorneys often request that. But to be quite honest, once the jurors have heard the inconsistency, then they're going to make their decision. But you're absolutely correct.

Senator SPECTER. That's different.

Mr. COARD. Certainly. But to answer your question directly, yes, the judge can give that limiting instruction. But I think every trial lawyer knows that limiting instructions really don't mean a whole lot. A judge will tell the jury to consider certain evidence for this, but not for that. That's like telling the jury, think of everything except a blue horse. Well, the first thing they're going to think of is what they were told not to. So, limiting instructions are a good thing because they're the only thing, but they're not an effective thing.

Senator SPECTER. How about a mistrial?

Mr. COARD. That's great from a defense standpoint, but that's rare.

Senator SPECTER. If the limiting instruction is insufficient, you have the recourse of a mistrial. Mr. Coard, we're going to be back here, I don't know how many decades, and we're going to have a young lawyer testify who occupies the Michael A. Coard chair of some distinguished law school. You are very articulate and obviously a good lawyer.

Mr. COARD. Thank you, sir.

Senator SPECTER. We thank you for coming in.

Mr. COARD. I appreciate hearing that from you.

Senator SPECTER. Our final witness is Professor Richard Frei, Associate Professor at Philadelphia Community College. He headed up the Snitching Project. I infer that that's academically heading up a project as opposed to being a head snitcher.

Professor FREI. No, heading up the project.

Senator SPECTER. In conjunction with the Center for Law and Society. He has directed interdisciplinary, student-driven research initiatives on the phenomenon of snitching, trained students in applied research. He has a bachelor's degree in Psychology and a very distinguished academic record, and is undertaking a very interesting line of study.

Thank you for joining us, and we look forward to your testimony.

STATEMENT OF RICHARD L. FREI, ASSOCIATE PROFESSOR, COMMUNITY COLLEGE OF PHILADELPHIA

Dr. FREI. Thank you, Senator Specter. Thank you for the honor of appearing before you today. My name is Dr. Rick Frei. I'm Associate Professor of Psychology at Community College of Philadelphia. My area of expertise is applied community research, specializing in using large-scale survey research as our teaching tool in my psychology courses.

Over the past decade I have overseen a number of large-scale community surveys on topics such as the use of check-cashing institutions, corporal punishment, attitudes toward guns and gun violence, and over the past 2 years, the "Stop Snitching" phenomenon

and its impact on the community involvement in the Philadelphia community justice system.

Today we've heard heartbreaking and disturbing testimony from victims and advocates regarding rampant witness intimidation that is prevalent in Philadelphia, although Mr. Coard seems to think it's not as prevalent as the *Inquirer* said.

My goal today is to frame the testimony in a larger context of the Stop Snitching movement. For example, in the *Philadelphia Inquirer's* recent extensive reporting on the failures of our criminal justice system, the reporters describe the case of Martin Thomas, whose statement to police was turned into a threatening flyer that was posted throughout North Philadelphia.

While the primary goal of this flyer was to physically threaten the witness, it also served a secondary purpose, identifying Thomas as a rat who could no longer be trusted in this neighborhood. The idea that cooperating with police could in fact tarnish your reputation among family, friends and neighbors, even if the perpetrator of the crime was a feared or despised person, is at the core of the Stop Snitching phenomenon. Such intimidation techniques can only occur if the community buys into the Stop Snitching culture.

My goal today is to give you a better understanding of the people's attitudes toward snitching and cooperating with police, which ultimately facilitate the coercive witness intimidation techniques that we have heard so much about today.

The Stop Snitching phenomenon is widely discussed in the media, yet poorly understood as a psychological construct. It is regularly decried as a major impediment to law enforcement, and yet scant systematic research has been conducted to identify its possible origins. Even the word "snitch," which we talked about before, has been so misused and overused in the media, that it's now synonymous with anyone who cooperates with any authority figure, regardless of the situation.

For example, recently when National Football League Commissioner Roger Goodell recently called for players to tell their teams' medical staffs if they suspected a teammate showed symptoms of a concussion, Washington Redskin fullback Mike Sellers responded, "We ain't no snitches over here. This is not happening." What was once considered a code among thieves and then a code of the street is quickly becoming a societal norm.

The Snitching Project is an ongoing student-driven public policy research initiative in conjunction with Community College of Philadelphia's Center for Law and Society, aimed at developing a better understanding of the snitching phenomenon and facilitating community discussion through education.

The project began in 2007 as part of an applied psychology course at the college. Students conducted extensive library research on the topic of snitching and cooperating with police. Based on this research, students next conducted focus groups throughout the city of Philadelphia to get a better understanding of snitching, people's attitudes toward the police, and community involvement.

From these focus groups, we concluded that: (A) there is not one common definition of snitching; and (B) both attitudinal and situational factors influence whether, and to what extent, a person would provide evidence to the police.

We developed hypotheses regarding the nature of the snitching construct, possible antecedents and correlates of snitching attitudes, and situational factors, such as characteristics of the victim or the perpetrator, that might influence involvement. Then the students administer the survey to test their hypothesis to about 1,500 community college students, so we had a very large sample for this.

My goal today is going to be a brief summary of that research, along with some of the recommendations regarding ways to improve community involvement in our criminal justice system. I'm not going to go through the whole thing here, but a couple things I want to point out here.

First and foremost, one of the things that Commissioner Ramsey had spoken about was looking at people's life experiences and their attitudes toward snitching. One of the things he said was that people who had past experience with police and the criminal justice system and those who engaged in illegal behavior would be more likely to view any form of cooperating with police as a form of snitching. Further, they would be less likely to trust police.

What we found was that nearly half of our respondents reporting being victims of crime, so out of the 1,500 students we had asked, almost 750 said that they had been victims of crime in the city, and nearly two-thirds had friends or relatives who had been victims of crime as well. Twenty-one percent of the respondents have been in trouble with the police before; 17 percent reported being falsely accused of a crime in the past; 7 percent said they had been snitched on before, and only 2 percent said they'd ever snitched on anyone else.

What we found is that over 60 percent said that they knew a police officer personally, and nearly half reported cooperating with police in the past, although half the sample also said they did not trust police at all. Those respondents who knew police officers personally were more likely to trust the police and less likely to view cooperating with police as a form of snitching.

We also hypothesized that students who engaged in illegal behavior would be more likely to find snitching as cooperating with police and less likely to cooperate with police in any situation. To assess illegal behavior, we asked students if they'd used illegal drugs in the past 30 days. Fifteen percent of our sample said they had. We also asked students if they had drunk alcohol in the past 7 days. Since we also had students' age, we were able to identify those respondents who engaged in illegal underage drinking, and about 13 percent of our sample fell in that category.

Those students who engaged in these illegal behaviors were much more likely to view cooperating with police in any situation as a form of snitching.

Senator SPECTER. Professor Frei, may we leave the statistics for just a moment and talk about the psychological phenomenon?

Dr. FREI. Okay.

Senator SPECTER. What is the origin of the disapproval of someone who has been injured, robbed, beaten, observed a homicide/murder, testifying? What is wrong with that to bring social disapproval to it?

Dr. FREI. What we found in our survey is that students were very concerned about how cooperating with police would influence

their reputation in the neighborhood they lived in. Many of our students——

Senator SPECTER. Well, let's start with the simple proposition.

Dr. FREI. Okay.

Senator SPECTER. You get disapproved, but is there something wrong with that conduct? Identify any aspect of that conduct which is wrongful.

Dr. FREI. That's wrongful?

Senator SPECTER. Yes.

Dr. FREI. In regards to what?

Senator SPECTER. What's wrong with reporting a crime, especially if it's a crime against yourself?

Dr. FREI. What's wrong with reporting a crime?

Senator SPECTER. Somebody beat you on the head in a robbery and you go to the police and you testify in court. Is that person a snitch?

Dr. FREI. Well, actually, in our research we asked people how they defined the term "snitch," and what we found was that nearly 50 percent of our students talked about any form of cooperating with police at all as a form of snitching: picking someone out of a line-up, answering police questions——

Senator SPECTER. Well, somebody will say anything about anything. Now, my question to you, Professor, is a snitch someone who is beaten in a robbery, identifies the perpetrator and testifies in court?

Dr. FREI. In my definition, no. My definition of a snitch is someone who testifies against someone else as a way of reducing their sentence in a crime. That's the way I define it, and that's the way the majority of our students define it.

Senator SPECTER. Well, if you don't have the motivation to get a lesser sentence, you would not be a snitch?

Dr. FREI. I wouldn't define that as a snitch, but I think the majority of people in Philadelphia would.

Senator SPECTER. I gave you the example of the guy who's beaten on the head and robbed. Now, a witness who sees somebody beaten on the head and robbed and he testifies, is he a snitch?

Dr. FREI. I wouldn't think he's a snitch, but I think that there's a lot of people in Philadelphia that would consider anyone who cooperated with police a snitch. Is your question why is that?

Senator SPECTER. Well, is this an evolving view? When James Cagney shot Humphrey Bogart in 1935 and said, "You rat"——

Dr. FREI. I'm not familiar with the situation of why he shot him in the first place. Was he testifying against?

Senator SPECTER. I'll tell you why he shot him: it was in the script.

[Laughter.]

Senator SPECTER. It was a good movie. But my question to you, aside from the illustration, which I'm surprised that a man of your scholarly research didn't know about, was has the disapproval of snitches gotten greater in 2005 contrasted with 1935?

Dr. FREI. I think it's certainly been marketed. I think that part of it has to do with the fact that there are people who are making money off of the Stop Snitching movement. That certainly is a part

of it. So in that regard, I think it's more of a cultural thing because people are using it to make tee shirts and to sell albums.

Senator SPECTER. OK. Mrs. Clowden's son sees a man dousing her house with gasoline to burn her up, arson/murder. Is he a snitch?

Dr. FREI. For reporting that?

Senator SPECTER. Yes.

Dr. FREI. No, I don't think so.

Senator SPECTER. But in the community, would he be regarded——

Dr. FREI. I think in the community—well, you have to think about it in the larger context. It's not just this community, it's all communities. It's in the Senate. People in the Senate don't like to have other people——

Senator SPECTER. Well, the question of this community, all communities. Would he be regarded as a snitch?

Dr. FREI. In many circles, yes.

Senator SPECTER. Uh-huh. And why is that?

Dr. FREI. Why is that? Well, I think there are a number of reasons. Let's look at the fact that very often groups like to police their own. You know, I think——

Senator SPECTER. What's that? What's that?

Dr. FREI. To police their own. A lot of—you know, when we did focus groups throughout the——

Senator SPECTER. I still didn't understand. To police what?

Dr. FREI. Police their own police. I mean, when we went out in focus groups in the city——

Senator SPECTER. They want to police their own people?

Dr. FREI. Yes.

Senator SPECTER. As opposed to having the police department police them?

Dr. FREI. Yes. Absolutely.

Senator SPECTER. Well, who's going to go after this guy who commits the arson/murder?

Dr. FREI. Who is going to go after them? Many people in the city would say that——

Senator SPECTER. Is there a posse in the neighborhood, self-help?

Dr. FREI. We've seen that in the past. That's not uncommon to happen. We saw that in Kensington recently where a man was accused of molesting a child and a posse went after him. People like to police their own group. The police don't like outside people policing them.

Senator SPECTER. Let's stick with my examples, unless you want to be elected and run your own hearing.

Dr. FREI. Are you requesting that I do that? That would be good. I'd do that.

Senator SPECTER. If someone is considered a snitch because they see this guy douse the house with gasoline, then perhaps—or not perhaps. We ought to try to find some way to deal with that kind of a mentality, which is wrong.

Dr. FREI. Uh-huh.

Senator SPECTER. How do we do that? You're a professor.

Dr. FREI. I'd say we start when they're young. One of the things we found in our survey was that a lot of students were told grow-

ing up that snitching was a bad thing, that cooperating with police was a bad thing. You know, we think it's being influenced by a lot of outside sources, so is the family.

Senator SPECTER. Are you saying that's a prevailing culture in this community?

Dr. FREI. I would say, as Commissioner Ramsey said, people who are engaged in illegal behavior, even minor illegal behaviors, are less likely to cooperate with police. So if, for example, let's say you're a parent and you smoke marijuana. You would tell your children, oh, make sure you don't cooperate with police, it's bad to snitch, snitching's a bad thing. I think in many ways this is not coming from outside sources. A lot of times it comes from the family.

Senator SPECTER. Well, are you saying that it's a prevailing attitude in Philadelphia?

Dr. FREI. Absolutely. It's a common attitude in Philadelphia.

Senator SPECTER. Not distinguished by neighborhoods or racial——

Dr. FREI. Or age. No. It's a——

Senator SPECTER. Just to cooperate with police?

Dr. FREI. Just to cooperate with police in general.

Senator SPECTER. How many in this room think that cooperating with police is a bad thing to do and you'd be classified as a snitch and you're doing something bad to cooperate with police; would you raise your hands?

[Showing of hands.]

Senator SPECTER. How many of you think that to cooperate with police and report a crime is something that you ought to do?

[Showing of hands.]

Ms. HINES. If someone is classified as a snitch, then they could.

Senator SPECTER. And still be classified as a snitch?

Ms. HINES. The way you posed the question was a little——

Senator SPECTER. Consider yourself under subpoena and step forward so we can hear you.

[Laughter.]

Ms. HINES. Hi. My name's Erica Hines. It is the correct thing to do, to tell if you see a crime. However, that doesn't change the fact that the people in your community around with you will view you as a snitch. So your question was how many people think it's wrong, or how many people think that it's snitching to tell the police. I think that I would always cooperate with the police and I would tell the police whatever I knew if it could help someone. However, that doesn't mean that the people around me in my neighborhood would not view me as a snitch, they would. So your question is sort of two-fold. Did I say that right?

Senator SPECTER. Would you feel bad about being considered to be a snitch?

Ms. HINES. Personally, I don't. But I'm also—I mean, I'm a 35-year-old woman who is an attorney, who, no, I would not feel bad about it. But I understand that my 21-year-old brother would feel awful.

Dr. FREI. I mean, you also have to understand that people rely on their—and in a lot of these neighborhoods where there's not a strong family structure in a lot of these families, they rely on their

neighborhood to survive. You rely on the people who are your neighbors to get through the day, especially if you live in a violent neighborhood.

Senator SPECTER. There are a lot of neighborhoods with a strong family structure. Are you saying that in neighborhoods with a strong family structure, that people consider it being a snitch to cooperate with the police?

Dr. FREI. I would say that it's not a precursor to it, but certainly at least having a family structure to fall back on for support—you know, if I cooperated with a crime, if I saw a crime and I cooperated, my family would support me.

Senator SPECTER. Usually when I listen to an answer I try to figure out whether it's yes or no. I couldn't find your answer out at all.

Dr. FREI. So, repeat the question again.

Senator SPECTER. In a neighborhood with a strong family structure, would they consider cooperating with police to be a snitch?

Dr. FREI. They'd be less likely. I'll say that.

Senator SPECTER. You're still dodging, Professor.

Dr. FREI. I can't say no. I mean, I'm sure there are people—and our study found this, too. There were people who came from strong families who still consider cooperating with police being a snitch. I think they are less likely. In psychology we don't like to give yes or no answers, it's more or less likely.

Senator SPECTER. Well, you have identified a problem of sufficient intensity that it requires a response, in my opinion. I want to study it further, but it requires a response. The response may be, very directly, to instruct children in school that there's a duty to cooperate with law enforcement, where somebody—where they're a witness to something which is wrongful conduct, and that it is not something to be ashamed of, to cooperate with police, but something that ought to be done.

So if law enforcement breaks down because of some misguided notion about being a snitch, it's something we have to deal with. What do you think, Mr. Coard? I ask you there because you're nodding yes, otherwise I wouldn't have asked you.

Mr. COARD. I think first we need to define what snitching is. From my standpoint, snitching is not telling the police when you witness a crime. That's simply being a good citizen. Snitching is when you're one of the criminals and you get caught and you tell on your compatriots. That's snitching. That's the textbook definition of snitching.

I mean, they say there's no honor among thieves, and maybe there isn't any honor among thieves. But from my standpoint, snitching has a specific definition. Unfortunately, most people don't know what it is, but snitching does not mean telling the police when you see a crime. It means being a criminal and telling on your partners.

Senator SPECTER. Well, that is an acceptable definition for social conduct, I would say. But I would take it one step further. Frequently somebody will testify against a co-conspirator to get a reduced sentence, and of course that is sanctioned by the law.

Mr. COARD. Yes.

Senator SPECTER. That is encouraged. Do you think that the person who tells the truth against a co-conspirator to get a lesser sentence himself or herself is doing something wrong?

Mr. COARD. Doing absolutely nothing wrong, doing everything right. A snitch nonetheless, but doing everything right.

[Laughter.]

Senator SPECTER. Well, it's been very illuminating. Thank you very much, Mrs. Clowden, Mr. Canada, Mr. Coard, and Professor Frei.

What the Subcommittee is going to do, is examine these issues further. One action is to try to encourage and support grants to cities like Philadelphia for witness protection programs. Another line would be my inclination, after some further study, to propose Federal legislation to make it a Federal crime to intimidate a State court witness. That turns on whether it's involved in interstate commerce. You can't take something which is purely local. But criminals move in interstate commerce, and I think that would be upheld. I think it would be socially desirable.

My conclusion from the witnesses' testimony and my own experience is that people are a lot more apprehensive about being charged with a Federal crime when the FBI comes in and appearing before a Federal judge, where the cases are better prepared, they do have more resources, the sentences are longer, and the continuances are much tougher to get and cases don't go on for years. When the DA is criticized in Philadelphia for a conviction rate which turns on witnesses who do not appear because they are intimidated, that's not the DA's fault.

But I think there is a gigantic problem in Philadelphia today called witness intimidation, tragic stories told by Mr. Clowden and Mr. Canada, tragic stories. Beyond the personal tragedy for their own families, it's a breakdown of the criminal justice system. When murderers get away with it because witnesses are intimidated, there's no evidence, as we heard in the testimony, that's a total breakdown of the rule of law and that's an appropriate role for the Federal Government to come and help out.

Thank you all very much. That concludes our hearing.

[Whereupon, at 11:13 a.m. the hearing was concluded.]

[Submission for the record follow.]

SUBMISSIONS FOR THE RECORD

TESTIMONY BY THEODORE L. CANADA

In 2005, I lost my son Lamar L. Canada in a violent way on the streets of Philadelphia. A very courageous and brave young man by the name of Johnta Gravitt who saw the entire episode, decided to testify to what he saw of the event. Ten days after he gave his testimony, he was killed. It is being said by the police, that there was no connection between his testifying to what he saw of my son's murder, but we all know in our hearts by his stepping up and speaking out is what got him killed. Nothing was done by the City of Philadelphia, or the Police to protect Johnta for stepping up and doing the right thing. The day Johnta testified, the Police did not even have the decency to make sure he was taken home safely. His way of getting home was by bus, but my Uncle took him home instead. Police said it would be safer for Johnta to take a bus then for him to have two white Police officers arrive at his home with him. Wouldn't this have shown, that at least he had some protection around him? Or better still, have two black Police officers take him home in an unmarked car. Did anyone offer him witness protection?

We need to make some drastic changes to protect the witnesses to these crimes, it does not always take money to make changes, just common sense. Example:

1. **Stop making it so easy for witness information to get out.**
2. **Anyone who leaks witness information, should be held accountable.**
3. **There are too many postponements to court cases.**
4. **Witnesses are afraid to travel back and forth to court.**
5. **Rotate police officers to let them become more proficient at their jobs.**

The family of Lamar L. Canada would like the family of Johnta Gravitt to know that we are deeply sorry for their loss and that they have our deepest sympathy and gratitude for his unselfish act. Johnta will always be a Hero in our Hearts.

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The Statement of Barbara Clowden

Greetings, thank you for the opportunity to be here with you today.

I stand here before you today to speak regarding the effects of witness intimidation and in loving memory of my son, Eric Hayes, who was gunned down at the bus stop on Thanksgiving eve, three days before testifying in trial.

Sometime ago District Attorney Lynn Abraham put out a call for people to stand up against criminal activity and speak out. It seemed in her campaign, the city would offer help to those witnesses who stood up against criminal activity. Unfortunately, her noble outcry to solicit witnesses willing to stand up for justice caused my son his life. I know my son did the right thing by offering to testify against criminals who need to be off the street s of Philadelphia, but he paid with his life because the City of Philadelphia has no process in place to support witnesses who do step up, speak out and do the right thing. The city solely depends on the state for help protecting much needed witnesses and the state can only offer temporary help which is minimal protection at best.

This is where my story begins. On November 13, 2005@ 2 a.m., my son heard and witnessed two people pouring gasoline around the front door or our home. He did not take the law into his own hands, instead we contacted the authorities and he pointed out the individuals to the police in our District. Although the police caught the suspects smelling like gasoline, there were prolonged court dates and hearings, bogging down the process which would lead to a speedy conviction. After being intimidated and threatened for 2 months for speaking out, we entered into witness the "relocation" program. (It was a year or more later that to my surprise, I learned that there is a distinct difference between witness protection and witness relocation.)

The state's witness relocation program offers shelter which during this timeframe the victims are to secure housing and safety within four months. This to me is where the problem begins. For a person who cannot afford to permanently relocate to safety in that period of time, they are left to fend for themselves. That is what happened to my family. When I realized that I could not afford to leave the city to save my sons life, I appealed to the City for help. My request simply put – please help me to get a subsidized housing voucher so that I could affordably and safely live outside of the city. When I appealed to the following agencies they had no process in place that could help: Mayor John Street office, Councilwoman Anna Verna, Councilwoman Janie Blackwell, Congressman Brady, Dwight Evans office and OESS. Instead, we were placed into hotels where thousands of dollars were spent, and then later placed into the transitional housing program. Meanwhile, my home that I struggled to purchase for my family was left vacant, because of the intimidation of criminals.

On November 22, 2006, two days before he was to testify, my Eric was gunned down in the very neighborhood where housing was provided by the transitional housing program. For the record, my Eric was not working or hanging in our old neighborhood during this time.

In conclusion, three years after losing my son to those he was trying to protect others from, I find myself a disabled single mother, struggling, renting a home that I cannot afford, while the home that I

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own and can afford I cannot return too with certainty that my family will be safe. If it had not been for my faith, my Bishop and church family who encourage me and my sons to stay on the right side of the law and stay far away from the negativity, then my remaining two sons could have fallen victim to the retaliation mindset that sweeps across this city and I could have lost them as well. Instead, I chose to have faith and continue to stand up for justice knowing that one day we will have a home again and we will get justice for Eric.

Thank you for taking the time to listen to my story.

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December 31, 2009

Senator Arlen Specter
United States Senate
711 Hart Senate Office Building
Washington, DC 20510

Dear Senator Specter:

First of all, I gratefully thank you for inviting me to testify before the Senate Committee on the Judiciary- Committee on Crime and Drugs regarding "Federal Efforts to Address Witness Intimidation at the State and Local Levels." I am honored, as I am sure the other invitees are, to be here.

I have been a trial lawyer for nearly 20 years, a civic activist for more than 15 years, a local radio show host for over 10 years, and a university adjunct professor for approximately five years. And it is because of those roles that I can unequivocally say that the best way- in fact the only way- for the federal government to address witness intimidation at the state and local levels is by adhering to the Constitution of the United States of America. Stated another way, the federal government must make sure that it does not break the law in order to make the law.

The United States Constitution in the Sixth Amendment and the Pennsylvania Constitution in Article I, Section 9 mandate that a person accused of a crime has the fundamental right "to be confronted with the witnesses against him" (or her). I mention this because one of the first actions always considered in the commendable attempt to protect against witness intimidation is the condemnable attempt to allow illegal hearsay in as evidence in a trial or hearing. The erroneous rationale is that the most effective way to stop witness intimidation is to allow police officers or other persons to testify in court about what they allegedly heard someone else- who is not in court- say. Not only is that unconstitutional, it is also unfair.

In Pennsylvania, including obviously Philadelphia, there is case law and statutory law already on the books that, under certain legally sanctioned circumstances, allow for non-testifying witnesses' (i.e., hearsay issue-related witnesses') statements to be entered in to evidence. One example is Rule 803 of the Pennsylvania Rules of Evidence. Moreover,

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numerous longstanding Pennsylvania appellate court decisions permit such throughout the criminal court process- most notably, inter alia, at preliminary hearings wherein hearsay objections by defense attorneys are often a complete waste of breath.

Furthermore, in cases wherein witnesses do appear in court but purportedly are so intimidated that they testify in a manner that contradicts their previous statements to police against defendants, there also are laws already on the books that, once again under certain legally sanctioned circumstances, allow for those earlier inculpatory prior inconsistent statements to be used against defendants regardless of what those witnesses later testify to in court. Two examples are Rules 607 and 613 of the aforesaid Pennsylvania Rules of Evidence. And there are longstanding Pennsylvania appellate court decisions that also allow such.

Accordingly, there is absolutely no need for federal involvement in terms of creating law or expending limited resources. Neither is there absolutely any need for creating more state law. Instead, there is simply a need to more intelligently, hence efficiently, enforce state law that already exists.

In addition to the aforementioned state laws that already permit certain hearsay statements or hearsay issue-related statements to be entered in to evidence, there are also state laws that already protect victims of witness intimidation. And those laws are found in Pennsylvania crimes code sections 4952 (Intimidation of Witnesses or Victims) and 4953 (Retaliation Against Witness, Victim, or Party), both of which can be charged as felonies.

We all must and should have genuine sympathy for victims of witness intimidation, certainly when violence results and especially when death results. But the federal government should not be in the business of engaging in unlawful (i.e., unconstitutional) behavior in an attempt to protect the public from criminals' unlawful (i.e., murderous and otherwise violent) behavior. The constitution must and should apply to the law-abiders as well as to the law-breakers. After all, this *is* America.

I would be remiss if I failed to address what actually led to this hearing. And that is the Philadelphia Inquirer's apparently well-intentioned but frightfully inflammatory and journalistically incomplete four-part series from December 13-16, 2009.

It was frightfully inflammatory in its unnecessary use of phrases such as "***blood splashed***," "witness intimidation… (as) an ***epidemic*** in Philadelphia… (that)… ***pervades*** Philadelphia criminal courts… (which are in a) ***crisis***," and also defendants "beating cases… (and) escaping convictions with ***stunning regularity***."

Senator Specter
December 31, 2009
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It was journalistically incomplete in its failure to fairly acknowledge an essential principle of American criminal jurisprudence, which is that a person who is arrested is always presumed innocent. As stated to me by Troy H. Wilson, Esquire, a noted criminal and civil court litigator and the former chairman of the Philadelphia Bar Association's Criminal Justice Section, "The Inquirer's articles were based on a flawed premise, which is that people released on so-called technicalities were guilty. However, the presumption of innocence is paramount and continues even after a person's case has been discharged whether due to the District Attorney's delay or any other reason." In addition, asserted Wilson, defendants do not automatically get off scot-free during those (actually) relatively few times when cases are dismissed as a result of witnesses' failure to appear. As he makes clear, "The District Attorney has the legal wherewithal to merely and easily file a motion to re-arrest a defendant on the very same dismissed charges in such cases. It's as simple as that."

The Inquirer directed most of the blame for this supposed epidemic and crisis on criminal defense attorneys- the men and women who serve as vigilant watchdogs to make sure that the state and federal constitutions are respected and that the local, state, and federal governments are barred from unconstitutional violations. The newspaper claimed that "defense lawyers routinely exploit the court system's chaos... by delay(ing) cases to wear down victims and witnesses and seek spurious postponements if they know prosecution witnesses are in court and ready to go." The moniker "Philadelphia special" was used in part four of the series to describe this kind of unethical tactic. However, prominent defense counsel George H. Newman, Esquire, indicated to me that in his more than three decades as a criminal trial lawyer, he has never heard of such a name or concept. And in my nearly two decades, neither have I. And that is because it does not exist. Mr. Newman made another and much more key point about the series in general when he said that "The Inquirer's statistical analysis is unrealistic, since it includes preliminary hearings. As all lawyers and judges know, the District Attorney consistently overcharged arrested persons, filed baseless criminal accusations, and prosecuted unprovable cases." Moreover, remarked Newman, the articles "are filled with statistical misrepresentations, panicky innuendos, and some worst-case anecdotes."

In connection with baseless criminal accusations and unprovable cases, another distinguished criminal trial attorney, namely Charles A. Cunningham who is the First Assistant in the Defender Association of Philadelphia and has been a member of the Pennsylvania bar for 35 years, pointed out to me that the District Attorney often accuses and jails factually innocent people. He noted the recent case wherein someone allegedly claimed to have been attacked by three persons, which resulted in three men being arrested, detained, and jailed when they could not afford to pay bail. However, after three months- i.e., about 90 days- when the preliminary hearing was finally held, the complainant identified only one of the three as an attacker. The second defendant was

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actually a good Samaritan who had attempted to intervene on behalf of the victim and the third defendant was merely present with 20 others near the scene. Why didn't the District Attorney investigate the facts before, in effect, sentencing these two defendants to unwarranted and lengthy jail time? Although these two were ultimately released as a result of the unrebutted exculpatory evidence at the preliminary hearing, they lost a quarter of a year of their lives that can never be replaced and for which they will never be compensated. And they, as well as many other similarly situated persons, are cavalierly lumped in to the Inquirer's gang of defendants who are supposedly "beating cases… (and) escaping convictions with ***stunning regularity***."

As mentioned in Mr. Cunningham's final comments, even if the criminal justice system is completely broken it is not because of what the Inquirer contends. Instead, it is because of the system that refuses to address "the real issues that cause crime to occur in the first place"- obvious issues such as the lack of education and employment.

While there is no crisis, there is a problem, even if just a comparatively few witnesses are intimidated. But with every problem, there is always a solution. And that solution- without the need for journalistic "hair on fire, sky is falling" alarmism- is quite simple. In fact, any, some, or all of the following could immediately be implemented:
1) Housing, transportation, protection, and/or financial incentives for witnesses before trial;
2) Relocation for witnesses after trial;
3) Separate courtroom waiting rooms for witnesses;
4) Community policing/community prosecuting, coalition-building with ex-cons, local athletes, and local Hip Hop celebrities in order to persuade citizens (especially those in the approximately 15-25 age range) that cooperating with law-enforcement to protect one's own neighborhood does not constitute "snitching"; and/or
5) Education, job training, employment opportunities in high crime neighborhoods in order to discourage criminality, which would reduce crime and which in turn would reduce even the need for witnesses.

In conclusion, I again thank the esteemed Senator Specter for inviting me to testify at this committee hearing regarding primarily the purported crisis of witness intimidation in Philadelphia. And I end my testimony with a question: If there is so much witness intimidation- meaning evidence ostensibly substantial enough to justify arresting, charging, and jailing so many persons with that serious crime, why then are more than seven out of ten persons accused of that offense found not guilty or otherwise freed?

Respectfully submitted,

MICHAEL COARD
MC/ic

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Senate Judiciary Committee
Field Hearing on "Federal Efforts to Address Witness Intimidation at the State and Local Level"
Friday, January 8, 2010

Statement of U.S. Senator Russell D. Feingold

Providing adequate protection for witnesses in criminal cases is a vital task for law enforcement. Unfortunately, many state and local law enforcement authorities do not have the resources necessary to offer comprehensive witness protection and security, and state and local budget cuts have resulted in further cuts to already limited witness protection and relocation programs. As a result, witness intimidation continues to be a serious problem in cities all over the United States.

In 2007, the city of Milwaukee experienced a particularly tragic witness intimidation case. Maurice Pulley, Jr. was the victim of a violent crime that left him seriously wounded. Before the case against his attacker went to court, Pulley was offered $75,000 by the suspect's family to keep silent. Pulley decided to do the right thing, refused the bribe, and appeared in court ready to testify against his attacker. The next day, he was gunned down in his parents' driveway during a family barbeque. Maurice Pulley, Jr. was just 24 years old.

The Pulley case is just one heartbreaking example of a widespread problem that is plaguing American cities. We must prioritize witness protection, and the Witness Security and Protection Grant Program Act of 2009 takes an important step toward this objective. The Act provides state and local law enforcement agencies with the federal support they need to implement viable witness protection programs and prevent witness intimidation. The grants provided under this bill will enhance witness security by funding protection programs and encouraging cooperation between witnesses and law enforcement. Witness protection must begin at the street level, and these grants will help both police departments and district attorney's offices. In addition, the bill will provide state and local programs with technical assistance from the U.S. Marshals Service, which has successfully protected witnesses through the Federal Witness Security Program since 1970.

Even relatively small grants can make a big difference for state and local witness protection programs. After Maurice Pulley's death, the Milwaukee County District Attorney's office instituted a pilot witness protection program with just $50,000 of Byrne Justice Assistance funding. With this small amount of seed money from the federal government and a group of dedicated, creative investigators, District Attorney John Chisholm was able to create an innovative program that focused on responding immediately to any threats or intimidation reported by witnesses. The DA's office partnered with Marquette University, and started using interns to review hundreds of

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hours of jail conversations. The DA's office also started providing witnesses with cell phones and relied on other lower-cost interventions that would give witnesses some assurance that law enforcement was doing whatever they could to keep them safe before trial.

The program – which was recently dedicated to Pulley – has helped reduce crime in Milwaukee, and has led to more convictions for crimes related to witness harassment and intimidation. The Milwaukee District Attorney's office is a great example of how state and local governments can accomplish a lot with just a small amount of federal money. But we need to do more. Witness intimidation starts at the scene of a crime, long before a prosecutor is assigned to the case. Without witness cooperation, it is extremely difficult for law enforcement to even investigate cases. Law enforcement needs resources to be able to provide assurances to witnesses that if they come forward and report what they saw, they will be protected.

Witness protection programs like Milwaukee's need further support, and states and counties without programs need the funding to establish them. The federal government should aid these programs at the state and local level as much as possible, and that is what the Witness Security and Protection Grant Program Act is designed to do.

I want to thank Senator Specter for holding this important field hearing, and I look forward to working with him and my other colleagues on the Judiciary Committee to resolve this issue.

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Written Testimony Submitted to the
Subcommittee on Crime and Drugs
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Field Hearing on Federal Efforts to Address Witness Intimidation at the State and Local
National Constitution Center
525 Arch Street
Philadelphia, PA
January 8, 2010

WITNESS INTIMIDATION AND THE SNITCHING PROJECT

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Introduction

Mr. Chairmen and Committee Members:

Thank you for the honor of appearing before you today. My name is Richard Frei and I am an associate professor of psychology at Community College of Philadelphia. My area of expertise is applied community research, specializing in using large scale survey research as a teaching tool in my psychology courses. Over the past decade, I have overseen a number of large scale community surveys on topics such as the use of check cashing centers, corporal punishment, attitudes towards guns and gun violence, and, over the past two years, the Stop Snitching phenomenon and its impact on community involvement in the Philadelphia criminal justice system.

Today, we have heard heartbreaking and disturbing testimony from victims and advocates regarding rampant witness intimidation that is prevalent in Philadelphia. My goal today is to frame that testimony in the larger context of the Stop Snitching movement. For example, in the *Philadelphia Inquirer*'s recent extensive reporting on the failures of our criminal justice system, the reporters describe the case of Martin Thomas, whose statement to police was turned into a threatening flier that was posted throughout North Philadelphia. While the primary goal of the flier was to physically threaten the witness, it also served a secondary purpose; identifying Thomas as a "rat" who could no longer be trusted in the neighborhood. The idea that cooperating with police could, in fact, tarnish your reputation among family, friends, and neighbors, even if the perpetrator of the crime was a feared or despised person, is at the core of the Stop Snitching phenomenon. Such intimidation techniques can only work if the community "buys into" the Stop Snitching culture. My goal today is to give you a better understanding of people's attitudes towards snitching and cooperating with police, which ultimately facilitate the coercive witness intimidation techniques that we have heard so much about today.

The Stop Snitching phenomenon is widely discussed in the media, and yet poorly understood as a psychological construct. It is regularly decried as a major impediment to law enforcement, and yet scant systematic research has been conducted to identify its possible origins. Even the word *snitch* has been so misused and overused in the media that it is now synonymous with anyone who cooperates with any authority figure, regardless of the situation. For example, when National Football League Commissioner Roger Goodell recently called for players to tell their teams' medical staffs if they suspected a teammate showed symptoms of a concussion, Washington Redskins fullback Mike Sellers' responded: "We ain't no snitches over here!...That is not happening." What was once a code among thieves, and then a code of the streets, is quickly becoming a societal norm.

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The Snitching Project is an ongoing student-driven public policy research initiative, in conjunction with Community College of Philadelphia's Center for Law and Society, aimed at developing a better understanding of the snitching phenomenon and facilitating community discussion through education. The project began in 2007 as part of an Applied Psychology course project at the college. Students conducted extensive library research on the topics of snitching and cooperating with police. Based on this research, the students next conducted focus groups throughout the city of Philadelphia to gain a better understanding of snitching, people's attitudes towards the police, and community involvement. From these focus groups, we concluded that: a) there is not one common definition of snitching, and b) both attitudinal and situational factors influence whether (and to what extent) a person would provide evidence to the police. We developed hypotheses regarding the nature of the snitching construct, possible antecedents and correlates of snitching attitudes, and situational factors, such as characteristics of the victim or the perpetrator, that might influence involvement. The students developed a survey to test their hypotheses, which they administered to nearly 1500 Community College students (see Appendix A for survey).

My goal today is to give you a brief summary of that research, along with some recommendations regarding ways to improve community involvement in our criminal justice system.

Results from the Snitching Project

I. Definition of Snitching

Our first goal was to better understand how people were defining the word snitching. In our original focus groups, we found that it was difficult to draw conclusions about people's attitudes towards snitching because everyone was defining the word differently. We provided respondents with a list of situations and asked them to indicate whether each was an example of snitching or not. Our results confirmed that people differed in how they define snitching. The traditional definition of snitching, that is, ratting on someone else to get out of a crime, was the most accepted example, although the less serious situations (tattling, telling on a classroom cheater) also received high ratings (over 50%), indicating the word has different meanings in different contexts.

Overall, in terms of cooperating with police, there seemed to be a relationship between perceptions of snitching and initiative. The more the situation required the person to take initiative (e.g., it takes more initiative to call the police than it does to answer questions if you are already at the scene of a crime), the more likely it was to be viewed as snitching. Below is the list of situations and the percentage of students who indicated that the situation was an example of snitching:

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- Ratting on someone else to get out of a crime: 83%
- Reporting a classmate cheating on an exam: 74%
- Tattling on a brother or sister: 56%
- Helping the police set someone else up: 50%
- Picking a suspect out of a police lineup: 29%
- Witnessing a crime and calling the police to report it: 28%
- Answer questions from police if you are at the scene of the crime: 16%

II. Situational Factors That Influence Cooperation

Based on our previous research with focus groups, we knew that situational variables may influence whether a person would cooperate with police or not. We looked at four categories of variables: Characteristics of the victim, characteristics of the perpetrator, characteristics of the crime itself, and outcomes for cooperating.

Overall, respondents were more likely to cooperate with police if the victim was a senior citizen, a child, a friend, a relative, a disabled person or the respondents themselves. They were also more likely to cooperate if the perpetrator was a police officer. Respondents were less likely to cooperate with police if the victim was a known drug dealer. Likewise, respondents were less likely to cooperate with police if the perpetrator was a friend or a relative or the crime was nonviolent in nature.

If the perpetrator had a reputation as being dangerous, 42% of respondents said that they would be more likely to cooperate with police, while 22% said it would make them less likely to cooperate with police. Likewise, if the crime involved gang members, 35% of respondents said that they would be more likely to cooperate with police, while 25% said it would make them less likely to cooperate with police.

Most of the outcomes (reward, guaranteeing a criminal gets off the street, resulting in an innocent person or the respondent to go free) would make respondents more likely to cooperate, with one notable exception. Nearly 30% of respondents said they would be less likely to cooperate if it would affect their reputations in the neighborhood, higher than any other situational variable.

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III. Life Experiences and Snitching Attitudes

Our initial research indicated that people's past experience with police and the criminal justice system, as well as their propensity to engage in illegal behavior, would be more likely to view any form of cooperation with police as a form of snitching. Further, we also hypothesized that those who listened to Stop Snitching-themed music would be more likely to view any form of cooperation with police as a form of snitching. Finally, we hypothesized that those respondents who viewed themselves as religious would be less likely to view any form of cooperation with police as a form of snitching and more likely to cooperate with police across different situations.

A. Past Experience with the Police and the Criminal Justice System

Nearly half of all respondents reported being victims of crime and two thirds had friends and relatives who had been the victims of crime. 21% of respondents had been in trouble with police before, 17% reported being falsely accused of a crime in the past, and 7% said that they had been snitched on before. Only 2% said that they had ever snitched on anyone else.

While over 60% said that they know a police officer personally, and nearly half reported cooperating with police in the past, half of the sample also said that they did not trust police. Those respondents who knew police officers personally were more likely to trust the police and less likely to view cooperating with police as a form of snitching.

Over one-third of all respondents had participated in the D.A.R.E program before, an anti-drug program that is run by police officers and has been tied to more positive perceptions of police officers. However, those who had participated in the D.A.R.E. program were no less likely to have done illegal drugs in the past 30 days, nor were they more likely to trust police or personally know a police officer than those who had not gone through the D.A.R.E. program. Nearly half of all respondents said that they would be more likely to cooperate in criminal investigations if there was someone else besides the police to which they could report crimes.

B. Illegal Behavior

We hypothesized that respondents who were recently engaged in illegal behavior would be: 1) more likely to define snitching as cooperating with police in any situation and 2) less likely to cooperate with police in any situation. To assess illegal behavior, we asked students if they had used an illegal drug in the past 30 days, a direct measure of illegal behavior. 15% of our sample admitted to

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using illegal drugs within the last 30 days. We also asked students if they had drunk alcohol in the past seven days. Since we also had students' ages, we were able to identify those respondents who engaged in illegal underage drinking, an indirect measure of illegal behavior. 13% of our sample who reported drinking alcohol in the last seven days was also under the age of 21.

Students who had engaged in these illegal behaviors were more likely to view cooperating with police in any situation as a form of snitching. Drug users in particular had significantly different life experiences than non drug users. They were significantly more likely to have been the victims of crime (62% of drug users as compared to 39% of non drug users), more likely to have friends and relatives who had been the victims of crime, and more than twice as likely to have been in trouble with the police in the past.

C. Music and Snitching

We hypothesized that respondents who listened to music that explicitly says that snitching is bad would be: 1) more likely to define snitching as cooperating with police in any situation and 2) less likely to cooperate with police in any situation. Not surprisingly, those who listened to music that said that snitching was bad were more likely to define snitching as any cooperation with police and less likely to be influenced by situational factors when deciding whether to cooperate with police or not. Interestingly, while nearly 35% of all respondents admitted that they listened to music that said that snitching is bad, only 5% said that the music they listen to influenced their attitudes towards snitching.

D. Religiosity and Snitching

We asked respondents "Do you consider yourself religious?" 60% said yes and 40% said no. We hypothesized that respondents who identified themselves as being religious would be: 1) less likely to define snitching as cooperating with police in any situation and 2) more likely to cooperate with police in any situation. There were no differences between religious and nonreligious students regarding how they defined snitching. However, across all situations, religious students were more likely to cooperate with police than nonreligious students EXCEPT when: 1) there was a reward for doing so and 2) if by doing so the respondent would go free. These differences in cooperation may be related to life experiences. Nonreligious students were more likely to have tried drugs in the past month and drunk alcohol in the past seven days, although there was no difference between religious and nonreligious students in terms of past trouble with the police or trust of the police.

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Conclusions and Recommendations

The Snitching Project is currently entering Phase II of data collection, focusing more extensively on methods of increasing community involvement in our criminal justice system. However, based on our initial findings, I offer the following recommendations:

- Increasing community confidence in our criminal justice system should increase community involvement. Nearly 63% of respondents said that they would be more likely to cooperate with police if doing so would *guarantee* that a criminal was off the streets.

- Certain situational variables (such as characteristics of the victim) will result in higher levels of cooperation with police. For example, respondents were far more likely to cooperate with the police if the victim was a child or a reward was involved. Perhaps the media could focus on the familial relations of the victim (the victim has children or grandchildren) as a method of increasing cooperation.

- Efforts must be made to improve the relationship between the police and the community. Our survey found that those people who personally knew a police officer were more likely to trust police and less likely to view cooperating with police as a form of snitching. Efforts should be made to recruit police cadets from underrepresented neighborhoods and have local police officers play a bigger role in non-law enforcement neighborhood activities. Financial incentives in the form of housing grants should be given to police officers to choose to live in the communities in which they serve.

- Until we can improve relations between the police and citizens, we need to develop other mechanisms within the community that allow for community involvement without directly going to the police. As previously stated, nearly half of all respondents said that they would be more likely to cooperate in criminal investigations if there was someone else besides the police to which they could report crimes. Anonymous tip lines or Internet-based methods of reporting a crime may improve community involvement.

I'd like to thank Senator Specter and the rest of the committee for allowing me to testify on this critical issue.

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Appendix A: The Snitching Survey

THE SNITCHING SURVEY

Thank you very much for agreeing to participate in the survey. This survey was developed by the students of Dr. Rick Frei's *Introduction to Applied Psychology* course to measure attitudes about snitching and cooperating with police. The survey is anonymous and your responses will be kept confidential, so please answer honestly.

We will be presenting the overall results of this survey during Law and Society Week next semester. If you have any questions about the survey, the course, or the presentation, please contact Dr. Rick Frei at rfrei@ccp.edu.

Instructions:

- **PARTICIPATION IN THIS SURVEY IS OPTIONAL.** If at any time you decide that you do not want to participate, simply keep the survey and do not return it to the survey administrator.
- The survey is anonymous, so **PLEASE DO NOT PUT YOUR NAME ANYWHERE ON THE SURVEY!**
- **ALL QUESTIONS ARE OPTIONAL!** If you do not feel comfortable answering a question, you may skip it.
- If you have filled out the survey in another class, **PLEASE DO NOT FILL IT OUT AGAIN.**
- When you have completed the survey, place it back in the folder and return it to the survey administrator.

I. Demographic Information

Instructions: We would like to know about you. Please answer the following questions. ***If you do not feel comfortable answering a question, you may skip it.***

1. Age: _____
2. Sex: Male Female
3. Race:
   A) African American/Black
   B) Asian/Pacific Islander
   C) Latino/Hispanic
   D) Native American
   E) White
4. Marital Status: Married Single Live-in Partner
5. Are you a parent? Yes No

II. What is Snitching?

Instructions: We would like to know how **you** define the word "snitching". For each situation below, please indicate with an "X" whether you think it is an example of snitching or not. ***If you do not feel comfortable answering a question, you may skip it.***

Situation	This is snitching.	This is NOT snitching.
A child tattles on his brother when he does something bad.		
A student witnesses someone cheating on an exam and reports it to the teacher.		
A person witnesses a crime and calls the police to report it.		
A person who is at the scene of the crime answered questions by police.		
A person who is at the scene of a crime picks out the perpetrator in a police line up.		
A person agrees to cooperate with police in helping set someone else up.		
A person rats on someone else to reduce his sentence for a crime that he committed.		

III. Life Experiences

Instructions: We would like to know about your life experiences. Please answer the following questions by circling Yes or No. ***If you do not feel comfortable answering a question, you may skip it.***

1. Have you ever been the victim of a crime?	Yes	No
2. Have any of your relatives ever been the victim of a crime?	Yes	No
3. Have any of your friends ever been the victim of a crime?	Yes	No
4. Have you ever been in trouble with the police?	Yes	No
5. Have you ever cooperated with the police before?	Yes	No
6. Do you consider yourself religious?	Yes	No
7. In the past 30 days, have you used an illegal drug?	Yes	No
8. In the past seven days, have you drank alcohol?	Yes	No
9. Do you listen to music that explicitly says that snitching is bad?	Yes	No
10. Does the music you listen to affect your attitude towards snitching?	Yes	No
11. Have you ever been falsely accused of a crime?	Yes	No
12. Has anyone ever snitched on you to the police?	Yes	No
13. Have you ever gotten out of trouble with police by snitching on someone else?	Yes	No
14. Do you trust the police?	Yes	No
15. Do you personally know any police officers?	Yes	No
16. Would you be more likely to cooperate in criminal investigations if there was someone else (ie., a neighborhood watch group) to report a crime to besides the police?	Yes	No
17. Are you currently working in the law or law enforcement profession?	Yes	No
18. Do you plan on having a career in law or law enforcement?	Yes	No
19. Did you participate in the D.A.R.E. drug prevention course in school?	Yes	No
20. Did your parents/guardians teach you that snitching was bad?	Yes	No

IV. What Influences Whether You Cooperate with Police?

Instructions: We would like to know what factors might influence whether you would cooperate with police or not. For each hypothetical situation below, please indicate with an "X" whether it would: a) make you less likely to cooperate with police, b) make you more likely to cooperate with police, c) have no effect on whether you cooperate with police or not. ***If you do not feel comfortable answering a question, you may skip it.***

1) Characteristics of the VICTIM: Would you be more or less likely to cooperate with police if the VICTIM of the crime was...

Victim	It would make me less likely to cooperate with police	It would make me more likely to cooperate with police	It would have no effect on whether I cooperate with police
a senior citizen?			
a child?			
a relative?			
a friend?			
a disabled person?			
a known drug dealer?			
yourself?			

2) Characteristics of the PERPETRATOR (person who committed the crime): Would you be more or less likely to cooperate with police if the PERPETRATOR of the crime was...

Perpetrator	It would make me less likely to cooperate with police	It would make me more likely to cooperate with police	It would have no effect on whether I cooperate with police
a teenager?			
a relative?			
a friend?			
a police officer?			
someone with a "reputation" of being dangerous?			

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3) Characteristics of the CRIME: Would you be more or less likely to cooperate with police if the CRIME...

Crime	It would make me less likely to cooperate with police	It would make me more likely to cooperate with police	It would have no effect on whether I cooperate with police
was a violent crime?			
was a non-violent crime?			
involved a gun?			
involved drugs?			
involved members of a gang?			

4) OUTCOMES of Cooperating with Police: Would you be more or less likely to cooperate with police about a crime if...

Outcome	It would make me less likely to cooperate with police	It would make me more likely to cooperate with police	It would have no effect on whether I cooperate with police
there was a reward for cooperating?			
doing so would *guarantee* that a criminal was off the streets?			
it would damage your reputation in the neighborhood?			
doing so would result in an innocent person going free?			
doing so would result in *you* going free?			

Thank you very much for your participation in this survey. When you have completed the survey, place it in the folder and wait for the survey administrator.

Marlene L. Olshan, Chief Executive Officer
Big Brothers Big Sisters Southeastern PA
Telephone: 215-790-9200
Email: molshan@bbbssepa.org

SENATE JUDICIARY SUBCOMMITTEE FIELD HEARINGS ON WITNESS INTIMIDATION
NATIONAL CONSTITUTION CENTER
PHILADELPHIA, PA

Written Testimony of Marlene L. Olshan, Chief Executive Officer, Big Brothers Big Sisters Southeastern PA

January 8, 2010

Dear Chairman Leahy, Senator Specter and Members of the Committee,

Thank you for allowing me the opportunity to submit written testimony regarding effective strategies for addressing the challenges facing Philadelphia's criminal justice system.

In the Philadelphia Inquirer series that precipitated these hearings, we learned the frightening tale of a young man who has "celebrated" more arrests (44) than birthdays (23).

The series detailed an array of challenges and problems facing Philadelphia's criminal justice system – from low conviction rates to "revolving doors" and a pervasive, indifferent attitude towards the rule of law, public safety and well-being.

In the pages of The Inquirer, at public forums and in the course of these hearings, a myriad of experts have weighed in on these problems and offered potential actions needed to fix our hemorrhaging criminal justice system. While many, if not all of these suggestions have merit, none of them will address the circumstances that result in a boy being arrested 11 times as a youth and 44 times before his 24th birthday.

In Philadelphia, too many children are struggling with family poverty, limited academic opportunities, familial incarceration, violence, and a lack of access to successful adults who can serve as role models. This confluence of risk – at home and in the community – has resulted in poor academic achievement, high drop-out rates and involvement in the juvenile justice- which in turn leads to involvement in the already overburdened criminal justice system.

As CEO of one of the nation's largest Big Brothers Big Sisters organizations, I submit to the Committee that youth in Philadelphia are in crisis – and that to effectively reduce the incidence of violence terrorizing our city's streets and crippling our criminal justice system, a concerted, long-lasting and sustainable investment in evidence-based "Blueprint" violence prevention programs must be made by the public and private sectors alike.

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In her 2009 book, Smart on Crime, current San Francisco District Attorney, Kamala D. Harris said, *"We must reduce the burden (on law enforcement), or we simply will not have the resources we need to protect our children and other vulnerable populations."*

Thanks to studies conducted by organizations like Public/Private Ventures in Philadelphia and the Center for the Study and Prevention of Violence at the University of Colorado, we know how to reduce that burden because we know what programs are effective in preventing and reducing violence.

Simply put, we know what works, and now it is time to "invest in what works."

The Center for the Study and Prevention of Violence at the University of Colorado has studied more than 800 programs, and has identified only 11 as "Blueprint" model intervention programs for effectively reducing adolescent violent crime, aggression, delinquency and substance abuse. "Blueprint" programs have the highest standards and meet the most rigorous tests of effectiveness and replicability in the field. Big Brothers Big Sisters mentoring is one of these 11 programs and I believe a necessary component to any comprehensive strategy that is implemented in order to reduce the burden on Philadelphia's criminal justice system.

We work every day to bring the proven impact of Big Brothers Big Sisters mentoring to the region's vulnerable at risk youth. We believe that the work we do today will reduce the burden on the criminal justice system tomorrow. Therefore, we must have the support of the community and the financial resources necessary to do this work.

As Philadelphia District Attorney-elect Seth Williams recently said in the Philadelphia Inquirer, *"The road to crime is predictable. Most offenses by minors happen after school...Chronic truancy is next...then comes more serious crimes. Drugs. Armed robbery. Shooting one another..."*

Big Brothers Big Sisters mentoring program targets children already engaged in (and at risk for) these gateway behaviors and matches them with carefully screened, trained volunteers in a professionally supported one-to-one mentoring relationship. By working with the mentor and the caregiver, we collectively provide a level of consistency and support to the child which then helps them make better social and academic decisions. The impact of this work is evident in the positive outcomes for children in our program, where during the past two years[i]:

- 82% did not receive any disciplinary actions at school.
- 92% did not have any arrests or convictions.
- 98% avoided becoming a teen parent.
- 91% avoided fights using weapons.
- 85% of children matched with a mentor had zero unexcused absences from school.
- 97% of parents report their children who were matched with a mentor were moving on to the next grade.
- 88% of parents report their children who were matched with a mentor passed all of their classes.

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Children will find mentors- and when they live in dangerous neighborhoods riddled with crime, drugs and dropouts, we cannot leave this choice to them alone.

It is proven that youth who have a positive role model and mentor in their life are less likely to make the decisions that lead to truancy, delinquency and other criminal behaviors. Therefore, in order to improve the criminal justice system, investments must be made in proven evidenced-based prevention programs like Big Brothers Big Sisters.

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[1] BBBS SEPA Parent Survey Results, 2007 and 2008

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Senate Judiciary Subcommittee on Crime and Drugs: National Constitution Center, Philadelphia, PA
"Federal Efforts to Address Witness Intimidation at the State and Local Level" – January 8, 2009
Testimony from Police Commissioner Charles H. Ramsey, Philadelphia Police Department

Good Morning Chairman Specter, distinguished Committee members, invited speakers, and guests. Thank you for this opportunity to appear before you today, and to discuss how the Federal Government can assist local and state law enforcement agencies in preventing and responding to witness intimidation. As the Police Commissioner for the City of Philadelphia, and the former Chief of Police for the Metropolitan Police Department in the District of Columbia for nearly nine years, I cannot overstate the importance of collaboration between the federal government and local law enforcement.

What the recent Philadelphia Inquirer's series on the criminal justice system in our city so clearly demonstrated is that our **"system"** is indeed dysfunctional. Together we work to fight crime and make our communities safer. Separately, we often have competing goals and metrics of success, different operating procedures and political pressures.

There is no simple solution to fixing a system-wide problem. The Inquirer pointed out that the conviction rate for violent crime in Philadelphia is the lowest in the nation. Raising the conviction rate should not be viewed, however, as the cure-all for a broken system, nor should any statistic be interpreted as an indicator of its success or failure. Reducing systemic dysfunction and placing blame squarely with any single agency does a disservice to us all.

In a New York Times editorial entitled "Criminal Justice Cube," published on December 9, 1981, the Board wrote the following:

> **"It's long been understood that criminal justice is a Rubik's Cube: what the police do will affect what happens in court, which will affect what happens in the jails and prisons. You can't hope to deal with crime better by focusing on any single part - any more than you can solve the cube by concentrating on one square at a time."**

This editorial was published nearly 30 years ago in response to the dysfunction that marked the criminal justice system in New York City and its surrounding boroughs. Its message, however, resonates loud and clear today. Substitute Philadelphia for New York, or any large city, for that matter, and the conversation is just as relevant as it was in 1981. Now in 2010, we continue to be overwhelmed and under-resourced in terms of how best to approach the deep fissures in our criminal justice system.

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It's time to change the conversation.

The topic of this hearing, witness intimidation, and I would add to that, witness noncooperation, undermines the integrity and reliability of our criminal justice system.

From a financial perspective, the Federal Government can play a meaningful role in guarding victims' rights in proposed House Resolution 1741, the "Witness Security and Protection Grant Program Act of 2009." The Bill would make competitive grants available to state and local law enforcement jurisdictions to establish and maintain certain protection and assistance programs. As the Inquirer series noted, financial assistance for these programs has been dwindling since 2007. This is an excellent opportunity for the Federal Government to aid state and local law enforcement agencies in combating the insidious culture of violence around witness intimidation. This is a necessary bill whose value cannot be measured in budgetary terms, and I urge the Committee and the full Senate to enact this bill into law.

Another tangible financial step that the Federal Government can take is investing in law enforcement technology that maximizes data sharing and integration between agencies. "Today's complainant is often tomorrow's defendant," as one of our detectives recently said regarding why witness noncooperation with police is so pervasive. The same people committing crimes are frequently victims of crime themselves. Three out of every four shooting victims in 2008, for example, had a previous arrest record; of those with an arrest record, one out of five had at least 10 or more prior arrests. All of our investigators should have access to a database which traces a defendant, his entire criminal history, his associates, the victims involved, the dispositions of his hearings, and his status in the correctional system, in one clearinghouse of information. The way in which we deploy technology throughout the various criminal justice agencies is a mirror of the criminal justice system itself –fragmented, decentralized and lacking coherence of purpose. Improving the overall efficiency with which all agencies perform their jobs will go a long way toward helping police and prosecutors fight witness intimidation and noncooperation.

On a much broader level, I would also suggest that the Federal Government consider the option of establishing a national major crime commission. In the past, the Federal Government has empanelled crime commissions to accomplish this goal of viewing the entire criminal justice system from a single frame of reference. A national crime commission in 2010 could provide an invaluable compendium of best practices, and strategies for improvement across the board. The difficulty with addressing system deficiencies in a piecemeal manner is that a small change in one part of the system may result in unintended consequences in another area. We cannot continue to operate as a dysfunctional system, and hold on to expectations that the system will remedy itself.

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Over time, each individual agency has developed tunnel vision, resulting in either a lack of understanding or appreciation about the operation of the rest of the system.

The result: Tension and conflict, with insufficient resources allocated toward addressing crime and violence in a holistic, preventive and sustainable manner. Of course, these issues aren't the sole purview of criminal justice agencies. Crime is a much broader social issue, with poverty, neighborhood disorganization and lack of education as significant factors. The attitudes and social norms in distraught neighborhoods that promote the "stop snitching" culture cannot be remedied through any one solution. Police, however, can make significant inroads by building trust within communities, and raising the level of public confidence. Forging positive relationships between police and community members in these neighborhoods is essential for breaking down barriers.

Here in this city, the Philadelphia Police Department will continue to work hard, and I believe, make great strides at connecting with our many diverse communities and reducing crime. In doing so, we will play an important role in combating witness intimidation and non-cooperation. We cannot do it alone, however. Changing the system will require a systems approach. It is my sincere hope that the Federal Government can take the lead on providing the leadership and action to effect real change at the state and local level.

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