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|  | **NAACP** | | | |
| **NEW ENGLAND AREA CONFERENCE** | | | |
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| (617) 325-7580  August 20, 2021 | |

**Qualified Immunity Testimony**

**Before the Massachusetts Commission To Study Qualified Immunity**

**August 20, 2021**

I am pleased to provide testimony today to testify before the Massachusetts Commission To Study Qualified Immunity and I appreciate the opportunity. I am president of the NAACP, New England Area Conference (NEAC). NEAC is the governing and coordinating entity for Branches of the NAACP in the states of Rhode Island, Massachusetts, New Hampshire, Maine and Vermont. I am speaking today on behalf of the 15 Branches in Massachusetts which extend from the Berkshires to Martha’s Vineyard.

In the Civil Rights Act of 1871 (also known as the Ku Klux Klan Act), Congress granted Americans the right to sue public officials who violate their legal rights. In Section 1983 of the U.S. Code (the modern analogue of the 1871 Civil Rights Act), Congress made clear that if a public official violates your rights – whether via police brutality, an illegal search, or an unlawful arrest – you can file a lawsuit to hold that public official financially accountable for his conduct. The language Congress used was unequivocal: “**Every**” state official who causes a **“deprivation of any rights** guaranteed by the Constitution and laws “**shall be liable to the party injured**.”

The Supreme Court developed qualified immunity in 1967, describing it as a modest exception for public officials who had acted in “good faith” and believed that their conduct was authorized by law. Over the years since 1967, the Supreme Court has largely gutted this legal right for legal redress of abuse and lawlessness by police and other public officials. Today, the protection afforded to public officials no longer turns on whether the official acted in **“good faith.”** Instead, even officials who violate people’s rights maliciously will be immune unless the victim can show that his/her right was “clearly established.” To show that the law is “clearly established,” the Court requires, in imposing qualified immunity, that the victim cite a decided case that involves the same “specific context” and “particular conduct.”

Civil litigation, in our legal system, is an indispensable avenue for the redress of wrongs and illegal activity to hold people accountable. The New England Area Conference of the NAACP is most concerned about holding law enforcement officials accountable. The public has become increasing aware of some law enforcement officials who act with brutality and lawlessness, under the cloak of law, in carrying out their duties, particularly in dealing with Blacks and other people of color. We must hold law enforcement officials for their actions. It is much more important that we hold law enforcement officers accountable because we have granted them special authorities, policing power -- the right to arrest, to detain, and to use deadly force when the situation actually warrants it. This extraordinary power requires a much greater level of accountability, not less.

Some may say that incidents of police misconduct, police brutality and police shootings of unarmed citizens have not been extensive in Massachusetts, compared to other states. That may or may not be true be true, but we don’t develop policies and enact laws because the incidents in Massachusetts are less than in other states. We should enact laws to protect our citizens, and it is certainly warranted here.

**Juan M. Cofield**

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President