

*“to observe  
and to suspect”*

*A People's Audit  
of the Los Angeles Police Department's  
Special Order 1*



*Prepared by the  
Stop LAPD Spying Coalition  
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## **Introduction**

The Los Angeles Police Department's Special Order 1 (SO 1), as well as the iWATCH program and Intelligence Gathering Guidelines, criminalize innocent behavior, break down trust, provoke violence, and plant informants in response to anonymous tips.

Since June 2011, the Stop LAPD Spying Coalition has been working to expose and rescind Special Order 1 and other LAPD policies that infringe on human and civil rights, and violate privacy. In an effort to gain more transparency about the practices and impacts of Special Order 1 and its preceding, similar versions, the Coalition submitted an extensive request for public records and has demanded other information in numerous public meetings. Yet the specific practices, and especially the impacts and implications for those targeted and the general public, remain mostly a secret.

On March 15, 2013,<sup>1</sup> the LAPD's Office of the Inspector General (OIG) made its audit of Special Order 1 available to the public (the audit is dated March 12). In general, the Coalition has low expectations for OIG audits. First, the Inspector General's role, by definition, does not create accountability. The LA City Charter gives the Inspector General the power and duty to audit and investigate LAPD, with the same access to Police Department information as the Board of Police Commissioners, but no power to institute changes based on the results of the audit. In addition, the Inspector General is focused mostly on procedural issues – i.e. does LAPD follow the written policy? If the policy itself is flawed, as our Coalition has documented, AND it is actually the impacts of the policy that are most worrisome, then a procedural audit won't inform the public of what it most needs to know.

This particular OIG audit was deficient in a number of ways.

- **The OIG audit appears to have cherry picked the data.** It confines itself to a mere four months of data concerning a policy which has been in effect for five years. Some sections of the audit did not even examine all the data from those four months. It provides no explanation for these limitations in scope other than that the data was "judgmentally selected."<sup>2</sup>
- **The OIG audit only claims to address the concerns of community members.** In a section entitled "Community Involvement," the OIG claims that its audit plan addressed the concerns of "various community members and groups." Yet it is very selective in the concerns it addresses: they all regard questions about *local* procedure (e.g. what the Department does with its reports), rather than questions about the broader consequences of this policy (e.g. how many agencies *ultimately* have access to these reports and how these agencies could affect the lives of those targeted). The OIG does not engage with concerns about the frightening policing philosophy behind this policy ("pre-emptive policing," i.e. elimination of traditional standards of proof required before law enforcement is legally allowed to act).

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<sup>1</sup> [http://www.lapdpolicecom.lacity.org/031913/BPC\\_13-0097.pdf](http://www.lapdpolicecom.lacity.org/031913/BPC_13-0097.pdf)

<sup>2</sup> See p. 2 of the Inspector General's cover letter and p. 7 of the audit itself (both accessible via the link above).

- **The OIG Audit barely mentions some of the most disturbing elements of LAPD policy.**

For instance, in one brief sentence on Page 3, the OIG states that the data from reports which analysts deem “Unfounded” are deleted from ONE local database, but remain in THREE other local databases. Without further discussion, the OIG mentions that LAPD now wants the authority to keep even these “Unfounded” SARs in these databases for 10 years.<sup>3</sup>

As we have seen recently even at the Federal level, transparency and accountability are crucial in a democracy even in matters of national security (e.g. the recent debate on drones , renewed calls to release secret torture memos, and revelations regarding the FBI’s treatment of the Occupy movement).<sup>4</sup> Because the Stop LAPD Spying Coalition believes that, to date, the level of public transparency regarding Special Order 1 and similar LAPD programs that criminalize non-criminal behavior has been minimal at best, and because the Inspector General is not likely to investigate civil rights and other individual and community impacts of the program, we have prepared this initial People’s Audit. The People’s Audit is intended to present the limited information that is available to date, highlight the lack of information available to the public, and reflect LA residents’ viewpoints on these unjust policies that are broadly enforced under the pretext of national security. We ask, who is actually more secure under these policies and, more importantly, who is less secure?

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<sup>3</sup> The term “Unfounded” is used only on p. 7 of the report, but on both pages the same review process (screening by LAPD’s Analysis Unit) is being discussed.

<sup>4</sup> On drones: <http://www.constitutioncampaign.org/blog/?p=12422>; on the secret torture memos: <http://www.guardian.co.uk/law/2013/mar/05/britain-us-secret-torture-reports>; on FBI and Occupy: <http://www.justiceonline.org/commentary/fbi-files-ows.html>.

### **Background and context for Special Order 1**

The contents of SO1 and related protocol are in many ways issues of both local and national concern, involving successive waves of unprecedented policies implemented at both levels. In 2004, Congress passed the Intelligence Reform and Terrorism Prevention Act. The act mandated the creation of the “Information Sharing Environment” (ISE), controlled by the Office of the Director of National Intelligence (ODNI), headed by the Program Manager for the Information Sharing Environment (PM-ISE). This elaborate new apparatus was tasked with facilitating the exchange of terrorism-related “tips and leads” between federal, state and local agencies including tribal, campus and transit police, and the private sector. In January of 2008 PM-ISE formally launched the Nationwide Suspicious Activities Reporting Initiative (SAR), complete with the first version of the Functional Standard for Suspicious Activity Reporting, which established some preliminary guidelines on how “terrorism information” would be collected and shared. In March of 2008, former Chief of Los Angeles Police Department (LAPD) William Bratton issued Special Order 11 (“SO 11”),<sup>5</sup> which outlined the protocol for filing a Suspicious Activity Report (SAR), and specified types of activities/behaviors which the LAPD regarded as potentially terrorism-related. Federal officials at the ODNI incorporated some material from SO 11 into their revised Functional Standard (Version 1.5),<sup>6</sup> released in May of 2009.<sup>7</sup> The LAPD, in turn, revised local SAR protocol to bring it more in line with ISE standards. In January 2012, the current Chief of LAPD issued the revised protocol as Special Order 1 (SO 1).<sup>8</sup> Special Order 1 was itself revised in August of 2012<sup>9</sup> to resemble Version 1.5 of the Functional Standard even more closely; to our knowledge, this version of SO 1 remains in effect.<sup>10</sup>

The basic idea that prompted this chain of changes in intelligence gathering was that seamless sharing of terrorism-related information would help investigators “connect the dots” and prevent another 9/11. Toward that end, reports of “suspicious” activities (SARs) are gathered by various agencies around the country and transmitted to a “Fusion Center.” Fusion Centers are basically hubs which tie local collectors and users of intelligence data into a national information sharing network (the ISE, discussed above). LA’s Fusion Center is officially known as the Joint Regional Intelligence Center (JRIC). There are an estimated 77 Fusion Centers around the country. Once a SAR has been uploaded to a Fusion Center, a determination is made as to whether it has a “potential terrorism nexus”; if so, the report becomes an ISE-SAR, and the information within it becomes accessible to tens of thousands of agencies in the country-- for instance, the reports are shared with more than 18,000 agencies solely

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<sup>5</sup> <http://stoplapdspy.org/wp-content/uploads/2012/04/SO-11.pdf>

<sup>6</sup> According to p. 5 of ACLU’s March 2, 2012 letter to Chief Downing: see <http://www.chirla.org/sites/default/files/20120312SARSACLUCHIRLA.pdf>, or do a Google Search for ACLU “March 2, 2012” and SAR.

<sup>7</sup> <http://www.dhs.gov/xlibrary/assets/privacy/privacy-pia-dhswide-sar-ise-appendix.pdf>

<sup>8</sup> <http://stoplapdspy.org/wp-content/uploads/2012/04/SO-1.pdf>

<sup>9</sup> <http://stoplapdspy.org/wp-content/uploads/2013/03/SO-1-Revised-Aug-2012.pdf>

<sup>10</sup> Note that this means that our critique of LAPD’s SO 1 has direct implications for the national Functional Standard.

through eGuardian, the IT system associated with the FBI's Joint Terrorism Task Forces (JTTFs).<sup>11</sup> Thus law-enforcement agencies, if not the "dots" they pursue, have become alarmingly well-connected.

SO 11 and its successor, SO 1, trained and authorized LAPD officers to gather street-level intelligence and information whenever they suppose—in other words, assume—that potentially innocent behaviors are associated with terrorism, infringing on privacy and civil liberties, promoting racial profiling, legitimizing spying by local law enforcement, and criminalizing innocent behavior.

Special Order 11 classified many activities that did not necessarily involve a threat to the public as "pre-operational surveillance"; examples include using cameras, using binoculars, and drawing diagrams. Numerous other non-criminal behaviors listed as suspicious included shooting videos, taking notes, and walking into an office and asking for hours of operation. In Special Order 1 LAPD appeared to limit the identified areas of activity to 16 subheadings, corresponding to the ISE's Functional Standard. However, if we read beyond the subheadings in both documents, we find they STILL include all of the typically innocent activities mentioned above.

The LAPD added new language to Special Order 1, imported directly from ISE's Functional Standard—language which, on its face, may *appear* to give officers less discretion in determining when such seemingly innocent activities are worthy of reporting. In reality, the added language is completely meaningless from a legal standpoint *precisely because it is entirely new*. The August, 2012 version of SO 1 states that "articulable facts" must suggest that "the behavior observed is not innocent, but rather reasonably indicative of criminal activity associated with terrorism." Many in the legal community have pointed out that the idea of a reasonable *indication* is a completely unprecedented, intentionally watered-down version of "reasonable suspicion." "Reasonable suspicion" is a US legal standard officers must meet when they stop and frisk individuals, or detain and question them: officers must be able to explain *why*, based on their training and experience, they thought the individual was involved in criminal activity.<sup>12</sup>

As one might guess from the ample abuses of the technically legal "stop and frisk" tactics,<sup>13</sup> *reasonable suspicion* of criminal activity is in and of itself a watered-down version of "probable cause," a phrase which refers to the warrants without which arrests, searches and seizures should not occur. **A watered-down version of a watered-down version of our Fourth Amendment protections is an all too literally unwarranted threat to our rights, liberties, and privacy.** While authorities may claim that filing reports and maintaining records is less invasive than searches, seizures, or frisking and therefore calls for

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<sup>11</sup> See p. 66 of *Platform for Prejudice*, a study summarized below in the "Research and critique" section of this document.

<sup>12</sup> While both Version 1.5 of ISE's Functional Standard and LAPD's August revision of SO 1 mention "reasonable suspicion" in another context—in conjunction with *detaining* individuals (SO 1, page 6) or retaining information in *local criminal intelligence* information databases (ISE Standards, Page 33)—neither say it is a requirement for **filing a SAR or retaining an ISE-SAR in databases available to analysts and law enforcement agencies throughout the nation**. An alarming amount of information is being retained on ordinary citizens in national databases and mined for patterns of activity; for more on this, see under "Research and Critiques of Special Order 1," below.

<sup>13</sup> Recent trials have made it clearer than ever that the NYPD stops and frisks people based primarily on their race, gender and age: [http://www.nytimes.com/2013/03/23/opinion/walking-while-black-in-new-york.html?\\_r=1&](http://www.nytimes.com/2013/03/23/opinion/walking-while-black-in-new-york.html?_r=1&).

a lesser standard of proof, the number of law enforcement and intelligence entities who have access to these reports argues otherwise.

The “suspicion” cast on benign, daily behaviors and the completely speculative and arbitrary nature of the “reasonable *indication*” standard is exactly what opens the door for racial profiling and for such normal activities to be used as a pretext to open investigations and spy on people who are just living their lives and abiding by the law: as many psychologists have pointed out, in highly ambiguous situations (“Is that man with a camera a tourist or a terrorist?”), we use our conscious prejudices *and* our unconscious biases to determine the significance of actions.<sup>14</sup>

It is important to realize that SO 1’s fundamental premise is that each and every person is a potential suspect, completely contradicting the long-held principle of *innocent until proven guilty*; in these police encounters we are *guilty until proven innocent*. Since launching the SAR initiative in March 2008, LAPD has questioned, harassed and opened hundreds of secret files on people in Los Angeles engaging in innocent activities under a vague and over-broad definition of suspicious activity – simply taking a picture can now be considered “*observed behavior reasonably indicative of pre-operational planning related to terrorism or other criminal activity*.” In effect, then, Special Order 1 criminalizes innocent behavior.

Furthermore, in October 2009 LAPD launched the iWATCH program, promoting community and neighborhood involvement in reporting “suspicious activity” to LAPD. In an interview with NPR, LAPD Chief William Bratton lamented that “individuals have varying thresholds at which they feel compelled to notify authorities when [their neighbor’s] activity is not overtly terrorist related.” He went on to say that the “iWATCH program is a giant leap toward overcoming this problem.” The implication is that iWATCH “encourages the public to file a report even if people are not convinced that witnessed behavior is criminal.”<sup>15</sup> The iWATCH tagline of “See Something, Say Something” in effect recruits community informants to report perfectly legal activities!

To complete the surveillance troika, in September 2012 the Los Angeles Police Commission approved new guidelines for intelligence gathering on political groups and others engaged in social justice work. These new guidelines greatly scale back safeguards placed upon LAPD to maintain criminal intelligence files only in instances of criminal predicate (=“reasonable suspicion”). These safeguards were placed on LAPD in the early 80’s after LAPD’s Public Disorder Intelligence Division (PDID) was exposed to have illegally kept files (over 2 million documents on 55,000 individuals) on groups engaging in constitutionally protected activity, human and civil rights activists, and public officials including the sitting mayor Tom Bradley.<sup>16</sup> Under new guidelines LAPD can place informants at an organization for

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<sup>14</sup> See Smith and Alpert’s 2007 study “Explaining Police Bias: A Theory of Social Conditioning and Illusory Correlation” for one view of the underlying cognitive mechanisms.

<sup>15</sup> See p. 62 of *Platform for Prejudice*, a study summarized below under “Research and critique of SO 1.”

<sup>16</sup> The old guidelines and the related ACLU lawsuit are mentioned in the second half of this article:

[http://articles.latimes.com/1985-05-30/local/me-5135\\_1\\_los-angeles-police-officer](http://articles.latimes.com/1985-05-30/local/me-5135_1_los-angeles-police-officer) (“ACLU to Handle JDL’s Appeal of Spying Case”). The new LAPD guidelines are here:

<http://www.lapdonline.org/assets/pdf/INTELLIGENCE%20GUIDELINES%20FOR%20MAJOR%20CRIMES%20DIV.pdf>. The possibility of a 180-day “Initial Lead Investigation” is mentioned on p. 20 of the guidelines. On p. 15, it is made clear that information from the public that does not meet the “reasonable suspicion” standard can prompt such an investigation. On p. 16, monitoring and the use of informants are listed as permissible tactics.

180 days based on just an anonymous tip -- no reasonable suspicion needed. Furthermore LAPD officers can take on fictitious personas for online investigations such as Facebook and other web-based and social media tools.

LAPD's SAR protocol has gone through three revisions (the latest in August 2012), yet the policy remains flawed in its basic premise – criminalization of innocent behavior, dissemination of fear and suspicion, and the facilitation of racial and religious profiling. Veiled in the language of “National Security,” these policies are also an affront and a threat to our basic human right and natural impulse to record a moment on video, take a picture to share with loved ones or draw on paper a sketch of our favorite building, a bridge or any other landmark.

In classic LAPD misrepresentation, the department claims that they have not received a single civil rights complaint. The question is how can LAPD receive any complaints when people don't even know that a Suspicious Activity Report has been filed on them? One needs a court order to find out if a SAR has been filed on someone.

### **Research and critique of Suspicious Activity Reporting, the core of SO 1**

Since the inception of these programs, there have been several studies calling into question the viability of SAR-related policies. Progressive think tanks such as Political Research Associates have debunked the conceptual framework of SARs. The National Academy of Science, Engineering and Medicine has strongly cautioned against uncritical use of the concepts of data mining and behavioral profiling/surveillance. And a US Senate subcommittee has exposed the folly of our reliance on Fusion Centers, and in particular the amount of resources consumed by these ineffective additions to an already sprawling national security apparatus.

- ***Pre-Emptive Policing***

A 2010 study by Political Research Associates titled *Platform for Prejudice* thoroughly examined the national Suspicious Activity Reporting Initiative in general and LAPD's SAR policies in particular (<http://stoplapdspying.org/2012/09/platform-for-prejudice>). Most of the background provided in the People's Audit is discussed in detail in this study; especially helpful in this regard are the sections on the “Veins of the Domestic Security Matrix” (p. 24-31) and on the Los Angles JRIC (p. 59-63). Perhaps most importantly, *Platform for Prejudice* argues that SAR policies are one manifestation of a broader change in the way US governmental agencies conceive of the role of law enforcement. As the study puts it,

The SAR Initiative reflects the new philosophy called **Intelligence-Led Policing**. The term itself is misleading. **Pre-Emptive Policing**, the more accurate term emphasizes surveillance and seizures of individuals *before* a criminal “predicate” exists, raising critical questions about its compatibility with American Constitutional principles such as the presumption of innocence and the warrant requirement. (p.17)

Among the increasingly accepted but empirically unfounded assumptions that underlie Pre-Emptive Policing is the idea that data mining can identify trends of behavior uniquely associated with terrorism. *Platform for Prejudice* quotes a 2008 study on data mining and behavioral surveillance, which

concludes that data-mining techniques are *particularly* likely to generate false leads when part of counterterrorism efforts. Authored by the National Research Council et. al. and entitled *Protecting Individual Privacy in a Struggle Against Terrorists*,<sup>17</sup> this study concluded regarding behavioral surveillance in a counterterrorism context that “although research and development on certain aspects of this topic are warranted, there is no scientific consensus on whether these techniques are ready for operational use at all in counterterrorism.” The study further concluded regarding data mining that “although these methods have been useful in the private sector for spotting consumer fraud, they are less helpful for counterterrorism because so little is known about what patterns indicate terrorist activity.”

*Platform for Prejudice* quotes a former FBI agent’s critical remarks on the use of data-mining projects in counterterrorism efforts; she concludes by saying that, “Every study done says this approach has not been able to be successful and get[s] lots of false positives” (p. 35). The cost of such false positives to the lives of “involved persons” (the technical term for the human subjects of SARS) is, of course, immense. Through the ISE, SAR-related databases are accessible by other local, regional and Federal law enforcement agencies and private contractors; victims of ill-conceived computer algorithms might be prevented from securing employment, traveling, attempting to adjust their immigration status and pursuing further education.

We might add that more recent revelations support the conclusions of this 2010 study regarding the “Pre-Emptive Policing” trends of which SARs are a part. On the local end, faculty from UCLA’s Anthropology and Applied Mathematics departments have formally partnered with the LAPD on a number of “predictive policing” projects.<sup>18</sup> On a more regional level, police in the Southern California area are monitoring data from social network sites in order to show up at the scene of a (supposed) crime before it happens;<sup>19</sup> on the opposite coast, New York’s Domain Awareness System “syncs the city’s 3,000 closed-circuit camera feeds with arrest records, 911 calls, license plate recognition technology, and radiation detectors” to “monitor a situation in real time and draw on a lot of data to understand what’s happening” and presumably what (police think) *might happen*.<sup>20</sup>

Perhaps most disturbing are the manifestations of the “Pre-Emptive Policing” philosophy on the national and even *international* level. The National SAR initiative is far from the only Federal “Pre-Emptive” project with troubling implications. In 2012, the National Counterterrorism Center, which is organizationally part of the ODNI, made very troubling changes to its own guidelines.<sup>21</sup> As a recent *Wall Street Journal* article on the subject<sup>22</sup> noted,

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<sup>17</sup><http://stoplapdspy.org/wp-content/uploads/2013/03/Summary-National-Academy-of-Sciences-Report.pdf>

<sup>18</sup> The following article treats one project among many: <http://www.huffingtonpost.com/news/predictive-policing>.

<sup>19</sup> <http://rt.com/usa/cops-patrolling-facebook-for-predictive-policing-103/>

<sup>20</sup> <http://www.guardian.co.uk/technology/2013/mar/09/facebook-arrested-evgeny-morozov-extract>

<sup>21</sup> The latest version of the NCTC guidelines is here: <https://www.documentcloud.org/documents/490761-nctc-guidelines-2012.html>

<sup>22</sup> Here: <http://online.wsj.com/article/SB10001424127887324478304578171623040640006.html> (Alternately, just Google “Wall Street Journal” and “NCTC” to get an article entitled, “**US Terrorism Agency to tap a vast database of citizens.**”)

The rules now allow the little-known National Counterterrorism Center to examine the government files of U.S. citizens for possible criminal behavior, even if there is no reason to suspect them...Now, NCTC can copy entire government databases—flight records, casino-employee lists, the names of Americans hosting foreign-exchange students and many others. The agency has new authority to keep data about innocent U.S. citizens for up to five years, and to analyze it for suspicious patterns of behavior.

Alarmingly, the NCTC has also authorized itself to share information, including entire databases, with foreign governmental agencies “for the purpose of determining whether the United States person information constitutes terrorism information”—in other words, **even if there is no reasonable suspicion or “indication”** of terrorism-related activity.

**The NCTC seems to be dispensing with the watered-down version of the watered-down version of our Fourth Amendment rights.<sup>23</sup>** When it rains, it pours—and before you know it, a sea change is upon us.

- ***Racial, ethnic and religious profiling***

A second topic that *Platform for Prejudice* does well to highlight (the topic that inspired its title) is the effect of the SAR initiative (and other intelligence programs which identify commonplace behaviors as potentially suspicious) on communities that already face discrimination: “The SAR Initiative creates a platform through which prejudices and social biases can be amplified and ultimately acted upon” (p. 43). It is painfully clear that in post-9/11 America even more than pre-9/11 America, simply coming from a “suspicious” country or professing a “suspicious” faith can put one on a collision course with governmental authorities. *Platform for Prejudice* reminds us of NSEERS and post-9/11 “preventative detention.”

The “special registration” program enacted by the Bush Administration, called the National Security Entry-Exit Registration System (NSEERS), resulted in the “preventative detention” of about 5,000 men on the basis of their birthplace and later sought 19,000 additional people for “voluntary interviews.” More than 170,000 men from 24 predominately Muslim countries and North Korea were fingerprinted and interviewed; 83,000 individuals are still registered within the NSEERS database. (p. 45)

Of course, the US in general (and California in particular) has a longer record of wartime “preventative detention” (the Japanese American Internment being an infamous example).

*Platform for Prejudice* points out that the LAPD’s pioneering role in the SAR Initiative already raises red flags, considering the actions of the LAPD Rampart Division in the late 1990s. Of course, the Rampart Scandal is hardly the only stain on LAPD’s record; to see “90 years of human rights violations” perpetrated by the LAPD, visit the Stop LAPD Spying Coalition’s website.<sup>24</sup>

One 2005 incident related in *Platform for Prejudice* reminds us why profiling *behavior* in no way prevents LAPD’s history of racial profiling from repeating itself.

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<sup>23</sup> <https://www.documentcloud.org/documents/490761-nctc-guidelines-2012.html#document/p12/a80301>

<sup>24</sup> <http://stoplapdspying.org/2012/01/lapd-surveillance-timeline/>

On July 3, 2005, a man observed (and photographed) three Middle Eastern men videotaping the popular pier at Santa Monica beach. Several weeks later police seized the video, which they characterized as “probing” for a terror attack because the tourists themselves were not in the shots. Police consulted with the FBI, the Los Angeles Terrorism Early Warning Group (precursor to today’s JRIC Fusion Center) and the state Department of Homeland Security. As a result, Santa Monica police requested \$2 million to install pre-emptive measures such as surveillance cameras, additional patrols, and bomb-sniffing dogs to beef up security at the pier. No arrests were made. (p. 45)

The “Stories” section of this People’s Audit demonstrates that LAPD now reacts *in even more aggressive ways* to similarly innocent activities *especially* when conducted by ethnic minorities.

- ***Financial waste***

Of course, the above incident highlights the *waste* as much as the injustice of racial profiling: law enforcement paranoia cost taxpayers \$2 million. This brings us to a recent Senate Subcommittee report on the regional facilities that process SARs. On October 3<sup>rd</sup>, 2012, a United States Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, released a highly critical report on Fusion Centers.<sup>25</sup> The Senate report concluded that almost **\$1.4 Billion** have been spent by the Federal government on Fusion Centers. The subcommittee investigation found that Fusion Centers’ intelligence reporting was often:

- Flawed, irrelevant or useless;
- Inappropriate or unrelated to terrorism;
- Had nothing of value;
- Could have violated privacy act protections;
- Often outdated, duplicative and uninformative.

Furthermore the study found that DHS funded Fusion Centers:

- Lack adequate financial oversight;
- Fail to hold officials accountable who reportedly violated guidelines.

Clearly, then, we cannot rely on Fusion Centers to properly screen SARS for retention or rejection based on the likelihood of a “terrorism nexus”!

Though the Subcommittee Report focused on problems at the Federal level, multiple California Centers were cited because they present particularly drastic cases of problems which affect Fusion Centers generally.

One especially troubling intelligence report retained by a Fusion Center and reviewed by the Senate Subcommittee involved a California-based motorcycle club (p. 37-38). The report focused on a leaflet produced by the group, and entitled “Checklist for Club Members Who Are Stopped [by Police].” As the Subcommittee and DHS-internal reviewers noticed, this leaflet encourages club members to follow the law – yet it was reported as part of counterterrorism efforts. In violation of both the Privacy Act and DHS guidelines, this report was retained in Fusion Center records long after it was officially deemed inappropriate for publication.

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<sup>25</sup> <https://www.documentcloud.org/documents/446073-10-2-12-psr-staff-report-re-fusion-centers.html>

The San Diego area's Fusion Center, known as the Law Enforcement Coordination Center (SD-LECC), was singled out as a particularly egregious example of the mismanagement of funds (p. 79-80). SD-LECC spent \$25,000 on high-tech surveillance equipment, including "shirt-button cameras" and other recording and tracking devices—this despite the fact that Federal guidelines for Fusion Center capabilities focus on facilitating the *analysis* of intelligence rather than the development of an ever-expanding inventory of covert intelligence-gathering techniques (and the procurement of related gadgetry). SD-LECC also spent nearly \$200,000 on computers, monitors, and related equipment (the center now has more computers than full-time employees), and \$75,000 on 55 flat-screen televisions, which employees use to watch the news—a practice which they initially tried to label "open-source monitoring," before they were pressed to define this somewhat euphemistic term.

Federal funding typically accounts for 20-30% of Fusion Center budgets.<sup>26</sup> The Senate Subcommittee report confined itself to monitoring the expenditure of Federal funds; it is likely that a great deal more of California taxpayers' money has been used toward similarly wasteful and potentially illegal ends.

The LAPD has so far been unresponsive in regards to the Stop LAPD Spying Coalition's requests for information regarding local SAR-related expenditures.

Mainstream media weighed in on the Senate report findings. The title of a related Washington Post report (October 2, 2012) did not mince words: "DHS fusion centers portrayed as pools of ineptitude, civil liberties intrusions."<sup>27</sup> The Los Angeles Times (October 3, 2012) reported, "Local analysts had written inappropriate and potentially illegal reports about constitutionally protected activity." When asked by LA Times about the senate subcommittee report, LAPD deputy chief and head of counter-terrorism bureau Michael Downing said "There's a lot of white noise, but there are occasional gold nuggets." Yet Downing "did not know" whether any of these "gold nuggets" have led to a conviction, reports the Los Angeles Times.<sup>28</sup>

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<sup>26</sup> See the Constitution Project's *Recommendations for Fusion Centers*, Overview p. 7 and Footnote 22: <http://www.constitutionproject.org/pdf/fusioncenterreport.pdf>; c.f. John Rollins, Cong. Research Serv. *Fusion Centers: Issues and Options for Congress* 30. Jan. 18, 2008: as of 2007, DHS formally required that 80% of costs be passed on to state and local governments; similar figures have been cited in news articles on California Fusion Centers specifically.

<sup>27</sup> Google the title and you'll still find the article.

<sup>28</sup> <http://articles.latimes.com/2012/oct/03/nation/la-na-fusion-centers-20121003>

### **Sources of data/LAPD withholds most SO 1 Information from the public**

In April 2012, the Stop LAPD Spying Coalition, in partnership with the National Lawyers Guild, filed a request for records related to SO 1 pursuant to the California Public Records Act (CPRA). LAPD continues to drag its feet in releasing documents-- but the documents that were obtained by Stop LAPD Spying Coalition revealed more glaring inconsistencies than hard facts (see subsequent pages). According to different portions of the same set of documents, **anywhere from 3697 to 4968 SARs** were filed from March 2008 until April 2012 (more than 3 SARs a day over a period of 50 months). During this time period, LAPD sent **3,001** SARs to the Fusion Center. Out of these **2,368 (80%)** SARs were considered unfounded<sup>29</sup> – ***basically useless information; and yet LAPD and the Fusion Center get to keep this information for at least 1 to 5 years.***<sup>30</sup> From October 2009 until April 2012, LAPD received **152** iWATCH reports (over 1 report every week). Out of these, **108 (71%)**<sup>31</sup> did not even meet basic standards – ***basically people were snitching on others without any reason.***

LAPD held a community symposium on its Suspicious Activity Reporting Program on April 26, 2012. Using powerpoint and videos, LAPD Deputy Chief and Commander of the Counter Terrorism Division Michael Downing and his SAR team continued to provide justifications for the continuation of Special Order (SO) 1. Yet when answering critical questions such as budgetary impact and program “effectiveness,” Downing remained vague.

Interestingly, the LAPD has been more forthcoming when addressing other law enforcement agencies. *Platform for Prejudice* (p.60) reproduces information from Cmdr. McNamara’s August 2009 presentation at the National Forum on Criminal Justice and Public Safety. Certain categories of data were released in this context, yet not revealed to the general public. Does LAPD respect its fellow police agencies more than its constituents?

LAPD has publicly maintained that it does not keep data on the race of all “involved persons” named in SARs, which is more of a curse than a blessing, since aggregate data would reveal the operation of (at least) unconscious biases in SAR reporting. Information discovered through CPRA, although very minimal, revealed that **78%** of SARs were filed on non-whites. Statistics included in other LAPD documents put the number anywhere from 66% to 71%. In the preliminary audit data presented by the Office of the Inspector General, there is also reason to be concerned about racial profiling in suspicious activity reporting as only 26% of SARs filed during the audit period (and containing data on the race/descent of involved persons) were about white residents.<sup>32</sup>

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<sup>29</sup> Number obtained by subtracting the Number of ISE-SARs from the number of JRIC/JTF SARs in the document, “Suspicious Activity Reports: Most Common Behaviors.”

<sup>30</sup> The five-year limit is from 28 C.F.R Part 23. As we noted at the beginning of the report, the OIG audit (p.3) shows that the LAPD is now asking for the authority to hold all SARs for 10 years.

<sup>31</sup> Both numbers (152 and 108) are in the document, “Suspicious Activity Reports: iWATCH.” This document was obtained in May, 2012, meaning that it only covers the first four months of that year.

<sup>32</sup> According to the CPRA document, 48 IPs were white from among 219 of the SARs filed from 2008-2012 (22%). Data provided on PDF page 2 for the Symposium document, “SAR Symposium: Statistical Analysis” shows that for 2011 5/15 IPs were white (33%). Data provided on PDF page 4 for “20111 [sic]” shows that 11/38 IPs were white (29%). (The CPRA document put the 2011 numbers at a total of 13/58.) OIG audit data is from p. 4: 7/27= 26%.

### Data sets and inconsistencies between them

Several of the data sets that we requested in the April 2012 CPRA request were not provided. Many of the numbers we were given were conflicting. Consequently, it is difficult to determine even basic statistics, such as the number of SARs filed. For example:

#### **1. The total number of SARs filed between March 2008 and April 2012 is somewhere between 3697 and 4968:**

According to the total tally provided in the document, "Suspicious Activity Reports: Most Common Behaviors": **3697**

According to the number obtained by adding the individual SAR counts in the same document: **4325**

According to the number obtained by adding the individual SAR counts in other documents<sup>33</sup> provided pursuant to the CPRA, which break down SARs by behavior category: **4968**

#### **2. Of the total number, the most common behaviors for which SARs are filed are:**

Testing/Probing of security (Abandons suspicious package/item): 1762 SARs

Testing existing security measures: 1618 SARs

Pre-operational surveillance: 376 SARs

Photography: 326 SARs

Expressed or implied threats: 123 SARs

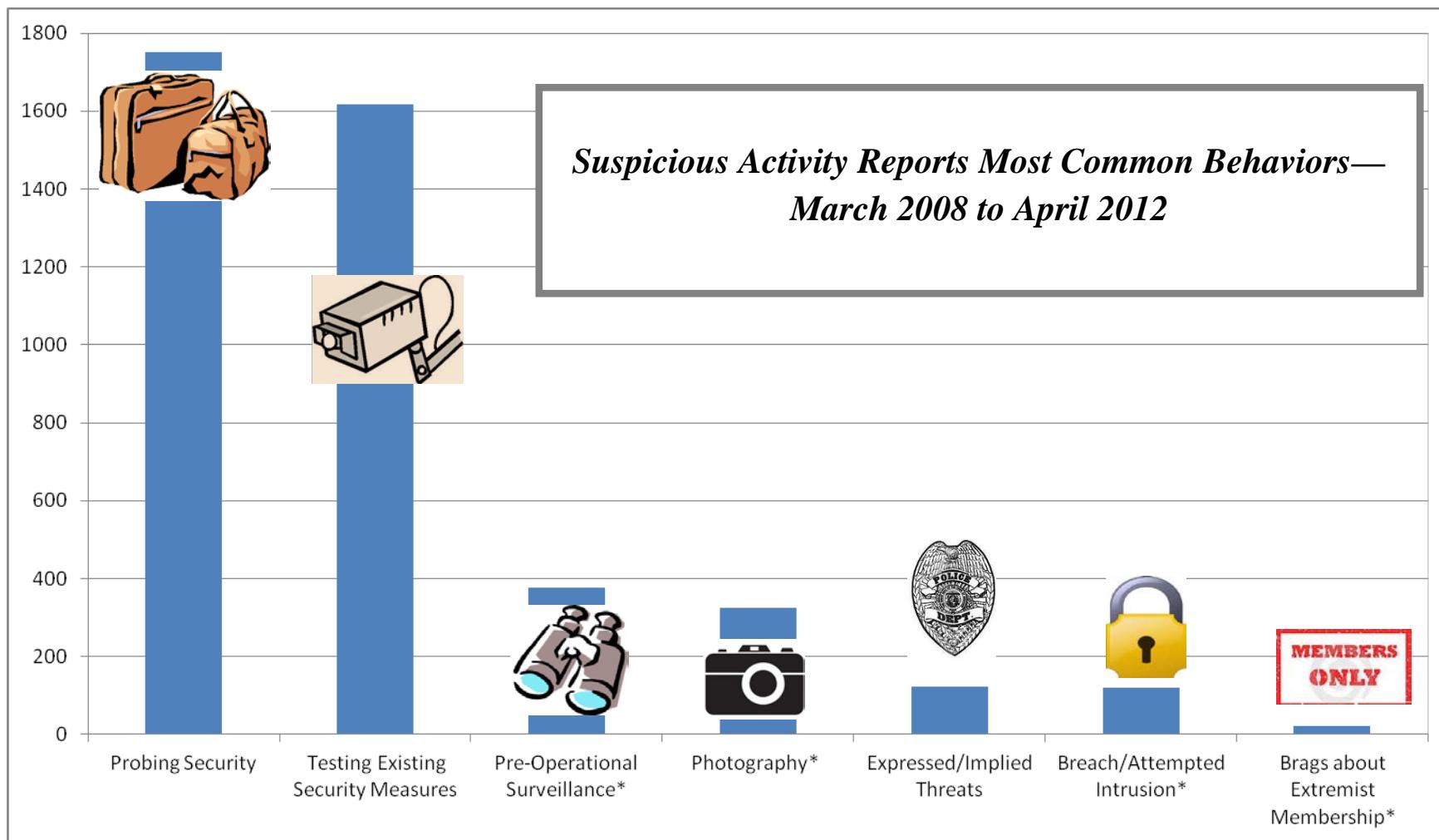
Breach/attempted intrusion: 120 SARs<sup>34</sup>

Brags about affiliation or membership with extremist organization: 24 SARs<sup>35</sup>

<sup>33</sup> "BEHAVIORS [2008-2011]" and "BEHAVIORS [2012]."

<sup>34</sup> All the numbers so far under "2." came from the document, "Suspicious Activity Reports: Most Common Behaviors."

<sup>35</sup> This number comes from the other documents ("BEHAVIORS").



The chart “**Suspicious Activity Reports Most Common Behaviors—March 2008 to April 2012**” reflects the numbers in one official LAPD document. The categories with an asterisk (\*) after them are at risk of being *inaccurate due to conflicting information provided by the LAPD*. In other documents provided by the LAPD,<sup>36</sup> four out of seven of the categories had different numbers:

- \*Pre-operational surveillance: 326 SARs
- \*Photography: 314 SARs
- \*Breach/attempted intrusion: 110 SARs
- \*Brags about affiliation or membership with extremist organization: 23 SARs

**3. The number of arrests resulting from SARs was also conflicting.** The official number given to Stop LAPD Spying Coalition by the LAPD was 48. However, in the same set of documents, the total number of arrests listed by behavior was 65.<sup>37</sup> Which one is to be trusted? In 2011, there were a total of 5 arrests resulting from SARs. In the first half of 2012, there were a total of 4 arrests resulting from SARs. Remember that Chief Downing “did not know” whether any convictions have resulted (in other words, there almost certainly have been none).<sup>38</sup>

#### **4. Number of SARs...**

Shared with Information Sharing Environment	Deleted from LAPD Database	Deemed Unfounded	Transmitted to JRIC and/or the local JTF
633	CLASSIFIED	125	3001

Cmdr. McNamara’s August 2009 presentation at the National Forum on Criminal Justice and Public Safety indicates that from 2008-2009, 126 Suspicious Activity Reports were referred to a local JTF, resulting in 36 arrests (no word on whether any arrests were related to “terrorism”). As noted in the Introduction of this People’s Audit, according to the OIG audit SAR reports are deleted from ONE LAPD database, but apparently kept in THREE others, whether or not they are deemed to be “unfounded.”

In essence the numbers - though very incomplete – give us enough to understand the overall story: LAPD initiates over 4,000 SARs; feeds over 3,000 SARs to the Fusion Center; and even the Fusion Center finds 80% of these useless. Fusion Centers upload the rest of SARs into databases they share with other government agencies; the Senate Subcommittee finds that information useless, flawed, irrelevant, nothing of value, a violation of privacy, and civil liberties intrusion. From start to finish it is ***Garbage In, Garbage Out. Yet between LAPD and the Fusion Center they can keep our information from 1 to 5 years.***

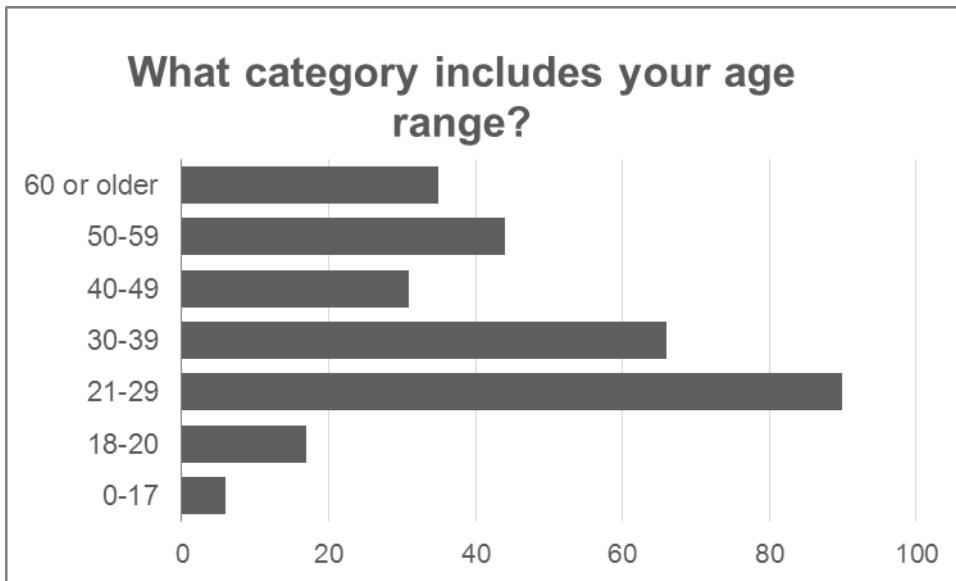
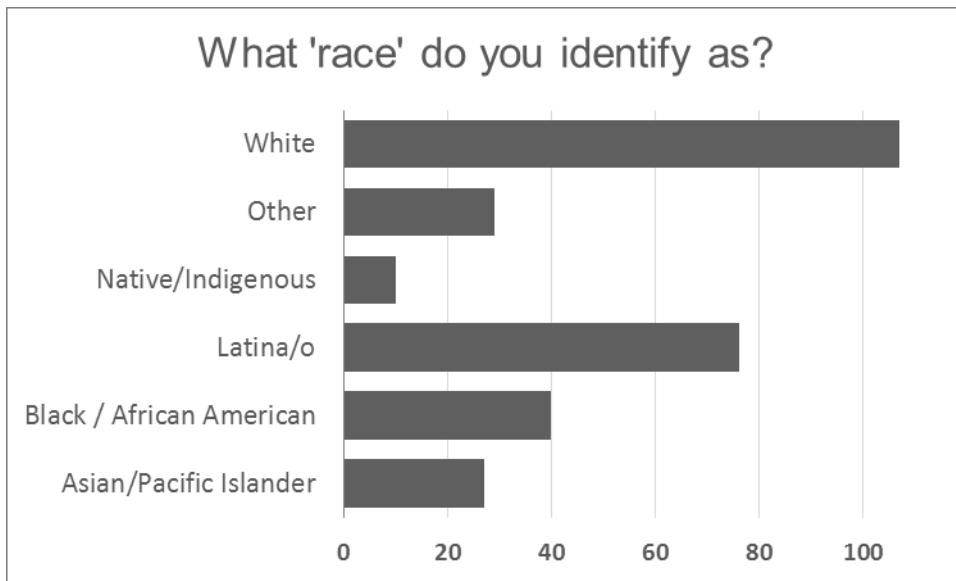
<sup>36</sup> “BEHAVIORS [2008-2011]” and “BEHAVIORS [2012]” provide all but the last number; 23 was given as the number of “Brags” by the LAPD in the April 2012 Symposium. Since a PRA document (“BEHAVIORS [2012]”) lists no such “Brags” for the first half of 2012, the inconsistency of 23 vs. 24 cannot be accounted for by the earlier date of the Symposium.

<sup>37</sup> 48 is from the document, “Arrests Related to Suspicious Activity Reports.” 65 is from the document, “SAR Related Arrests by Behavior.”

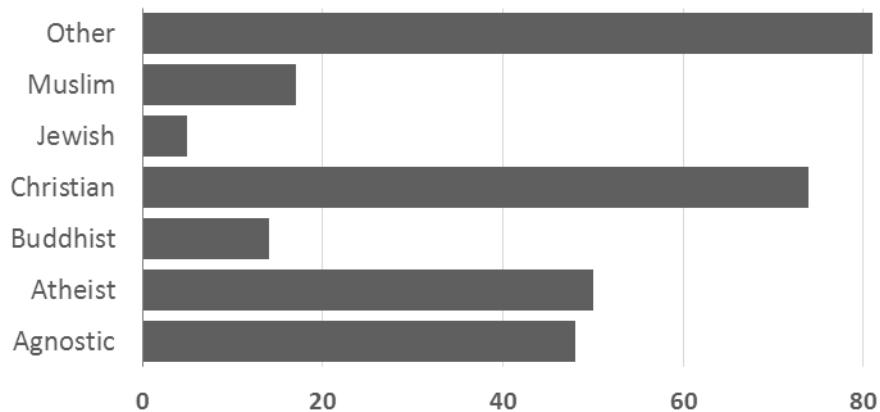
<sup>38</sup> The last two numbers are from the document, “Arrests Related to Suspicious Activity Reports.” The Downing quote is from an LA Times article referenced in the “Research and Critique” section of this document (under the section on Fusion Centers).

### Community Survey data

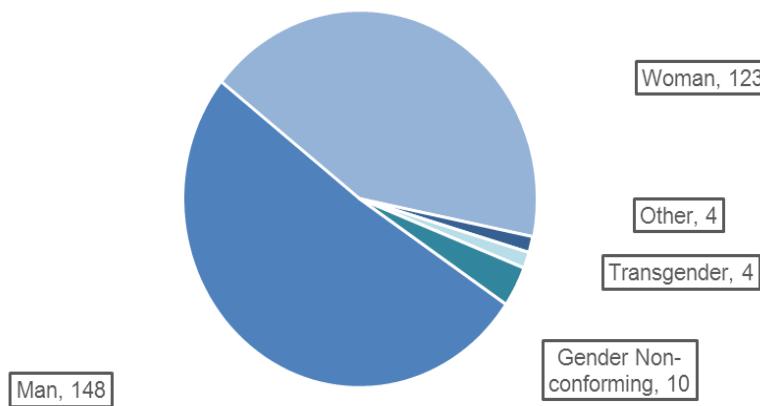
Since LAPD continues to keep the majority of information about this program secret, as well as make claims that the large majority of Los Angeles residents fully support SO 1 and similar programs, the Stop LAPD Spying Coalition surveyed residents of the Los Angeles region to find out their opinions about the program. The large majority of those surveyed (82%) reported living in a City of LA zip code, with the remainder primarily in immediately surrounding cities. Starting below and through page 21, the self-reported characteristics, experiences and opinions of 289 respondents are summarized.



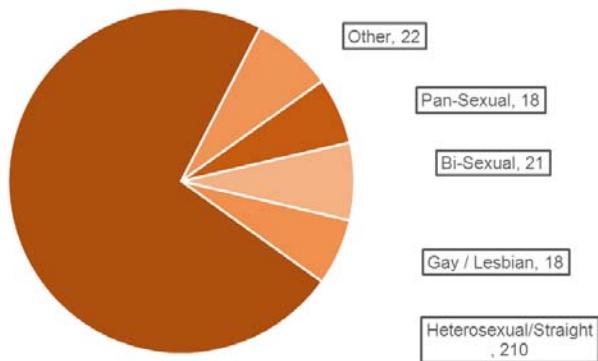
## What faith/religion do you identify with?

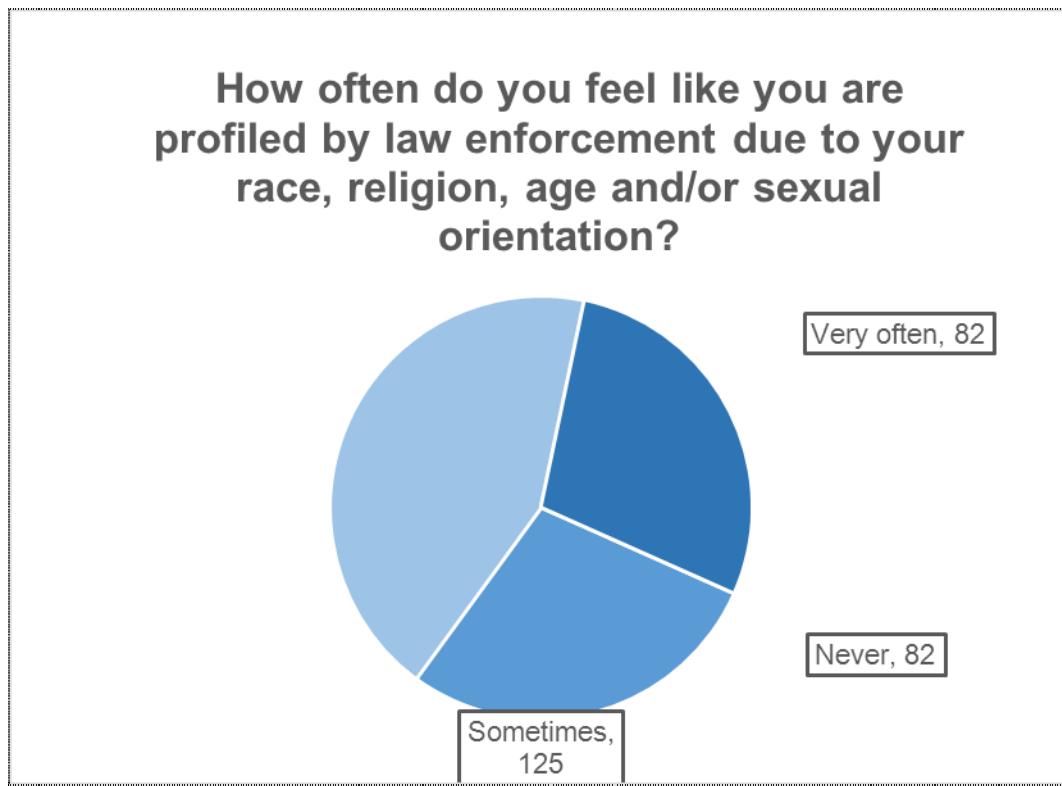
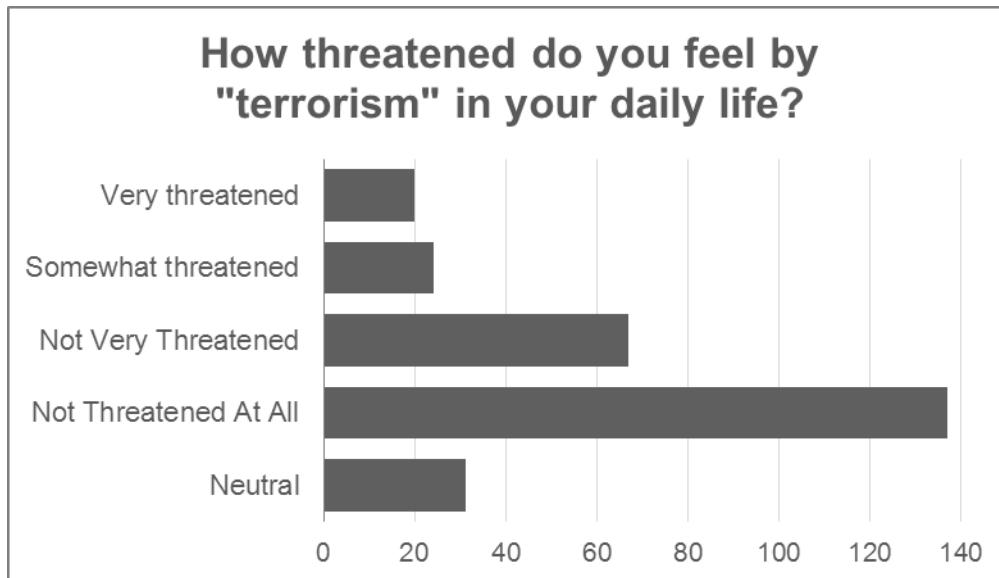


## What gender do you identify as?

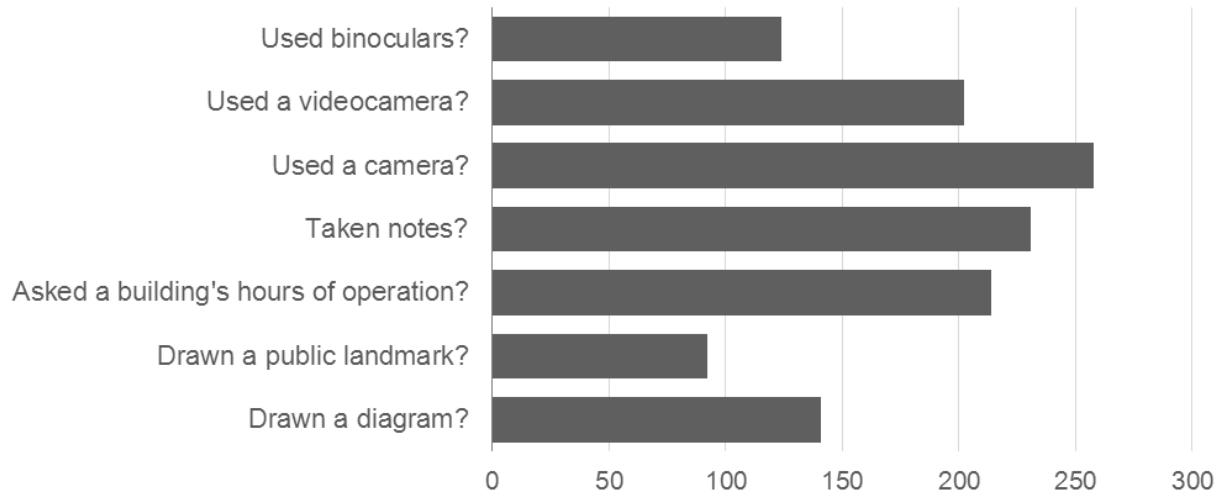


## What is your sexual orientation?

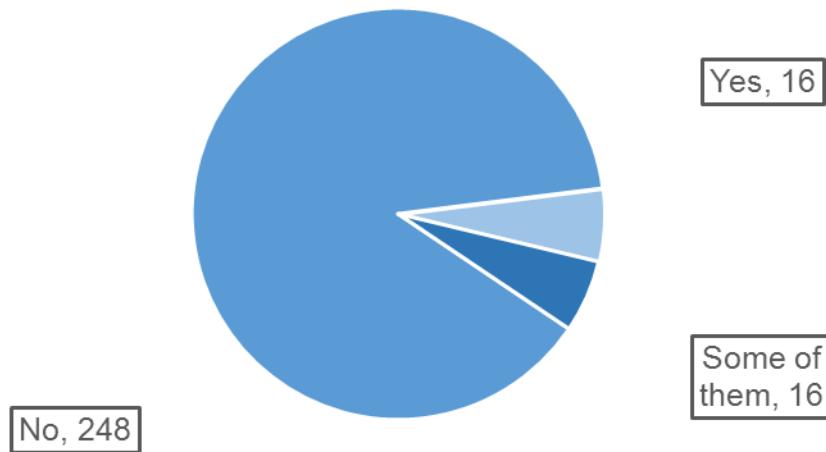




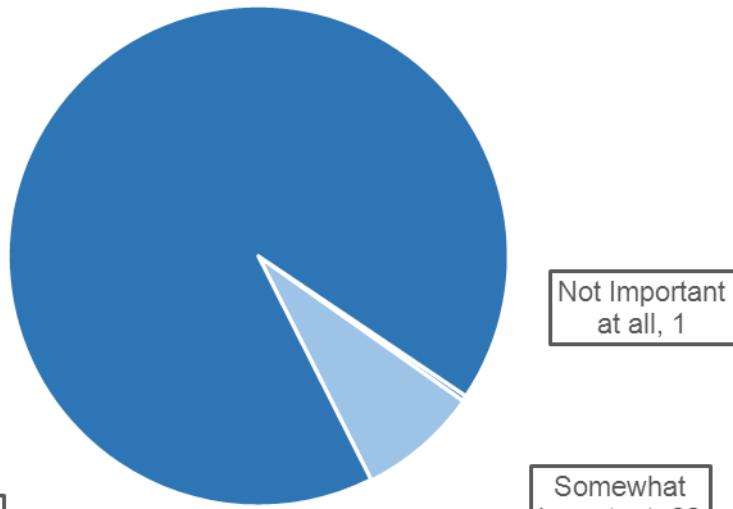
### Have you ever, in a public place... (check all that apply)



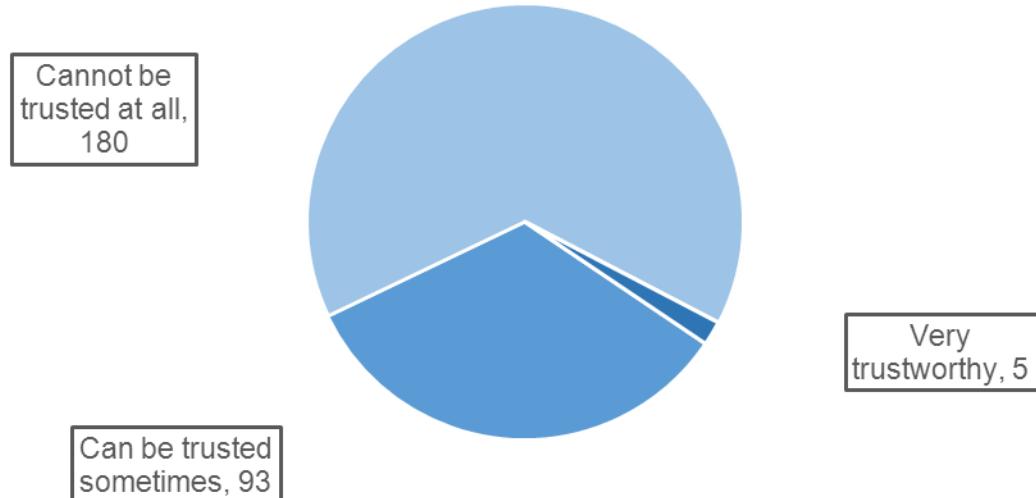
Do you think any of the activities listed  
in the previous question are  
threatening?



### How important is your privacy to you?



### What is your general view of the LAPD?



### **Stories of police harassment likely prompted or aided by SO 1**

As part of our Community Survey, the Stop LAPD Spying Coalition reached out to community members who believed they had been targeted by SO 1. Here are just a few of the stories they shared with us.

#### **ISAAC's STORY: STOPPED, FRISKED and INTERROGATED for TAKING PICTURES**

My name is Isaac Barrera, I am 22 years old, I live in Los Angeles and I am an undocumented migrant from Mexico, Mexicali. In October of 2012, I was a victim of the SO1 LAPD spying program. I was stopped, frisked and interrogated for taking pictures of the sky near a federal building in Los Angeles.

While on a casual morning run, in less than ten minutes of taking photographs through my cell phone, a detective car aggressively appeared in my way as I jogged on. Two officers (with unfamiliar uniform) pulled out of the car very quickly, surrounded me while their hands steady on their guns, shouted, "Stay right there!" They grabbed my cell phone from my hand before I could react. One officer began to question me as the other -big, tall, and intimidating - placed his hands on my left arm positioning it behind my back side and bending me over the hood as the other officer asked, "Who are you? Where do you live? Who do you work for?" I was shocked to see a trigger-happy ready-for-combat patrol car on a deserted street. I was intimidated and confused at first so I answered some questions and resisted from being touched by them. They were interested in why I had taken pictures, what made me take the pictures, and for who I was taking them. I reminded them that I had certain rights that protected me from answering further questioning and the right to take photographs. They made threats with going to the police station or opening an investigation. They left with some of my information and gloating pleasure after violating my human/ civil liberties.

For an undocumented person like myself, Special Order 1 is yet another fast track program to the prison/detention to deportation pipeline. For all of us, this program is an injustice to our civil liberties, a violation of the people's human rights, and it should be terminated immediately.

#### **POOYAN's STORY: DETAINED and INTERROGATED for TAKING PICTURES**

I am an Iranian who escaped the brutality of the Ayatollah's regime in Iran, only to be hurled back into the brutality of the racist police departments in the United States. I was arrested by LAPD in September 2012 while attending Salman Rushdie's public lecture at Los Angeles Public Library. On the day of my arrest, I had a beard. I believe I was racially profiled; I was definitely harassed and detained and illegally interrogated by LAPD, even after I asserted my constitutional right to see a lawyer. My supposed crime was taking a picture of the crowd which apparently the LAPD thought had no artistic value but was going to be used for criminal purposes. My actual "crime," aside from looking Middle Eastern, was likely being a member of Occupy L.A.: I recognized some of the officers from the General Assemblies of Occupy at Pershing Square. I saw them behind a window pointing at me. There were about fifty other people who took photos at that event but I was the only one who was arrested for doing so. The public library even posted photos of that event on their website and their Facebook page. They told me that they had arrested me for my own protection--but I think they are creating a culture of suspicion where everyone is a suspect. Profiling means everyone's past and future is under review. The presumption of innocence unless proven guilty has been reversed.

**ERICK's STORY: PULLED OVER, INTERROGATED and THREATENED with ARREST for FILMING**

My experience with the Los Angeles Police Department's Special Order 1 happened last year when I was filming video for a personal project in front of the US Citizenship and Immigration Services offices. As I filmed in front of the building, I saw 2 police officers across the street going back into their car and sitting there. Once I realized that they were just waiting for me to make a move, I packed up my recording equipment and headed toward first street, riding my bike along Los Angeles street.

The officers pulled me over after driving around the block to cut me off. Both officers began to ask me questions about what I was doing in front of the building filming, why, what, for who was I filming. Being undocumented, I complied and answered their questions at every turn, even though the officers were cornering me into telling them my immigration status by saying that if I don't tell them what they want to know, they would find out who I was in jail.

They called in my info and proceeded to ask me if I had arrest warrants, was I part of a gang etc. My name was cleared since I was in the system already for paid tickets and citations. Once the officers were convinced that I wasn't a terrorist, they took down all of my personal information in a form and then they let me go. My experience was one of having to comply with the police because of my immigration status, otherwise I would have challenged them at every turn.

**ANA's STORY: SURVEILLED, STALKED and HARASSED for FILING a COMPLAINT**

Our family and I are being stalked and harassed on a daily basis by members of the Torrance Police along with other local agencies like Harbor LAPD. This ordeal began after I made a sexual assault complaint against a Torrance Police officer, A. Force #18684. We have been stalked literally every day since July of 2011. Stalking harassing tactics include 24 hour aerial surveillance through the use of police marked and unmarked helicopters, and small Cessna model planes. We are also stalked by various informants to our every location. We are stalked to school, work, grocery stores, parks and any other location we go to. Initially, there were many attempts to incriminate us and frame us. However, we are not criminals and their attempts at incriminating us failed. Since then, they have resorted to simply being in our presence at all times of the day, everyday, in hopes to harass us psychologically and instill fear into us as we try to move on with our normal lives. They have resorted to the use of terror tactics to harm our family in any way possible that still allows secrecy from the general public. They have robbed us from our freedom, by taking our right to go anywhere without them stalking us. They have made it very clear that their only intentions are to harm us in any way possible. I am now 5 months pregnant and they show no intentions of stopping their illegal and pointless terrorist campaign against an innocent family in repercuSSION for reporting a sexual assault.

-Ana E

### **Summary**

Close to 5,000 SARs, including SARs with personal information, have been filed by LAPD over the last five years. LAPD has chosen to characterize common activities as potentially suspicious, and to use completely vague and unprecedented language that opens the door for policing based on speculation and hunches—in other words, based on prejudices. “5,000” becomes the number of false positives, of lives potentially ruined by the SAR program.

LAPD claims that it does not racially profile—yet profiling is all but required to determine when everyday activities are “suspicious” and when they are benign. Contrary to stated intentions, the SAR initiative and related “Pre-Emptive Policing” programs in effect legalize and institutionalize a longstanding tradition of police profiling, in which people are targeted based primarily on their ethnicity, or their religious or political affiliation. Indeed, the accounts submitted to the Coalition came primarily from ethnic or religious minorities and political dissidents.

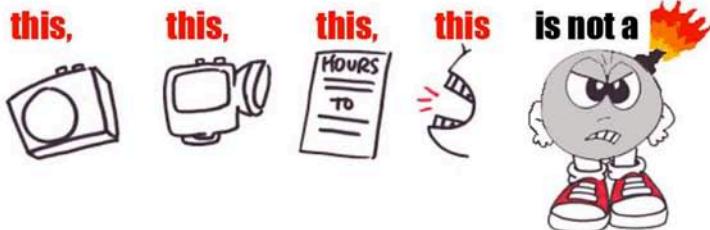
LAPD and Federal authorities claim that two rounds of analysis insulate “identified persons” from being falsely labeled as terrorists or criminals (the first round conducted by LAPD’s Analysis unit, and the second by the Fusion Center’s staff). LAPD’s Analysis unit forwarded thousands of SARs to JRIC. The data mining method that Fusion Centers and other regional and Federal institutions use to identify a “potential terrorism nexus” has been debunked by several studies, and the results of this method were fiercely criticized by the Senate Subcommittee. Besides, local and regional facilities are keeping even rejected SARs on file for years—up to a decade according to the LAPD’s most recent request.

### **Conclusion and community demands**

SO 1, the iWATCH program and related police protocol cannot be reformed; we demand that LAPD rescind them. We will not let the diverse cultural mosaic that is Los Angeles be torn apart by policies based on suspicion and fear of the “Other.” We refuse to stand idly by while our community members are entered into secret databases that render them vulnerable to infiltration, harassment, “preventative” internment and other forms of violence perpetrated by the state. We will not permit the country with the largest prison population and children as young as 10 in gang databases gain more ways to target innocent people. We will not stand idly by while private contractors who have access to these databases profit from the destruction of innocent lives. We demand that self-appointed community leaders stop the charade of partnering with the LAPD or stop the charade of claiming to defend our human and civil rights. We will not allow our government to mine databases for an excuse to let history repeat itself.

## Information-gathering, storing and sharing procedure

### The process for collecting and monitoring police surveillance on local communities under Special Order 1.



**1.** A police officer observes "something suspicious" and fills out a S.A.R. - Suspicious Activity Report. Under Special Order 1 this means reporting on non-criminal activities such as taking a picture of a building, drawing or painting a landmark, drawing diagrams or taking notes in public, using binoculars, or inquiring about a building's hours of operation.



**2.** All S.A.R.s are sent to the Counter Terrorism and Criminal Intelligence Bureau (CTCIB) of the LAPD's Major Crimes Division (MCD).



**3.** The S.A.R.s' information is often shared with the Joint Regional Information Center also known as the **Fusion Center**.



**4.** The S.A.R.s' information can then be uploaded onto the **Information Sharing Environment** (ISE) a National Database.

## Will we sleep or will we fight?

(Compare to the far less amusing chart on the last page of ISE's Functional Standard:  
<http://www.dhs.gov/xlibrary/assets/privacy/privacy-pia-dhswide-sar-ise-appendix.pdf.>)

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### **About The Coalition**

Formed in the summer of 2011, the Stop LAPD Spying Coalition comprises of concerned individuals from diverse sectors of our community, including youth, artists, immigrants, formerly incarcerated people, academics, LGBT community members, lawyers, journalists, students, faith based and community-based organizations. Some of the organizations that are part of the coalition include: Dream Team LA, Gender Justice LA, IDEPSCA, Interfaith Communities United in Justice and Peace, Labor Community Strategy Center, Los Angeles Community Action Network (LA CAN), National Lawyers Guild, South Asians for Justice, and Youth Justice Coalition (YJC).

Since its formation, the coalition has actively engaged to publicly expose policies like LAPD Special Order (SO) 1, its previous version SO 11 and the iWATCH program, and to build a diverse grassroots campaign to rescind these policies. The underlying premise is to take the issue out of just the legal/constitutional framework and to instead use it as a vehicle for organizing - thus taking it beyond the limits of legal challenges and help build public awareness, participation, mobilization and action. There have been several outreach events, focus groups, teach-ins, townhall meeting, public actions, meeting with LAPD leadership, police commission testimonies and movement building.

But in a city as diverse and large as Los Angeles or for that matter any city, large or small we need to go beyond civil liberties or the science of such policies. Violation and criminalization of our daily lives is an assault on human dignity and community values. LAPD Special Order 1 and iWATCH are fundamentally flawed primarily because they are premised on suspicion and fear of the “Other.” These policies create a culture of suspicion and paranoia, lead to fear-mongering and create a strong potential for violence against those considered “suspicious.”

Oak Creek murders of Sikhs, the on-going shootings and vandalism at mosques and the targeted killing of Trayvon Martin are a few examples at least in our immediate memory of spreading terror in our communities. The targets of violence were one way or another considered suspicious and needed to be stopped or gotten rid of altogether. Whether political, racial, religious, sexual or gender, the purpose to rid ourselves of the unwanted, the undesired and the unfit is a product and a powerful tool of what’s been a defining feature of our culture in the United States: *Fear, Suspicion and Demonization of the “other.”* “See Something, Say Something” leads to “Do Something” resulting in harassment, intimidation, threats and murders.

### **How We Will Win**

The people of Los Angeles cannot allow the city to go down this path. LAPD cannot be allowed to police us based upon hunches and speculation. These policies should not be allowed to be thrust upon millions of Angelenos by a rubber stamp approval body like the Police Commission. Rather than public safety this leads to public insecurity. Join the Stop LAPD Spying Coalition’s effort to expose, organize, mobilize, and take action to put an end to these policies.

For further information and to get involved, go to <http://www.stoplapd spying.org>.