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THE BENEFITS OF AUDIO-VISUAL TECHNOLOGY IN ADDRESSING RACIAL PROFILING

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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THE BENEFITS OF AUDIO-VISUAL TECHNOLOGY IN ADDRESSING RACIAL PROFILING

THURSDAY, JULY 19, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The committee met, pursuant to notice, at 10:25 a.m., in room 2154, Rayburn House Office Building, Hon. Dan Burton (chairman of the committee) presiding.

Present: Representatives Burton, Barr, Gilman, Morella, Shays, Platts, Cannon, Waxman, Owens, Maloney, Norton, Cummings, Kucinich, Tierney, Turner, Clay and Watson.

Staff present: Kevin Binger, staff director; James C. Wilson, chief counsel; David A. Kass, deputy chief counsel; Mark Corallo, director of communications; Andre Hollis, counsel; Kevin Long and Michael Canty, professional staff members; Sarah Anderson, staff assistant; Robert A. Briggs, chief clerk; Robin Butler, office manager; Josie Duckett, deputy communications director; John Sare, deputy chief clerk; Danleigh Halfast, assistant to chief counsel; Corinne Zaccagnini, systems administrator; Phil Schiliro, minority staff director; Phil Barnett, minority chief counsel; Sarah Despres and Tony Haywood, minority counsels; Denise Wilson, minority professional staff member; Ellen Rayner, minority chief clerk; and Jean Gosa and Earley Green, minority assistant clerks.

Mr. BURTON. Good morning. A quorum being present, the committee will come to order. I ask unanimous consent that all Members' and witnesses' written opening statements be included in the record, and, without objection, so ordered.

[The prepared statements of Hon. Edolphus Towns and Hon. Janice D. Schakowsky follow:]

Statement of Congressman Edolphus "Ed" Towns(D- New York)
Committee on Government Reform
Hearing on "The Benefits of Audio-Visual Technology in Addressing Racial Profiling"
July 19, 2001

Thank you, Mr. Chairman, for continuing to honor your pledge to focus on racial profiling.

Racial profiling is an abomination. It is America's apartheid and like apartheid, it too must end. Every citizen in our democratic society is guaranteed equal protection under the law. Yet in too many communities throughout this nation, it is a guarantee that has not been honored for people of color. It is imperative that we do everything we can to end this separate system of injustice. I welcome the strong statements of the President in this regard. Also, I appreciate the efforts of the US Attorney General, John Ashcroft, reviewing law enforcement actions relating to their use of "race as a factor in conducting stops, searches and other investigative procedures" and encouraging legislative initiatives. Nevertheless, I believe that we must go beyond these encouraging gestures to confront this terrible situation. Audio-visual technology may be a legitimate part of any plan to address racial-profiling, but it does nothing to address the underlying causes of this discriminatory practice and will not solve the problem.

In New York City, Amadou Diallo was stopped and shot 41 times because he was black. Would audio-visual technology have made a difference ? While audio-visual technology may be a useful tool in assessing the validity of charges, audio-visual equipment cannot look within a law enforcement officer's heart or mind to determine why they have stopped the person in the first place.

I have a number of questions that I hope the witnesses will address; such as, is audio-visual technology feasible for officers in a City such as New York where officers often are not attached to a vehicle? Does audio-visual technology raise privacy concerns ? Or is there a necessary trade-off ?

I look forward to working with my colleagues to end the injustices, the unexplained stops on the side of the road, the harassment, the death and the disgrace that racial profiling is. If that means arming every law enforcement officer with audio-visual technology, requiring law enforcement agencies to collect information on the race, ethnicity, and sex of people they detain for questioning in order to determine whether law enforcement unfairly target minorities or increasing our law enforcement education efforts, I will support whatever steps are necessary to end this discriminatory practice. In this country we have successfully taken strides against discrimination in many forms, but we have a long way to go. I thank the witnesses for coming and I look forward to hearing their testimony.

Statement of Congresswoman Jan Schakowsky
The Benefits of Audio-Visual Technology in Addressing Racial Profiling

Thank you Mr. Chairman for calling this important hearing to discuss the usage of audio –visual technology as a law enforcement tool to battle the devastating and growing problem of racial profiling in our nation. Even today, skin color can make one a suspect for criminal activity in this country. Tens of thousands of innocent motorists and travelers on highways and in airports across the country are victims of racial profiling. These discriminatory stops have reached epidemic proportions in recent years, fueled by the 'War on Drugs," that targets people who fit a 'drug courier' or 'gang member' profile. This targeting has so dramatically affected African Americans, Latinos, and other minorities, that the minority community has given it the derisive term of DWB or even DWM, "driving while black or brown" or "driving while Mexican".

It is a tragedy that our nation has not evolved beyond the legacy of police abuse against people based on their color. Many law abiding African Americans and Latinos alter their driving habits to "evade" law enforcement. Some completely avoid places like all-white suburbs, where they fear police harassment for looking "out of place." Racial profiling affects the decision of which car to buy or what to wear for many people of color. That is unnecessary and unfair.

Perhaps the personal cost exacted by racially-biased traffic stops is clearest in the instructions given by minority parents to their children on how to behave if they are stopped by the policy. This advice transcends economic background and geographic region. Karen, a social worker, says that when her young son begins to drive, she will tell him: "The police are supposed to be there to protect and to serve, but you being black and being male, you've got two strikes against you. Keep your hands on the steering wheel, and do not run, because they will shoot you in the back. Let them do whatever they want to do. I know it's humiliating, but let them do whatever they want to do to make sure you get out of that situation alive. Deal with your emotions later. Your emotions are going to come second-or last." This is not an uncommon or irrational fear for minority parents. Minority parents know that traffic stops can lead to physical, even deadly confrontations. We must put an end to the practice of racial profiling that undermines the legitimacy and effectiveness of the criminal justice system.

I am deeply concerned about this problem and I am eager to engage in this discussion that will explore new technology that can provide concrete statistics to racial profiling and clear up inconsistencies in stories that might exist.

Mr. BURTON. I ask unanimous consent that all articles, exhibits and extraneous or tabular material referred to be included in the record, and, without objection, so ordered.

I also ask unanimous consent that questioning in this matter proceed under clause 2(j)(2) of House rule 11 and committee rule 14 in which the chairman and ranking minority member allocate time to the committee members as they deem appropriate for extended questioning, not to exceed 60 minutes, equally divided between the majority and minority, and, without objection, so ordered.

Today we're going to examine the issue of racial profiling. I think we all understand what this means. Racial profiling occurs when a law enforcement officer targets someone for a traffic stop or a search or some other law enforcement action based solely on their race, their ethnicity or their gender. This is something that should never happen. It's offensive to the basic values that we all hold dear.

Police officers do have a tough job. We have to give them the freedom they need to do their jobs. If they have probable cause to believe someone is committing a crime, they have to take action, but no one should ever be targeted because of their race. People should be able to drive down a highway or walk down a city street with the confidence that their civil rights will not be violated.

This is a tough issue. It's hard to get a handle on how often this happens and why it happens. I should say at the outset that I have a lot of confidence in our law enforcement community. In my years as a Congressman and a State legislator, I have met a lot of very good law enforcement officers from all over the country. They're dedicated. They work very hard to protect our safety. I think most police officers around the country would find the notion of targeting people because of their race just as repugnant as Mr. Cummings and I do.

On the other hand, I have no doubt that it happens. I have no doubt that there are bad police officers out there who've pulled people over just because of their race. I wouldn't be surprised to learn that out of the thousands of police forces around the country, there may have been a few that tolerated or even winked at that kind of behavior.

I think it's very difficult to quantify how often racial profiling happens. It's hard to get inside a police officer's head and figure out why he makes a certain decision. Maybe the best thing we can do is focus on what can be done to prevent it from happening and punish people who do it. That's why Mr. Cummings and I wanted to focus this hearing on the use of audio-visual technology.

It's becoming more and more common to see video cameras in police cars. The reason is pretty obvious: When a police officer goes to the scene of a crime, videotaping what happens creates evidence. If a police officer is attacked or shot, a video camera might record the identity of the attacker. By the same token, if a police officer violates the rights of any citizen, it's captured on videotape, and that officer can then be punished.

The use of audio-visual technology should be a strong deterrent to racial profiling. If a police officer's actions are being recorded, he or she will be much less likely to stop someone unless there's an

objective reason for doing it. If a police officer does target motorists for no other reason than their race, there will be videotaped evidence to discipline him. On the other hand, if a police officer is falsely accused of violating someone's rights, there will be evidence to exonerate him.

Today we're going to hear from the Justice Department on this issue. The Assistant Attorney General for Policy Development Viet Dinh will testify. He will tell us what the Justice Department has done to work with law enforcement agencies around the country to promote the use of audio-visual technology and prevent racial profiling.

We are going to hear from two State senators from Texas, Senator Royce West and Senator Robert Duncan. They spearheaded a bipartisan effort to pass legislation in the Texas Legislature. It promotes the use of video cameras for just this purpose. Their bill was signed into law earlier this year. It requires that Texas police departments either collect racial data on police stops or employ video cameras to record stops.

We're going to hear from the lawyer for several Hispanic individuals from Ohio. They were pulled over by a State police officer. Because they were all Hispanic, everyone in the car was asked to prove that they were U.S. citizens. They sued the State police. The entire incident was videotaped from the police car. The videotape substantiated the charges against the police officer, and action was taken.

We'll also hear testimony about a New Jersey State trooper who was accused of violating a motorist's rights. The stop was videotaped. The officer was exonerated by the videotape. The motorist pled guilty to lying in his complaint because of the videotape, and the head of the New Jersey State Police, Colonel Charles Dunbar, is going to tell us what happened and how the use of video cameras has affected his force.

We can see that video works in both ways. If a police officer does something wrong, he should be held accountable. If a police officer is falsely accused, he should be exonerated. This is the way it ought to be. And that's why there's so much support for use of video cameras from police groups and civil rights groups alike.

That's not to say that audio-visual technology is the only solution to the problem. We don't want to downplay the potential contributions of data collection and other tools. Data collection can and should continue, but it's always good to be looking ahead to new and better ways to attack these problems.

Our witnesses today will discuss a number of these approaches. We'll hear from the National Organization of Black Law Enforcement Executives as well as the ACLU. We're also going to hear from the former Commissioner of the U.S. Customs Service, Raymond Kelly. Mr. Kelly will testify about how the Customs Service has dealt with the issue of racial profiling. We'll also hear from a Maryland attorney who believes that he was a victim of racial profiling. Finally, we'll hear from an executive of a California company that produces equipment for law enforcement agencies.

We have a lot of witnesses today. It is going to be a well-rounded debate. I'll end my opening statement here so we can get on with it. Let me just close by saying that we all find racial profiling and

discrimination repugnant. We want people to have confidence in the fact that their police officers are there to protect them. We want people to trust law enforcement officers and work with them. That should be true if you're African American, Hispanic, Asian or White. That's why it's so important that we look for constructive solutions to deal with the problems like the one we're dealing with today.

[The prepared statement of Hon. Dan Burton follows:]

Opening Statement
Chairman Dan Burton
Committee on Government Reform
"The Benefits of Audio-Visual Technology in Addressing Racial Profiling"
July 19, 2001

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We're also going to hear from the former Commissioner of the U.S. Customs Service, Raymond Kelly. Mr. Kelly will testify about how the Customs Service has dealt with the issue of racial profiling. We'll also hear from a Maryland attorney who believes that he was a victim of racial profiling. Finally, we'll hear from an executive of a California company that produces equipment for law enforcement agencies.

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I now yield to Mr. Waxman for his opening statement.

Mr. BURTON. Mr. Waxman, would you like me to yield to Mr. Cummings for his opening statement, or would you like to make it?

Mr. WAXMAN. I thank you, Mr. Chairman and Mr. Cummings, for allowing me to make my opening statement. I have to return to a markup in the Commerce Committee on one of the key energy bills before us this year, but I want to start today by thanking Chairman Burton for his willingness to work with Congressman Cummings and other Democratic Members to put together this very important hearing, and I am pleased there is bipartisan consensus that the issue of racial profiling deserves serious attention. And I'm glad our staffs were able to work together to organize this hearing, and I want to particularly thank Congressman Cummings for his leadership and commitment to this issue.

Earlier this week the Police Executive Research Forum, a national membership organization of progressive police executives, released a study funded by the Department of Justice on racial profiling. The report included a survey of perceptions of racial profiling of over 1,000 law enforcement officials who lead the big-city police departments, sheriffs departments and other police agencies. Nearly 60 percent of those surveyed said that racial profiling is not a problem in their communities, and fewer than 20 percent have adopted policies to outlaw racial profiling.

While law enforcement officials may not see that racial profiling is a problem, the people they stop on the highways do not agree. A recent Washington Post survey found that more than half of African American men and one-fifth of Asian and Hispanic men say they have been the targets of racially motivated police stops. Statistics validate this perception. In Maryland, for example, minority drivers are stopped and searched at rates higher than can be explained by their numbers on the roads.

Today we are going to hear the testimony of people who know firsthand that racial profiling is indeed a problem. Robert Wilkins, an African American attorney from Washington, DC, will testify about his personal experience of being stopped by Maryland State Police officers while he was returning from a funeral with his family. Pursuant to racial profiling policy, Mr. Wilkins was stopped and detained on the side of the road for no apparent reason for over an hour while the officer tried to obtain his consent to search his car. Mr. Wilkins subsequently sued the Maryland State Police, and the case was settled. Pursuant to the settlement, the Maryland Police agreed to collect data on traffic stops.

On the same panel attorney Mark Finnegan will testify about his client, a Latino motorist who has also experienced racial profiling and was able to prove it using audio-visual technology.

We'll also hear testimony about possible solutions to this problem. We have two legislators from Texas, who will tell us about a Texas law requiring law enforcement agencies to collect racial data unless they have applied for or receive State funding to purchase audio-visual technology. In addition, we'll hear about local law enforcement agencies that use audio-visual technology in exonerating police officers of charges of racial profiling. Other witnesses will testify about the need to expand efforts to combat racial profiling beyond audio-visual technology, including the important role of

data collection and technological advances to improve data collection.

Former U.S. Customs Commissioner Ray Kelly will also testify about the progress Customs has made in decreasing the number of searches without experiencing any decline in the number of successful searches.

I look forward to all the perspectives we will hear today. Racial profiling is an important and difficult issue we must confront at all levels of government. Given that this is a national problem, it is important that Congress take the lead on the issue. We need to examine all possible solutions, including data collection and the use of new technologies. We need to use all the tools available to deal with this problem. However, it would be very difficult to even begin to solve the problem until we understand that the problem exists. This is particularly true of law enforcement, without whose cooperation all proposed solutions will fail.

What the recent survey of law enforcement officials reminds us is that we have yet to clear that first hurdle of getting law enforcement to understand that racial profiling is a problem that needs to be addressed. I hope that today's hearing helps to do that.

I thank the witnesses for coming today, and I look forward to their testimony.

Mr. BURTON. Thank you, Mr. Waxman.

Before I go to Mr. Cummings, I'd like to welcome Representative Watson to this hearing, and I ask unanimous consent that she be allowed to participate in today's hearing, and, without objection, so ordered. Welcome. Glad to have you with us.

Mr. WAXMAN. Mr. Chairman, she's a new member on the Democratic side of this committee.

Mr. BURTON. Oh, is that right? Well, we're tickled to death to have you with us.

Ms. WATSON. May I very quickly respond?

Mr. BURTON. Sure.

Ms. WATSON. Mr. Chairman, Chairman Burton, Congressman Waxman and Congressman Elijah Cummings, thank you so much for the privilege of serving on this committee. I look forward to involving myself in every issue that comes in front of us.

Today's issue, the benefits of audio-visual technology and addressing racial profiling, is very significant. Racial profiling has truly been a pervasive issue within my district. One of the cases that we considered at the State level is the young man who took my seat in the California State Senate. So I will be very much involved in this issue, and thank you for the privilege of serving on the committee and with all of my colleagues.

Mr. BURTON. Well, once again welcome to the committee, and we will now yield to Mr. Cummings, who's been very, very hard-working on this issue. And I can think of no Member in the Congress that's worked harder on making sure that this issue is brought to light and reviewed thoroughly than Mr. Cummings, and I want to thank you very much for your hard work.

Mr. CUMMINGS. Mr. Chairman, I want to thank you for your cooperation, for working with us, and your staff and certainly my staff, and we also, all of us, join in welcoming the Congresslady from the great State of California Ms. Watson.

Welcome, and we look forward to working with you.

Chairman Burton, earlier this year, as you may recall, I urged this committee to apply its vast and powerful oversight jurisdiction to examine the menacing problem of racial profiling, and I'm very happy that our majority and minority staffs have been able to work together to help make this hearing happen.

Mr. Chairman, racial profiling is a very new term that describes a very old problem. We will hear a lot today about the role audio-visual technology can play and is already playing in addressing racial profiling. But the origins of racial profiling in the United States predate patrol-car-mounted cameras with sound recording equipment. In fact, they predate cameras, tape recorders and cars altogether. We are talking about a problem as old as this country itself, and, in fact, even older.

Drawing conclusions about character on the basis of immutable superficial characteristics rather than on the basis of behavior helped to justify slavery and segregation and now informs more subtle forms of discrimination that occur today in the post-civil-rights era in this country. Two months ago the Congressional Black Caucus held a hearing on all facets of the racial profiling problem. I'm glad that at least a slice of the issue has been presented here in this forum for broader discussion, because racial profiling is not just a problem for the Black Caucus or the Hispanic Caucus or the Democratic Caucus, it is a problem for all of this Congress and America to deal with. It offends our most basic common sensibilities as Americans because it directly contravenes our most sacred principles, namely, freedom, liberty, fairness and equal justice under the law.

Mr. Chairman, we didn't have a Constitution when the evil seeds of this problem were seen centuries ago, but we have one now, and thank God it has evolved to the point where it is beyond question to lawmakers that law enforcement action directed against citizens because of their race is plainly obnoxious to the sacred principles of due process and equal protection embodied to many of our—protection embodied in that enlightened document.

Evidently the notion is less clear to many of our Nation's law enforcers. Indeed, a recent survey suggested a clear majority of police executives surveyed believe that racial profiling is not a problem in their jurisdictions, and fewer than 20 percent have adopted policies to outlaw racial profiling. That must change. When President Clinton declared that racial profiling is the opposite of good policing, he was absolutely right. His wisdom was borne out by the clear evidence in my State of Maryland, which sadly has been called the "driving while Black" capital of the world.

One of our witnesses today, Mr. Robert Wilkins, is a respected attorney in Washington, who brought this situation to light. In 1992, he became an unfortunate victim of racial profiling; unfortunate for the police that is. As a result of the litigation that resulted from the encounter, *Wilkins* v. *Maryland State Police,* the State police in my home State have been required to disclose detailed information about the Maryland motorists they stop and search. The results are shocking to the conscience and chilling.

During 1995 through 1997, minorities accounted for 22 percent of both the motorists and the speeders along I–95. We were 34.5

percent of those stopped. We were 77 percent of those who were both stopped and searched along Interstate 95. Yet we also were 76 percent of the travelers who were stopped and searched and were found to be innocent of carrying any contraband.

The Wilkins evidence demonstrated that targeting Black people is ineffective as a police practice. It is, as President Clinton said, the opposite of good policing.

Today, the evidence derived from the Wilkins and companion cases is helping to bring about change in my home State, even though the problem persists. On May 15th of this year, Maryland joined 12 or more other States that have enacted legislation to address racial profiling. Like President Clinton's Executive order, which applies to Federal agencies, the Maryland legislation mandates the collection of data on State and local police stops. Other States are taking similar contrasting approaches, including Texas, as we'll hear today.

Whether audio-visual technology is sufficient on its own to address this problem is a matter of debate, and we'll hear arguments on that subject this afternoon. What should be clear from the outset of the discussion, however, is that we as Americans cannot and will not tolerate the practice of stopping and searching people for no reason other than their race, whether it's on the side of a highway, in an airport, in a public park or anywhere else.

This is national problem, and it is therefore incumbent upon this Congress to demonstrate leadership on this issue. This hearing is an important step, and I hope we have an opportunity to investigate thoroughly all potential solutions before we move forward with Federal legislation. But surely, Mr. Chairman, Congress must act. The data tells us so.

I look forward to hearing our witnesses today. I thank them for participating, and hopefully we will find some solutions to this menacing problem.

Mr. BURTON. Thank you, Mr. Cummings, and once again thank you for all your help and effort on this issue.

Ms. Watson, I believe came next, and since she's a new Member, do you have an opening statement you'd like to make?

Ms. WATSON. I just made it.

Mr. BURTON. You've already made your statement.

We'll go to Mr. Clay.

Mr. CLAY. Thank you, Mr. Chairman.

Very briefly I would like to say that I am very interested in hearing from the witnesses today. Representing Missouri, I helped draft and pass a law last year that instituted data collection. We received our first report last month, and it's just what I suspected: more higher incidence of African Americans and other minorities being stopped, vehicles being searched.

So my interest today is really to hear from our first witness, the Justice Department, too, so that he can share with us on how we attack the issue of racial profiling, how we address it, how we eradicate it from police departments throughout this Nation. I have a 7-month-old son, and I don't want him to have to go through what I have been subjected to, what other African Americans have been subjected to, which is "driving while Black," and I fear for him and other young African Americans and people of color that

are growing up now who may have to be subjected to this profiling. So I am interested in hearing from the U.S. Justice Department to hear what kinds of approaches they want to take. President Bush as well as Attorney General Ashcroft have indicated to this country that they want to eradicate racial profiling. So I am interested in hearing what approaches the U.S. Department of Justice wants to take to help eradicate this problem.

Thank you, Mr. Chairman.

Mr. BURTON. Thank you, Mr. Clay.

[The prepared statement of Hon. Wm. Lacy Clay follows:]

Statement of the Honorable William Lacy Clay before the Committee on Government Reform

"The Benefits of Audio-Visual Technology in Addressing Racial Profiling"

Good Morning!

THANK YOU FOR YIELDING, MR. CHAIRMAN. I WELCOME THE OPPORTUNITY TO MEET WITH THE COMMITTEE TODAY. I WELCOME THE WITNESSES FROM THE THREE PANELS THAT WILL TESTIFY TODAY ON THE BENEFITS OF AUDIO-VISUAL TECHNOLOGY IN ADDRESSING RACIAL PROFILING.

RACIAL PROFILING IS A SUBJECT THAT IS NEITHER NEW NOR ISOLATED TO ANY PARTICULAR AREA OF THE COUNTRY. THE PROBLEM IS NATIONWIDE. IT IS NOT NECESSARILY CONFINED TO DISCRIMINATORY PRACTICES AGAINT BLACK OR BROWN CITIZEN. IT RESULTS IN DISCRIMINATORY PRACTICES AGAINST WHITES AS WELL. HOWEVER, THE INCIDENCES OF THESE PRACTICES ARE DISPROPORTIONATELY HAPPENING TO MEMBERS OF THE BLACK AND BROWN RACES.

I AM FAMILIAR WITH SITUATIONS IN ST. LOUIS, MISSOURI, MY HOME; IN MARYLAND, WHERE I ATTENDED HIGH SCHOOL AND COLLEGE; AND VIRGINIA AND WASHINGTON, D.C., WHERE I FREQUENTED WHILE IN HIGH SCHOOL AND COLLEGE.

ACCORDING TO WASHINGTON POST STAFF WRITER, LORI MONTGOMERY, "LAST YEAR, MARYLAND STATE TROOPERS SEARCHED 533 CARS ON INTERSTATE 95. MORE THAN HALF OF THE DRIVERS WERE BLACK. TEN PERCENT WERE HISPANIC. IN ALL, 63 PERCENT OF DRIVERS FORCED OUT OF THEIR CARS WERE MINORITIES."

THE ISSUE OF RACIAL PROFILING BY POLICE BRIEFLY GRABBED THE ATTENTION OF THE PRESS WHEN THEN NEW JERSEY GOVERNOR CHRISTINE TODD WHITMAN FIRED THE HEAD OF THE STATE POLICE AFTER HE ACCUSED BLACKS AND HISPANICS OF BEING MORE LIKELY TO BE DRUG DEALERS AND THEREFORE DESERVING OF HEIGHTENED POLICE SCRUTINY. GOVERNOR WHITMAN EARNED GLOWING COVERAGE FOR HER SWIFT ACTION AND DESERVEDLY SO. IT WAS REPORTED FOR MOST OF HER TERM THAT SHE INSISTED THAT RACIAL PROFILING WAS NOT A PRACTICE OF THE STATE POLICE. HOWEVER, WITH MORE ATTENTION TO

THE ALLEGATIONS, SHE CHANGED HER PERSPECTIVE AND ACTED SWIFTLY.

EVERYTHING ABOUT RACIAL PROFILING IS NOT CONFINED TO THE POLICE. FOR MANY BLACKS NATIONWIDE, JUST GOING TO SURBURBAN STORES IS AN ADVENTURE IN ITSELF. THERE ARE TOO MANY REPORTS, I HAVE EXPERIENCED THIS MYSELF, OF A BLACK BEING THE ONLY MINORITY IN A STORE AND LOOKING UP AND FINDING EVERY SINGLE CAMERA IN THE STORE FOLLOWING THAT INDIVIDUAL. OFTEN THESE STORES SUFFER HEAVY LOSSES FROM THEFT, BUT HAVE VERY FEW MINORITIES AS CUSTOMERS. YOU WOULD THINK THAT SOMEONE WOULD WAKE UP, AT SOME POINTS, AND HAVE A CONSCIOUS THOUGHT.

AN ASSISTANT OF MINE WHO IS BLACK HAS ON NUMEROUS OCCASIONS, WHEN FISHING WITH HIS SONS AT ROOSEVELT ISLAND IN THE DISTRICT OF COLUMBIA, BEEN SUBJECTED TO SEARCHES OF HIS CAR BY THE PARK POLICE. ON THESE OCCASIONS, THEY WERE THE ONLY MINORITIES IN THE PARKING LOT THAT WAS FULL OF CARS. YET, THEY WERE THE ONLY ONES SEARCHED AND OR TALKED TO. HE REMEMBERS ONE INCIDENT BEING ASKED BY A PARK POLICEMAN IF HE HAD SEEN A WHITE BEARDED INDIVIDUAL EXPOSING HIMSELF. IT WAS NOTED THAT IN A FULL PARKING LOT HE WAS THE

ONLY PERSON ASKED ANYTHING BY THE OFFICER. AFTER QUESTIONING MY ASSISTANT, THE OFFICER LEFT THE PARK. MY ASSISTANT, A VIET NAM VETERAN, DOES NOT TAKE HIS SONS TO THE PARK ANYMORE FOR FEAR OF SOMETHING HAPPENING IN THE PRESENCE OF HIS SONS.

THERE ARE COUNTLESS EXAMPLES THAT CAN BE CITED, BUT IS UNNECESSARY TO DO SO AT THIS TIME.

WITHOUT SPEAKING FURTHER, LET US UNDERSTAND ONE FACT. MOST OF OUR POLICE OFFICERS DO NOT ENGAGE IN THESE ACTIVITIES. HOWEVER, THOSE THAT DO GIVE A BAD REPUTATION TO EVERYONE THAT SERVE.

WE MUST DO SOMETHING ABOUT THIS PROBLEM FOR THOSE THAT ARE DISCRIMINATED AGAINST AND ALSO THOSE THAT GET AN UNDESERVED REPUTATION FOR THINGS THEY DO NOT DO. THOSE THAT HONORABLY SERVE SHOULD BE APPLAUDED FOR RISKING THEIR LIVES ON A DAILY BASIS FOR THE SAFETY OF ALL CITIZENS.

WHILE MOST AGREE THAT AUDIO VISUAL TECHNOLOGY CAN PLAY A TREMENDOUS POSITIVE ROLE IN RACIAL PROFILING CASES INVOLVING POLICE STOPS, IT WILL ELIMINATE COUNTLESS

FALSE CLAIMS OF THESE PRACTICES. ALL CLAIMS ARE NOT ACCURATE. THE EMBARRASSMENT IS THAT THOUSANDS OF COMPLAINTS OF THIS NATURE ARE.

MR. CHAIRMAN I ASK UNAMIMOUS CONSENT TO SUBMIT MY STATEMENT TO THE RECORD AT THIS POINT.

Mr. BURTON. Mr. Owens.

Mr. OWENS. I have no opening statement, Mr. Chairman.

Mr. BURTON. You have no opening statement, you say, sir?

OK. Ms. Norton.

Ms. NORTON. Thank you, Mr. Chairman. May I commend your initiative on holding this hearing. It's not in this committee I expected to have the first hearing, and I was very pleased to find that indeed there is jurisdiction in this committee for a hearing of this kind at a time when this issue has assumed mammoth proportions.

Pending before the Transportation Committee as we speak is my own bill, the Racial Profiling Prohibition Act, which I filed as a member of that committee essentially to prohibit police stops based on race alone. We, of course, know if you have a description of somebody who is a Black male of a certain height or of a certain weight, that the description of the person's color could be informative, but if the police are looking for a Black male, that there is something very wrong with that description, because the police then can look for anybody, and the evidence is overwhelming that is exactly what police have been doing. This is often because at the very top, the kind of training and the kind of professionalism it would take to use race correctly, just as you can use the color of somebody's hair correctly, has not been in place when it comes to race. That is not unrelated.

So the way race has been treated in our country since the first Black slaves landed on these shores, what this problem indicates is that race and ethnicity as a basis for police stops has become so pervasive and so systematic that it has blown a hole in our civil rights protections. What is clear to us now, at a time when we thought we were at the end of having to pass civil rights legislation and merely had now to enforce it, is that there is a very important piece of civil rights legislation lying on the table. So three Members of Congress have introduced three different approaches to it.

My bill is introduced because I do not intend to sit in this Congress as a member of the Transportation Committee next year when we authorize upwards of $250 billion in highway traffic funds and see those funds continue to go to subsidize racial profiling, and that is exactly what will happen if, in fact, we do not take the steps to make sure that the unconstitutional use of Federal funds does not occur. It is unconstitutional for Federal funds to be used in a discriminatory way or to enforce discrimination. And so my bill would require that States have standards that bar the use of race and ethnicity as the reason for stopping somebody, and that the data and ethnicity to show that the law is being enforced be collected.

The reason that I have used this approach, Mr. Chairman, is that for a very real reason, it is the most natural way to get at this practice. What we have now, of course, are people have to sue; they have to look and see if their State legislation is good enough. I don't think anything but a proactive approach will truly work in this climate. I don't want to wait until Mr. Wilkins gets stopped again and say, go sue again. I want the State to take action now so that my son and every other Black man or Hispanic man who are identifiable by their color do not have to wonder if they're going

to be stopped on the street, because the State has already moved to make sure that does not happen.

And so what I looked at was how my committee, the Transportation Committee, had approached problems that it felt strongly about, and what I found was that in disbursing transportation funds, that the committee often required that in order to receive those funds, States had to take very specific action. The reason you have a national minimum driving age is not because all the States wanted to do it, and the District of Columbia had one age and one in Maryland and another in Virginia. A lot of people liked it that way, and we said, no, you have to have the same age in order to get this money. And highway money is the most coveted money in the Congress, and they came into line because we said it was important enough.

We said it was important enough to get convicted drug offenders off all of the roads, and so their licenses should not come back except after a period of time. And so we said, you're not going to get your highway money unless you pass a bill to that effect.

As I speak, we have said, unless you pass a law that, in fact, requires that those who are stopped meet the .08 blood alcohol content, you won't get your highway money. So essentially I've said to the Congress this is a test. Do you feel strongly about the outrage of people being stopped on the street because they are Black and Hispanic; do you feel strongly enough so that this Congress will take action to make sure that we do not subsidize racial profiling, because that is exactly what we are going to do.

I believe that the Congress is going to do that. I believe that my committee, the Transportation Committee, is going to pass this legislation. I believe it because it is a very bipartisan committee, because the committee has often sustained goals and timetables and other civil rights protections, and I believe that the outcry from literally every State in the Union is going to get this provision included in the transportation bill, the new TEA–21, when it comes out next year.

I can't thank the chairman enough, if I may say in closing, for being the first committee to spotlight this problem and take action to move us forward. Thank you, Mr. Chairman.

Mr. BURTON. Thank you, Ms. Norton.

Once again I want to tell the gentlelady from Washington that Mr. Cummings has led the fight on this issue, and he's to be commended for being so persistent, and that's one of the reasons why we're having this hearing today, because of his hard work.

Mr. Tierney.

Mr. TIERNEY. I have no comment. Thank you.

Mr. BURTON. Mr. Shays.

Mr. SHAYS. Thank you, Mr. Chairman. Thank you, Chairman Burton. Thank you so very much for convening this hearing on the benefit of audio-visual technology in addressing racial profiling. This bipartisan oversight initiative addresses a critical issue in need of greater exposure, public debate and reform.

Decades ago, with the passage of the sweeping civil rights legislation, this Nation attempted to amplify and extend our constitutional commitment to equal protection and equal treatment under the law. One remaining bastion of racial bias cynically turns the

law and law enforcement against the very citizens it is the solemn duty of both to protect. The practice of using race as a prima facie criterion for questioning or arrest violates that commitment and flies in the face of progress we have made toward racial equality.

With our colleague Mr. Conyers of Michigan, I am a grateful cosponsor of the End Racial Profiling Act, H.R. 2074, to require Federal law enforcement agencies to adopt policies and procedures to eliminate racial profiling. The bill also holds States and localities to the same high standard by making sure Federal funds are not used to continue the practice.

Our bill will help protect citizens from the indignity and stigma of profiling. It will also help law enforcement officers perform their sworn duties impartially by encouraging use of the technology we will be discussing today. Video and audio systems can serve as an impartial third party, protecting citizens against arbitrary police actions while reducing the risk of false or spurious racial profiling charges against law enforcement personnel. These technologies when used effectively should increase public confidence that arrests are being made based on probable cause, not racial stereotypes.

Again, Mr. Chairman, thank you for focusing the committee's attention on this issue. I truly look forward to the testimony of today's witnesses, and I look forward to exploring other dimensions of the problem and proposed solutions at future hearings. And I thank my colleagues who are participating in this important hearing.

Mr. BURTON. Thank you very much, Mr. Shays.

[The prepared statement of Hon. Christopher Shays follows:]

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Statement of Rep. Christopher Shays
July 19, 2001

Thank you Chairman Burton for convening this hearing on "The Benefits of Audio-Visual Technology in Addressing Racial Profiling." This bi-partisan oversight initiative addresses a critical issue in need of greater exposure, public debate and reform.

Decades ago, with the passage of sweeping civil rights legislation, this nation attempted to amplify and extent our constitutional commitment to equal protection, and equal treatment, under the law. One remaining bastion of racial bias cynically turns the law, and law enforcement, against the very citizens it is the solemn duty of both to protect. The practice of using race as a *prima facie* criterion for questioning or arrest violates that commitment, and flies in the face of progress we have made toward racial equality.

With our colleague Mr. Conyers of Michigan, I am a sponsor of The End Racial Profiling Act (H R 2074) to require federal law enforcement agencies to adopt policies and procedures to eliminate racial profiling. The bill also holds states and localities to the same high standard by making sure federal funds are not used to continue the practice.

Our bill would protect citizens from the indignity and stigma of profiling. It would also help law enforcement officers perform their sworn duties impartially by encouraging use of the technologies we will be discussing today. Video and audio systems can serve as an impartial third party, protecting citizens against arbitrary police actions while reducing the risk of false or spurious racial profiling charges against law enforcement personnel. These technologies, when used effectively, should increase public confidence that arrests are being made based on probable cause, not racial stereotypes.

Again Mr. Chairman, thank you for focusing the Committee's attention on this issue. I look forward to the testimony of today's witnesses, and I look forward to exploring other dimensions of the problem, and proposed solutions, at future hearings.

Mr. BURTON. We'll now welcome our first panel to the witness table, Assistant Attorney General Viet Dinh, and we'd like you to please rise and raise your right hand.

[Witness sworn.]

Mr. BURTON. Do you have an opening statement, sir?

Mr. DINH. I do, sir, and it's been submitted for the record. I'd like to now give an oral statement, if I may.

Mr. BURTON. It's fine. Without objection.

STATEMENT OF VIET DINH, ASSISTANT ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. DINH. Mr. Chairman and members of the committee, it's an honor be here, my first hearing since being sworn into office as Assistant Attorney General for Legal Policy. Thank you for this opportunity to inform you of the Department's effort on racial profiling and specifically how technology may assist in those efforts.

Improving the relationship between law enforcement and the communities they serve is a priority for the Department of Justice and for this administration. The Department recognizes that effective law enforcement requires trust between citizens and police officers, and police-community relationships may be threatened when a citizen is treated unfairly by the police. Racial profiling is a particularly egregious example. No American should fear law enforcement action just because of his or her race.

We are committed to ensuring that all individuals are treated equally under the law. The President and Attorney General have made clear that the Department will take a leadership role in addressing the issue of racial profiling. In February, the President directed the Attorney General to review the use of race by Federal law enforcement authorities, requested that the Attorney General work with Congress to develop data collection methods, and asked that the Attorney General report to him findings and recommendations for improved administration of the Nation's laws.

To implement these directives, the Deputy Attorney General Larry Thompson is conducting a comprehensive review of the policies and practice of Federal law enforcement agencies to determine the nature and extent of any racial profiling. That review encompasses the four following elements: a summary of the available data and studies relevant to the racial profiling issue; a description of the types of contacts that occur between Federal law enforcement and a general estimate of the number of such contacts; a review of current policies of Federal law enforcement agencies concerning racial profiling; and fourth, a review of all judicial proceedings and professional responsibility inquiries involving allegations of racial profiling by Federal law enforcement officials. The Deputy Attorney General anticipates completing this review by the fall.

In addition to our work under the directive, the Department has a number of ongoing initiatives relating to racial profiling. For example, the Community-Oriented Policing Services Office, the COPS office, has provided resources for data collection and research on racially biased policing and implemented a national training initiative through its regional community policing institutes. These programs proactively work with State and local law enforcement agen-

cies to adopt best practices, to weed out the bad seeds, and to improve the trust between law enforcement agencies and the communities that they serve. Additionally, COPS introduced a targeted grant program entitled Racial Profiling Prevention Strategies to develop best practice and technical assistance guides to prevent racial profiling.

The Department's Bureau of Justice Statistics [BJS], collects and analyzes data on traffic stops and data collection procedures. The Bureau of Justice Assistance recently published a Resource Guide on Racial Profiling Data Collections Systems. And the National Institute of Justice has supported studies on racial profiling issues, such as the North Carolina Highway Traffic Study, which addressed whether North Carolina Highway Patrol officers stopped minorities at a higher rate than nonminorities and what factors motivate highway stops.

Today you've asked me specifically to address the use of audio-visual technology as a law enforcement tool and its potential as a means for eliminating racial profiling. Section 2 of my written statement describes the nature of the technologies available and the respective advantages and certain limitations.

I would like to spend the next few minutes describing the Department's efforts to support deploying technologies to enhance police capabilities and improve efficiencies and prevent racial profiling.

The Department, principally through the Office of Justice Programs and the Office of Community-Oriented Policing Services, provides significant funding to State and local law enforcement agencies to support the deployment of technologies which can be used to purchase a wide range of equipment, including in-car and other video and a variety of data collection systems. The COPS office also administers an In-Car Video Camera Grant Program to provide law enforcement officials with this important tool during traffic stops.

To leverage these investments, OJP and COPS have produced a number of guides, references and other reports for use by the agencies in deciding what equipment to acquire and how best to collect data on traffic stops. Among these are a tutorial published by the Bureau of Justice Assistance that includes description of data collection programs in four United States and one foreign location, and provides recommendations for traffic stop data collection systems; an executive brief on how video cameras are used in law enforcement published by the International Association of Chiefs of Police under a National Institute of Justice cooperative agreement, and finally, but not exhaustively, a National Institute of Justice guide on how to select and apply law enforcement video surveillance equipment, which offers guidance on how to position cameras, lighting, and focusing, and other requirements.

The NIJ is also engaged in research on a variety of technologies to enhance capabilities and improve efficiency. Some of these technologies may also help to make police stops less personally intrusive and allow for a more objective determination of a need for a stop. Among these research subjects are police palm top devices that combine a number of technologies to allow the rapid completion and filing of reports from the field; the Voice Response Trans-

lator, a small device that allows officers to communicate one-way in the same language as the subject being questioned; and conceal weapon detection systems that may be used in certain circumstances in lieu of more intrusive body searches. Adaptive surveillance systems which can dynamically adjust the video parameters in a region of an image containing a face or other object of interest to improve the quality of image is also another technology that we are exploring.

Not all of these technologies, of course, are ready for deployment, and some will not be for several years, and any technology, old or new, may be employed in ways that raise significant concerns regarding privacy. Law enforcement agencies using any of these technologies must be cognizant of the privacy issues, seek guidance from legal counsel, develop appropriate policies and provide training before them putting them into operation.

We look forward to working with the law enforcement agencies and, more important, the Congress to answer these important questions relating to privacy, but to the topic today, relating to proactive steps we can take as a Department and as an administration to eliminate the practice of racial profiling across the land. Thank you very much.

Mr. BURTON. Thank you, Mr. Dinh.

[The prepared statement of Mr. Dinh follows:]

Department of Justice

STATEMENT

OF

VIET DINH
ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL POLICY

BEFORE THE

COMMITTEE ON GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES

CONCERNING

TECHNOLOGY AND RACIAL PROFILING

PRESENTED ON

JULY 19, 2001

STATEMENT OF

VIET DINH

ASSISTANT ATTORNEY GENERAL

OFFICE OF LEGAL POLICY

JULY 19, 2001

Mr. Chairman and members of the Committee, it is an honor to be here. Thank you for this opportunity to address the Department's efforts on racial profiling and specifically how technology may assist in these efforts.

Improving the relationship between law enforcement and the communities they serve is a priority for this Department of Justice. The Department recognizes that effective law enforcement requires trust between citizens and police officers, and police-community relationships may be threatened when a citizen is treated unfairly by the police. Racial profiling is a particularly egregious example. No American should fear law enforcement action just because of his or her skin color.

I. Department of Justice Efforts to Combat Racial Profiling

We are committed to ensuring that all individuals are treated equally under the law. The President and Attorney General have made clear that the Department will take a leadership role in addressing the issue of racial profiling. In February 2001, the President directed the Attorney General to review the use of race by Federal law enforcement authorities, requested that the Attorney General work with Congress to develop data collection methods, and asked that the Attorney General report to him findings and recommendations for improved administration of the Nation's laws.

To implement those directives, the Attorney General directed the Deputy Attorney General to conduct a comprehensive review of the policies and practices of federal law enforcement agencies to determine the nature and extent of any racial profiling. The Attorney General required that the review consist, at a minimum, of the following four elements: (1) a summary of the available data and studies relevant to the racial profiling issue; (2) a description of the types of contact that occur between federal law enforcement and a general estimate of the number of such contacts; (3) a review of current policies of federal law enforcement agencies concerning racial profiling; and (4) a review of all judicial proceedings and professional responsibility inquiries involving allegations of racial profiling by federal law enforcement officials. The Department is in the process of responding to these directives, and we anticipate completing a report for the Attorney General by this fall.

In addition to our work under the directive, the Department has a number of ongoing initiatives relating to racial profiling.[1] For example, the Community Oriented Policing Services (COPS) Office has provided resources for data collection and research on racially biased policing, and implemented a national training initiative through its Regional Community Policing Institutes. Additionally, COPS introduced a targeted grant program, *Racial Profiling Prevention Strategies*, to develop best practices and technical assistance guides to prevent racial profiling. The Department's Bureau of Justice Statistics (BJS) collects and analyzes data on the nature and consequences of police-citizen contacts, including data on traffic stops and data collection procedures. The Bureau of Justice Assistance recently published a Resource Guide on Racial

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[1] For a listing of Department of Justice programs on racial profiling, please see Appendix "A."

Profiling Data Collection Systems,[2] and the National Institute of Justice has conducted supported studies on racial profiling issues, such as the North Carolina Highway Traffic Study, which addressed whether North Carolina Highway Patrol officers stopped minorities at higher rates than non-minorities and what factors motivate highway stops.

II. Use of Audio-Visual Technology as a Law Enforcement Tool

Today you have asked me to address the use of audio-visual technology as a law enforcement tool and its potential as a means for eliminating racial profiling. Advances in technology have made possible new methods of data collection that may be employed during traffic stops. Not surprisingly, the audio-visual technology most often applied to the collection of data on police stops is the video recorder because it is readily available and relatively affordable.

Video technologies come in two major forms – analog and digital – and a nearly infinite number of different applications. Most video surveillance used by police today is analog, and no different from the traditional home VHS video cassette recorder technology. The image is recorded on tape and the tapes are then archived for some period of time and then either discarded or reused. Digital technologies, which are becoming increasingly common, convert the recorded image into a digital file, or series of files, and record them on an appropriate medium: tape, flash memory cards, hard drives, CD ROM or DVD discs.

Video surveillance systems usually consist of a camera mounted in the grill, on the dash, or on the roof, with a recorder mounted somewhere – usually in the trunk – in the car. For analog systems, the continuing operation of the system can be very expensive. Large numbers of tapes

[2] *A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned.* U. S. Department of Justice, Bureau of Justice Assistance. November 2000.

are required to archive the recordings for even 30 days and proportionately more for longer periods. In a typical police department with only six patrol cars, over 500 tapes will be required each month. For a department such as the New York Police Department, tens of thousands of tapes are required. In addition, the department will have to provide storage facilities – warehouse equivalents in the case of large departments – and resources to catalog and manage a search and retrieval system for the tapes. Digital systems are currently more expensive than tape systems, but generally require relatively little storage space, because huge amounts of video can be archived on far smaller media. Cataloging, search and retrieval resource requirements are also somewhat reduced.

The advantages to video technologies are fairly obvious. They objectively document what the camera can see and hear, without requiring police officers to make subjective determinations. More importantly, they permit the material to be archived for possible review by supervisors or researchers, subject to relevant state and federal laws. Anecdotal evidence, and some limited research, also suggests that the presence of cameras often has a positive effect on the behavior of both the citizen who has been stopped and the police officer. A Bureau of Justice Statistics survey of 700 law enforcement agencies showed that 74% of State and 46% of the surveyed local agencies used in-car video.[3]

Video technologies are not without limitations, however. First, these devices cannot provide any more information than the camera connected to the recording system can see or hear, which is often less than what the officer can. Most systems offer only a narrow, and fixed,

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[3]*Law Enforcement Management and Administrative Statistics, 1997: Data for Individual State and Local Agencies with 100 or More Officers.* U. S. Department of Justice, Bureau of Justice Statistics. April 1999.

viewing arc, so things happening to the left or right of the camera may not be captured. In a typical stop, when the officer pulls up behind the car, the in-car camera can only see the subject dimly through the rear window – if it can see anyone at all – although it can usually see the license plate and other important information. Second, making use of the data captured on tape may also require substantial resources because a supervisor or researcher must review the videos. Third, many of the systems are not correctly installed or well maintained, so that image and audio quality is often poor. Finally, most installations will permit recording over a tape at the discretion of the operator, which may permit tampering.

III. Department of Justice Technology Initiatives[4]

The Department of Justice, principally through the Office of Justice Programs (OJP) and the Office of Community Oriented Policing Services (COPS), provides significant funding to state and local law enforcement agencies to support the deployment of technologies, which can be used to purchase a wide range of equipment, including in-car and other video and a variety of data collection systems. The COPS Office also administers an In-Car Video Camera Grant Program to provide law enforcement officials with this important tool during traffic stops.

To leverage these investments, OJP and the COPS Office have produced a number of guides, references and other reports for use by agencies in deciding what equipment to acquire and how best to collect data on traffic stops. Among these are a tutorial published by the Bureau of Justice Assistance that includes descriptions of data collection programs in four U.S. and one

[4] A sampling of Department technology programs is attached at Appendix "B.".

foreign location, and provides recommendations for traffic-stop data collection systems;[5] an executive brief on how video cameras are used in law enforcement, published by the International Association of Chiefs of Police under a National Institute of Justice cooperative agreement;[6] and a National Institute of Justice guide on how to select and apply law enforcement video surveillance equipment, which offers guidance on how to position cameras, lighting, focusing and other requirements.[7]

The National Institute of Justice is also engaged in research on a variety of technologies to enhance police capabilities and improve efficiency. Some of the technologies may also help to make police stops less personally intrusive and allow for a more objective determination of the need for a stop. Among these research subjects are: police palm top devices that combine a number of technologies to allow the rapid completion and filing of reports from the field; the Voice Response Translator, a small device that allows officers to communicate one-way in the same language as the subject being questioned; concealed weapons detection systems that might be used in certain circumstances in lieu of more intrusive body searches; adaptive surveillance systems which can dynamically adjust the video parameters in a region of an image containing a face or other object of interest to improve the quality of the image; and intelligent software that

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[5] *A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned.* U. S. Department of Justice, Bureau of Justice Assistance. November 2000.

[6] *The Use of CCTV/Video Cameras in Law Enforcement.* International Association of Chiefs of Police. Executive Brief, May, 2001.

[7] *Video Surveillance Equipment Selection and Application Guide: NIJ Guide 201-99.* U.S. Department of Justice, National Institute of Justice. October 1999.

may be able to make objective assessments of behavior in recommending whether a stop is appropriate.

Not all of these technologies are ready for deployment, and some will not be for several years. However, any technology, whether old or new, may be employed in ways that raise concerns regarding privacy. Law enforcement agencies using any of these technologies must be cognizant of privacy issues, seek guidance from legal counsel, develop appropriate policies, and provide training before putting them into operation.

Mr. Chairman, that concludes my prepared remarks. I would be happy to answer your questions at this time.

APPENDIX "A"

OJP ACTIVITIES RELATED TO RACIAL PROFILING

(Current to June 5, 2001)

Office of the Assistant Attorney General (OJP)

- ***Principles for Promoting Police Integrity: Examples of Promising Police Practices and Policies (January 2001)***

  - This publication, produced by the Department of Justice, is the product of a working group comprised of staff from the Office of the Deputy Attorney General, the Office of the Associate Attorney General, the Department's Civil Rights Division, the Office of Justice Programs, as well as representatives of various state, local, and federal law enforcement agencies.

  - The report sets forth principles the help assess whether law enforcement agencies are implementing practices that promote civil rights.

  - The report also provides concrete examples of promising police polices and practices, consistent with the principles, that are being implemented by police departments around the country.

  - The report also contains an inventory of Department of Justice research, publications, and programs related to police integrity and community policing.

Bureau of Justice Assistance (BJA)

The Bureau of Justice Assistance (BJA) has allocated funds through its Byrne Discretionary Grants Program for specific purposes to address racial profiling, and published a document on racial profiling.

Byrne Discretionary Grant Program

- Northeastern Law School: $50,000 (FY 2000)

  For the creation of a Website that will enable law enforcement agencies to measure the extent of racial profiling.

- Cultural and Diversity Training: $3 million (FY 2000)

  BJA provided $3 million for cultural and diversity training for law enforcement officers in five urban police departments, including:

  - New York
  - Los Angeles
  - Chicago
  - Houston
  - Atlanta

BJA Publications on Racial Profiling

1. ***Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned (November 2000)*** (Document Included)

   This document provides:

   - an overview of the nature of racial profiling;
   - a description of racial-profiling data collection and its purpose;
   - a description of current activities in California and Great Britain;
   - and recommendations for the future.

National Institute of Justice (NIJ)

The National Institute of Justice, the Department of Justice's research and evaluation component, has conducted supported studies that address racial profiling.

NIJ Supported Research on Racial Profiling

1. **Research Project Title:** **North Carolina Highway Traffic Study**
   Project Period: September 1, 1999 - June 30, 2001
   NIJ Funding: $472,231 (includes $75,000 from the Bureau of Justice Statistics)

   This research project will research:

   - whether North Carolina Highway Patrol (NCHP) officers stop minorities on the road at higher rates than whites;
   - which factors motivate highway stops; and
   - how ethnic minorities respond to police stops.

2. **Research Project Title:** **Examining Minority Trust and Confidence in the Police** (Solicitation Included)
   Project Period: Applications were due to NIJ by February 15, 2001 and awards will be made by the end of May 2001.
   NIJ Funding: $1 million

   This research project will support rigorous evaluations of programs designed to reduce the incidence of use of force and incivilities, including racial profiling.

   Areas of research and evaluation interest include, but are not limited to:

   - determining the nature and extent of police behaviors that humiliate, embarrass, or physically abuse citizens, and the effects of these behaviors on public attitudes;
   - how perceptions and stereotypes of police, minorities, and youths are formed; and
   - the impact of various methods and/or types of training (e.g., use of force, verbal tactics, mediation), types of accountability systems (e.g., supervision, early warning systems, peer review, complaint systems), and policies (e.g., mandatory use of force reporting) on the incidence of use of force and behaviors that humiliate and embarrass.

U.S. Department of Justice
Office of Justice Programs

Bureau of Justice Statistics
Data series

July 17, 2001

BJS Activities Related to Racial Profiling

With the passage of the Violent Crime Control and Law Enforcement Act of 1994, the Bureau of Justice Statistics (BJS) expanded the examination of policing to include new data collection focusing on the nature and consequences of police and citizen contacts.

In 1996 BJS initiated a pilot survey designed to give new information on the reasons for face-to-face contacts between citizens and police officers and the outcomes of those contacts. An improved survey was fielded 3 years later which more extensively examined the exposure to traffic stops, the most common reason for police-citizen contact but one of the least documented in law enforcement management systems.

BJS maintains a long-range plan for recurring surveys of the public and greater collection and analysis of administrative data on traffic stops.

Current initiatives

• **Law Enforcement Management and Administrative Statistics (LEMAS) Survey** In 1999 and 2000 BJS conducted a national survey of law enforcement agencies. In each of these years departments were asked if they maintained computerized data on traffic stops. Findings from the 1999 survey, released in May 2001, indicated that 39% of local police departments maintained computerized records on their traffic stops; 60% maintained computerized files on traffic citations. Findings from the 2000 survey will be available in fall 2001.

• **State Police Traffic Stop Data Collection Procedures, 2001** In 1999 BJS collected data from each of the Nation's state police agencies regarding their policies on traffic stop data collection. Nine of the Nation's 49 State law enforcement agencies with highway patrol responsibility required officers to collect demographic data on all traffic stops. Currently, BJS is administering this data collection to gauge changes over the past several years in the number of state police agencies collecting race data from traffic stops. Findings are scheduled for release in summer 2001.

• **Contact between Police and the Public: Findings from the 1999 National Survey** As part of the Department's 2000 annual report to Congress on police use of force, BJS released findings from its national survey addressing citizen contacts with the police. The report indicated that half of people's face-to-face contact with the police occurred during traffic stops. Ten percent of white drivers were stopped as were 12% of black and 9% of Hispanic drivers. Overall, 84% of the drivers considered the traffic stop legitimate. (Please see accompanying *Highlights* brief for this study.)

• **North Carolina Highway Patrol Traffic Stops Study** This effort provided funding to the North Carolina State University (NCSU) to prepare a dataset for BJS analysts covering all traffic stops over the reference period of July 1, 1999 to June 30, 2000. In addition, the NCSU research team will append use of force reports linked to individual traffic stops. It is expected that the dataset will be provided to BJS in the summer 2001.

• **Inter-agency Agreement between Bureau of Justice Statistics (BJS) and the Bureau of Transportation Statistics (BTS)** On June 9, 1999, a Presidential Executive Memorandum directed federal law enforcement agencies to "design and implement a system to collect and report statistics relating to race, ethnicity, and gender for law enforcement activities." BJS was asked to explore methodological options that could be used to collect race and ethnicity data on all travelers using certain facilities and roadways.

BJS entered into an inter-agency agreement with the Bureau of Transportation Statistics to conduct a study that will assess the viability and cost of various data collection methods for obtaining race and ethnicity of the traveling public.

The goal of the project is to identify and test techniques that can be used to estimate the total number, race, and ethnicity of persons using particular transportation sites such as airports, bus terminal, and land border crossings. A final project report is expected in fall 2001.

In addition to working with BTS, BJS has served in a consultative role for the Immigration and Naturalization Service (INS) and the Drug Enforcement Administration (DEA) as they develop and implement their data collection methods.

BJS publications

Traffic Stop Data Collection Policies for State Police, 1999 (February 2000, NCJ-180776) provides an overview of the status of administrative data collection, both manual and electronically accessible data, by State police agencies on traffic stops and the outcomes associated with these stops. The report describes the number of States routinely collecting information on drivers and other vehicle occupants with respect to age, gender, race or ethnicity, and immigration status.

Law Enforcement Management and Administrative Statistics, 1999: Data for Individual State and Local Agencies with 100 or More Officers (November 2000, NCJ-184481) provides detailed data on the operations, resources, policies, and practices of more than 700 large law enforcement agencies throughout the U.S. The study found that 3 out of 4 large law enforcement agencies maintain computerized files on traffic citations.

Contacts Between the Police and the Public: Findings from the 1999 National Survey (March 2001, NCJ-184957) provides results of the largest survey ever conducted among the U.S. resident population (the Police-Public Contact Survey) about contacts between the public and the police and the outcomes of those contacts. The Survey incorporated a set of questions explicitly designed to learn about traffic stops and the respondent's experiences during the stop.

Traffic Stops Data Collection Policies for State Police, 2001 (forthcoming, summer 2001) will provide an enhanced set of questions and responses in this recurring biennial series. The forthcoming report will examine standardized traffic stop data collection forms currently in use by State Police agencies and the extent to which such data are available for analysis.

Characteristics of Drivers Experiencing Traffic Stops, 1999 (forthcoming, fall 2001) will focus upon a more detailed analysis of responses to the 1999 Police-Public Contact Survey with a focus on examining the differences and similarities across various population subgroups.

FY 2002 Enhancement Request

FY 2002 Request: $800,000 Pending Congressional Action In 2002 the Office of Justice Programs (OJP) requests $800,000 for BJS to support the development of a national statistical program to gather administrative data from law enforcement agencies on the content and consequences of police-initiated stops of motorists for routine traffic violations. In addition, during alternating years, BJS will utilize the Traffic Stops supplement to the National Crime Victimization Survey (NCVS), pilot-tested as a part of the Police-Public Contact Survey during 1999, to learn about the public's experience with such encounters with law enforcement officers. The two methods used will complement one another and help to identify gaps in agency-level information.

The primary goal of this effort will be to determine whether and to what extent such stops may be based upon legally inappropriate criteria such as "racial profiling." Recently, this issue has received much attention and has been the subject of repeated legislative proposals both at the Federal level (such as the proposed "Traffic Stops Statistics Study Act of 2001") and among the States. Of particular interest to the Administration and Congress is the issue of possible bias in law enforcement-initiated traffic stops. The Attorney General has made this issue one of his key priorities in ensuring that the administration of justice by our nation's law enforcement officers is fair and impartial.

This proposal will provide the vehicle for the collection of systematic information from law enforcement agencies and from the public on the content and consequences of these stops, which may include:

a. the number of individuals stopped for routine traffic violations;
b. characteristics of the individual stopped, including the race and ethnicity as well as the approximate age;
c. reasons for the stop including the type of traffic infraction alleged to have been committed that led to the stop;
d. searches of drivers and vehicles initiated as a result of the stop and what prompted the conduct of a search; and
e. especially important, any provocative actions on the part of the person stopped, the rationale for the search, and whether any contraband was discovered in the course of the search.

Analyses will be conducted on the consequences of such stops including whether any warning or citation was issued as a result of the stop, any collateral non-traffic charges resulted, an arrest was made as a result of either the stop or the search, or any complaints about an officer's conduct in a traffic stop were filed and how they may have been adjudicated and disposed.

Utilizing the Law Enforcement Management and Administrative Statistics (LEMAS) program as the platform for the collection of agency-level data in 2001, BJS anticipates carrying out initial data collection from among the Nation's 18,000 law enforcement agencies to learn more about the content of and limitations associated with any administrative data they currently compile on traffic stops.

U.S. Department of Justice

Office of Community Oriented Policing Services

Office of the Deputy Director
Community Policing Development
1100 Vermont Avenue, NW
Washington, D.C. 20530

COPS Office Activities on Racial Profiling

The COPS Office has taken a lead role in promoting police integrity and has supported the equal treatment of citizens as a priority since FY 1996. In FY 1999, we began to sharpen our focus on racial profiling, the unfinished business of community policing.

Racial profiling is one of the most significant issues facing American law enforcement. Aggressive police traffic stops, stop and frisk methods, or "out of place" stops have captured the attention of the American public because they can have a disparate impact on minorities, even if not intentionally discriminatory. Policy discussions on ways to curb uneven treatment based on race, ethnicity or national origin have included legislative remedies that mandate data collection on stops; identification of best practices in collecting and analyzing traffic stop data; and enhancing the training provided to state and local law enforcement across the country.

Seeking to prevent racial profiling, COPS Office resources have supported work on data collection, best practices, national training, model partnerships, and technology, with a goal of preventing racial profiling and enhancing community trust.

Current COPS Racial Profiling Initiatives:

- Produced a training video and teaching guide for line officers, Mutual Respect in Policing, which will be used as a training tool throughout the COPS Office national training network of Regional Community Policing Institutes (RCPI). It is being disseminated to all COPS grantees.

- Provided $12 million to 41 state police agencies to fund In-Car Video cameras. Funding enabled agencies to purchase 2,900 video cameras with a goal of increasing officer safety and reducing racial profiling. In FY 2001, we are providing video cameras to six (6) additional states, providing an extensive training program to ensure appropriate use of cameras, and funding an evaluation to determine the effectiveness of cameras in patrol cars.

- Funded the Police Executive Research Forum (PERF) to survey law enforcement agencies on racial profiling issues. Results on recommendations for policy and operational procedures were released in July 2001. A training video highlighting lessons learned from project work, collateral recommendations, and best practices will be an additional deliverable and currently is in process.

Systematic data collection on police stops has emerged as a principal strategy for eliminating racial profiling. However, early data collection efforts as well as the PERF survey data have identified the need to develop reliable and valid methods of data analysis, as well as an examination of other alternatives. Because of the growing complexity of the issue, COPS is supporting initiatives that will provide a broader assessment of what is required to respond to this difficult and controversial issue.

- Funded a FY 2001 follow up to the PERF project that will identify, test, and disseminate cost effective data analysis models that produce valid indicators of racial profiling. This project will produce a manual for police agencies on practices designed to prevent racial profiling.

- Funded a *Police as Problem Solvers and Peacemakers* site to objectively measure officer performance and the scope of racial profiling in a specific jurisdiction (Sacramento, CA). This project is developing innovative model practices for replication by other police departments and will provide technical assistance to inform other departments on implementation issues.

- Funded a project designed to explore operational factors related to data collection such as the basis of officer decision making in discretionary stops and identification of characteristics of the population of drivers at risk for stops. This project will inform the debate on data analysis and will result in a technical assistance guide for police departments.

- Implemented a national training initiative that will develop and provide high quality police integrity training, technical assistance services, and products for law enforcement agencies. Training will be delivered throughout the country using the RCPI network. One of the curricula that will be taught nationally focuses specifically on issues related to racial profiling.

- Supported a small group of Collaborative Leadership Projects that bring together national police groups, community organizations, and police departments to develop local level solutions to police-community problems that have implications for police integrity. Two of the national groups, the National Organization of Black Law Enforcement Executives (NOBLE) and the Police Executive Research Forum (PERF), are addressing racially biased policing.

- Introduced a targeted grant initiative, *Racial Profiling Prevention Strategies*, to develop best practices and collateral technical assistance guides to prevent racial profiling. This project provides $4.2 million in funding to twenty (20) police departments and requires that participating departments share their expertise and "lessons learned" with other police departments.

By supporting the development of this broad array of initiatives, COPS seeks to create community policing environments that develop trust and mutual respect between police and their communities and to ensure equal treatment for all citizens.

Notes

Survey findings show that police and citizens define racial profiling differently; citizens take a broader approach that includes rude, discourteous and disrespectful behavior. Officers define it more narrowly as stopping someone solely on the basis of their race.

APPENDIX "B"

U.S. Department of Justice

Office of Community Oriented Policing Services (COPS)

1100 Vermont Avenue, NW
Washington, D.C. 20530

COPS IN-CAR VIDEO CAMERA GRANT PROGRAM

Background

- In-car video cameras provide law enforcement officials with an important tool during traffic stops. These cameras are used as a deterrent to assaults on officers, as a training device, as evidence in trials, to increase officer accountability, and help build trust in the community.

- In the FY 2000 appropriations act, Congress included $7 million and wrote language to establish the In-Car Camera grant program. COPS added $5 million in discretionary technology funds to increase the total to $12 million.

- In the FY 2001 appropriations act, Congress included $3 million for the In-Car Camera grant program. COPS is adding $900,000 in discretionary technology funds to fund an evaluation of the program, provide training on in-car camera usage, and to increase the grant funding to $3.2 million.

COPS 2001 In-Car Camera Grant Program

- This year COPS will make $3.2 million in grants, directing funding toward state police agencies that did not participate in the program last year, as well as states that expressed a need for increased funding. This funding is expected to include Alaska, Idaho, New Mexico, Oklahoma, South Dakota, and Utah. The states that will receive grants to supplement their FY00 funding include: Connecticut, Massachusetts, Missouri, Montana, Virginia, and Wyoming.

- This grant will provide funding to purchase approximately 750 additional cameras.

- COPS is going to provide extensive training to our In-Car Camera grantees. This training will increase the level of professionalism and maximize the effectiveness of the cameras and teach techniques to prevent racial profiling.

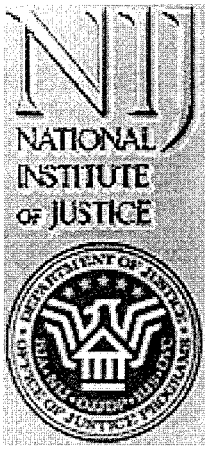
- COPS will also fund an evaluation of the grant program to determine how effective cameras have been in increasing officer safety, improving conviction rates, reducing citizen complaints, and preventing racial profiling.

COPS 2000 In-Car Camera Grant Program

- On September 13, 2000, COPS made $12 million in grants for the purchase of 2,900 in-car video cameras. These grants went to 41 state police agencies including: Alabama, Arkansas, Arizona, California, Colorado, Connecticut, Florida, Georgia, Iowa, Illinois, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Maine, Michigan, Minnesota, Missouri, Mississippi, Montana, North Carolina, North Dakota, Nebraska, New Hampshire, New Jersey, Nevada, New York, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Vermont, Washington, Wisconsin, West Virginia, and Wyoming.

- Funding was limited to state police agencies. Alaska, Delaware, Idaho, New Mexico, Ohio, Oklahoma, South Dakota, and Utah state police agencies did not request funding. Hawaii does not have a state police agency.

- Demand for this grant was extremely high. Requests for the In-Car Camera grants totaled $25 million for over 6,000 cameras.



Project Summaries for Field Data Collection Devices and Closed Circuit Television (CCTV)

National Institute of Justice

July 18. 2001

The National Institute of Justice's (NIJ) Office of Science and Technology (OS&T) has funded projects to demonstrate devices that can collect data in the field (traffic stops, incidents, etc.), provide real-time analysis of camera imagery to alert operators to illegal activity, and survey the needs and applications of law enforcement agencies for closed circuit television. Additional information for each of these projects is included in the portfolio summary below for the Metropolitan Nashville PD's Palmtop Project, and the Real Time Computer Surveillance for Crime Detection. The Technology Information Exchange Project with the International Association of Chiefs of Police (IACP), which includes a survey of police use of CCTV/Video cameras in law enforcement is also summarized.

For additional information on these projects please contact Dr. David G. Boyd, Deputy Director, NIJ, at 202-307-0645.

Metropolitan Nashville PD's Palmtop Project

Award Number: 1997IJCXK003
Awardee: Nashville / Davidson County, Metropolitan Government of

Original Funds: Year: 1997, **Amount:** $128,875.00
Project Location: Nashville , Davidson County , Tennessee

Project Description: The award supported 20 Palm Top systems with wireless CDPD modems, triple Digital Encryption Standard security, external keyboards, pen-based hand-writing recognition software, and Global Position Sensors on five test units. The system was designed so that the forms looked similar to what the officers were already familiar with so that training time was minimized. This project also investigated the feasibility of 2-way pagers as a work around alternative to the palmtops' weight and battery issues. During the project, an evaluation of the system was performed during field trials.

Real Time Computer Surveillance for Crime Detection

Award Number: 1999LTVXK019
Awardee: University of Maryland - College Park

Original Funds: Year: 1999, **Amount:** $124,229.00
Additional Funds: Year: 2000, **Amount:** $229,641.00
Total Funds: $353,870.00
Project Location: College Park , Maryland

Project Description: The University of Maryland Institute for Advanced Computer Studies, in cooperation with the Campus Police of the College Park campus, propose to develop and demonstrate a real-time visual surveillance for 24-hour a day, 7-day a week monitoring of an UMCP campus site. This system will be used to automatically alert campus police of illegal activity at the university's site.
The proposed surveillance system will leverage prior research on face recognition using linear discrimination analysis and a system developed at the University of Maryland under support of DARPA's Visual Surveillance and Monitoring Program. In addition, the system will alert human operations when an illegal activity is in progress and control the pan/tilt/zoom camera to acquire high quality video sequences of the faces of the people and the license plates of the vehicles involved.
This project will be conducted in collaboration with the campus police department that has already devoted significant resources to video surveillance at the University.

Technology Information Exchange for State and Local Law Enforcement

Award Number: 1999LTVXK004
Awardee: International Association of Chiefs of Police

Original Funds: Year: 1999, **Amount:** $199,998.00
Additional Funds: Year: 2000, **Amount:** $50,000.00
Total Funds: $249,998.00

Project Description: This project is a multi-task effort to provide information to the criminal justice community on the development and implementation of new and emerging technologies.
IACP supported NIJ's annual technology conference in Denver, CO, by the identifying potential speakers, disseminating conference materials to IACP members, and the developing of announcements for publication in the Police Chief magazine.
IACP is also working on several other tasks. IACP has published a request for information for any evaluation and testing methodologies employed by state and local law enforcement agencies prior to equipment purchases. IACP has designed and will test in early Summer 2000 a training program on police liability avoidance through the use of technology. IACP has distributed approximately 1000 surveys to law enforcement agencies of various types and sizes to determine the needs and application of close-circuit television (CCTV). In addition, IACP has designed and will test a prototype database to collect information and provide analysis of data on police pursuits. A draft database has been distributed to an advisory group consisting of law enforcement representatives and Pursuit 2000 Task Force members.

Mr. BURTON. Most of the questions that I had to ask you covered very thoroughly. Let me ask you this question. The COPS program, do you know how much money is allocated for that program?

Mr. DINH. There are a number of programs under the COPS initiative, and I have asked our people to assemble all those in a concrete number.

Mr. BURTON. Can you submit those for the record for us?

Mr. DINH. I will.

Mr. BURTON. What I'd like to find out right now, maybe your staff that's with us can help us with this, how much money has been used for the visual technology, and is that being apportioned out on a State-by-State basis, or is it being given to the States based upon their requests?

Mr. DINH. We have awarded 41 State police agencies $12 million to purchase 2,900 video cameras in the past—in last year actually. This year we are continuing the program with $3 million to 6 additional States for 750 additional cameras. I do not know the specifics as to whether or not we make these grants selectively or whether they're based upon an RFP that comes in and then we evaluate those.

Mr. BURTON. I think those of us on the committee would like to know if the Justice Department is pushing the States to accept audio-visual technology for police surveillance in these police cars, or if they're waiting for there to be a request from the States. If the Justice Department—I think it would be appropriate—and this is just a suggestion—that the Justice Department push the States to accept this, because I think racial profiling is a concern all across the country, and there may be some States that are not as active as far as requests are concerned, that if pushed a little bit, may accept them, and it might speed up the process.

Mr. DINH. We take your suggestions very seriously, Mr. Chairman, and I take all suggestions from Congress very seriously. We do have a program across the entire Department in making targeted grants more effective in achieving the objectives that Congress intended them to be, and this would fit right into that initiative, and I will personally commit to making that happen.

Mr. BURTON. Very good. I know the new administration has made this one of their issues and priorities, and what we'd like to do is maybe have you or somebody from the Justice Department that's conversant with this issue or working on it come back at some future date. So would you be willing to come back and give us an update on this in the not too distant future to see how it's progressing? In particular I'd like to know which States are actively pursuing the new technologies to make sure there's not racial profiling and which States aren't. I think if we make that public, it will kind of put a little pressure on the States that are not accepting the new technology to make sure there's not racial profiling to get on with the program.

Mr. DINH. I will be honored to come back, and especially when the Deputy Attorney General has completed his review of the Federal law enforcement policies and practices, and as we go into the second phase of our proactive efforts, to effectuate the President and Attorney General's directive on this in the fall. I would appre-

ciate an opportunity to address those issues in addition to the questions you have today.

Mr. BURTON. Mr. Shays, do you have some questions?

Mr. SHAYS. Yes.

Mr. BURTON. Excuse me. Just for the benefit of our colleagues, we are under the 30-minute rule, and that's why I went to Mr. Shays, and then Mr. Cummings will have 30 minutes as well.

Mr. SHAYS. For the benefit of my colleagues, my questions will probably be 5 to 10 minutes, and we will probably be able to give you a half hour and some of our time. We're happy to yield our time as well.

Mr. BURTON. That's fine.

Mr. SHAYS. Mr. Dinh, I just want to welcome you. I can get almost emotional seeing you at this desk and think that this is a country that is very inclusive when it wants to be and very open, and this American society is a very unique society. I would suspect you probably weren't born in this country.

Mr. DINH. I was not, sir. I came here in 1978 as a refugee from Vietnam.

Mr. SHAYS. Well, it makes me very proud to have you here.

Mr. DINH. Thank you, sir.

Mr. SHAYS. And welcome.

I was speaking with Congressman Owens, and he was sharing with me something that makes me wonder as well. The Federal Government basically has a role to play in this whole issue of racial profiling, but law enforcement tends to be a local and a State responsibility. I mean, that's where it tends, I would think, we would see most of the abuses. So let me ask you first off, what powers do you think the Federal Government has to deal with racial profiling?

Mr. DINH. Of course, as Congresswoman Norton noted, the Constitution prohibits the use of race as the basis for law enforcement, and that Constitution, of course, under Article VI of that great document, applies across the land to State and Federal actors alike, but, as you noted, the Federal Government is limited in its law enforcement capacity. Most of the policing power is exercised by State and local authorities. That's why the Department of Justice in its proactive efforts are reaching out to help State and local police agencies in order to develop best practices, to weed out the bad seeds, and to improve the trust between their law enforcement agencies and the communities they serve.

With respect to your specific question for congressional authority——

Mr. DINH. I would like to defer that to my colleagues in the Office of Legal Counsel and my new colleague the Solicitor General Ted Olson. I am no longer a constitutional law professor. I'm now a recovering academic in the guise of a government official. So I have to respect their province of authority.

Mr. SHAYS. Let me ask you this way: Do you think there are powers inherent in the Federal Government that can help us deal with this issue?

Mr. DINH. Certainly there is the Federal spending clause that is applicable, Section 5 of the 14th amendment are possible bases, but, again, the devil's in the details with respect to the employment

of any one of these powers with respect to State intrusions upon State sovereignty, and I think that any particular legislation or action by the Federal Government would have to be scrutinized under the constitutional standards as set forth by the Supreme Court.

Mr. SHAYS. I know you're involved in the policy side, and I suspect that you're not fully staffed and the Department isn't yet fully staffed, but can you tell me to what extent—and this is really a question that in the dialog I was having with Congresswoman Norton. I want to know to what extent the administration is willing to pursue this issue of racial profiling.

Let me put it in the context of this: There are some of us, a lot on the Democratic side of the aisle and some of us on the Republican side of the aisle, that believe that hate crimes is an issue that we need to deal with, hate crimes whether it be race or sexual orientation and so on, and the administration clearly doesn't want to move in that direction. I'm eager to know to what extent we are going to pursue this issue of racial profiling.

Mr. DINH. This is a matter of high priority both for the President and for the Attorney General. The review being undertaken by the Deputy Attorney General is but one step in this process, as you know. As you may know, the Attorney General in February issued I guess I would call it an ultimatum to ask Congress to authorize a Federal study, comprehensive study, of these practices within 6 months, and if not, he would undertake personally within the Department the study within our own Department and fund it through sources that we can identify. And so this is a matter of high priority for all of us in the administration, and we will pursue working with Congress and the relevant agencies.

Mr. SHAYS. Two last questions, and let me ask them both now, and maybe it will lead to another question. But have you had the ability yet to determine where in what level of government racial profiling tends to be the most egregious; and No. 2, are there particular areas of the country where we see it more prevalent? And I don't just mean in the South. I mean, we know that the civil rights movement kind of marched to Washington and in some cases stopped, and we can see segregation in a different way in the North, where I live; wealthy people tending to live in wealthy areas with wealthy White citizens, urban areas tending to have more of the poor and the minorities. It's more of a de facto segregation in some ways. But my question is have you had an opportunity to look at what level of government and where racial profiling tends to be the most egregious?

Mr. DINH. No, sir. We have not had that opportunity. Our review at this point is focused at the Federal law enforcement agency level. We anticipate to be able to study, with congressional authorization and funding if possible, otherwise an independently authorized review by the Justice Department of the State and local data that is available. Currently 12 States, I believe, require the collection of racial profiling data, and 37 States voluntarily do so, and we look forward to the opportunity to take a more comprehensive view of that data should it be funded by Congress.

Mr. SHAYS. Thank you, Mr. Chairman. Mr. Chairman, I have completed my questions.

Mr. BURTON. Thank you, Mr. Shays. Mr. Cummings we will recognize you for 30 minutes and if your side needs more, we will see if we can't get that for you.

Mr. CUMMINGS. Thank you very much, Mr. Chairman. Mr. Dinh, I also welcome you to the hearing and I congratulate you on your appointment and thank you for your testimony.

I just was wondering as you were answering Mr. Shays' questions, you know, a lot of the racial profiling problem comes from, I think, from a certain level of insensitivity and police officers who already have come to certain conclusions before they even stop a person. They—I see it in my own neighborhood. I have been a victim of it many times. And I was wondering, before we even get to the audio-visual piece, are you all looking at any—that is, the Justice Department—looking at any programs, and is it something that you believe is necessary to sensitize police officers to understanding that every African American male that they see driving a modern car, or any kind of car, down the road is not a criminal?

I mean are you all looking at it from that angle because the problem begins actually a little bit before the stop actually takes place.

Mr. DINH. Yes, sir, the COPS program, the Community Oriented Policing Services program, as part of its proactive training mechanism for State and local police officers and executives, has as a primary component what they call the ethics and integrity program; in your words, sensitizing the chiefs and their rank and file to these very, very significant issues.

That is one component of a much broader initiative in reaching out and developing a best practices and also implementing those best practices, encouraging the agencies to implement those practices throughout their rank and file, and so it is a problem that admits of both remedial but, as you noted, preventative measures; and those preventative measures include changing the hearts and minds and improving the trust between law enforcement agencies and the communities they serve.

Mr. CUMMINGS. Now, going to the COPS program and the audio-visual opportunities that are presented, do you know why that came about, why they first started with audio-visual, you know making these cameras available; that is, grants for the cameras?

Mr. DINH. I am not familiar with the genesis of the grant program but I suspect with most OJP—Office Justice Program—grant programs, that it was initiated by Congress. I do have, by the virtue of technology, two-way messaging, in answer to the earlier question with respect to the breakdowns of the States in requesting these programmatic funds. And I have been advised that all States except three have now requested money for audio-visual equipment for State police. One State not requesting is Hawaii, for the obvious reason it does not have a State Highway Patrol, and the other two States not requesting, for reasons unknown, are Ohio and Delaware.

Mr. CUMMINGS. OK. I look at the Baltimore City Police Department, when they make requests of the COPS program, they have certain priorities. And one of their priorities was just basic computers so that the police knew what each other were doing in the various parts of the city. And I was just wondering if you have, say, the COPS piece, the audio-visual piece; and then a city looks at

that and says OK, yeah, we really do need the audio-visual but we need some basic things before we get there, like police cars and things of that nature.

I was just wondering whether one grant works against the other. Are you following what I am saying?

Mr. DINH. Yes, I do, sir. The grant program that was described earlier, the $12 million last year and $3 million this year, is specifically for in-car video devices. The COPS program—the COPS office and other offices within OJP have a significant number of other grant programs on improvement of technologies generally, and some of that money can be used for in-car video or they can be used for other uses. The in-car program, the $12 million program, is specifically for this, but all of our programs are designed so that they do not work against each. This one just happens to be targeted for this particular priority, but there are many other technology-related grants that exceed, obviously, the hundreds of millions of dollars in improvement in technology for the State and local law enforcement agencies.

Mr. CUMMINGS. Is there any research that you all have done or that you are doing with regard to States that use the audio-visual equipment and how that has affected this whole concept of racial profiling? I guess it is a little early for that.

Mr. DINH. We have not performed any research or funded any specific research within the Department of Justice, and I have undertaken a review of social science literature with respect to the use of audio-visual and I have not seen any significant statistical research. There has been some anecdotal research out there, I think of two specific studies, but not any comprehensive ones.

That goes to one of the issues that was addressed in my written remarks, is the obvious limitation, a common-sense one with respect to the use of audio-visual equipment is that there has to be somebody reviewing the audio tapes and data, and that is a significant undertaking of reviewing those hours of tapes and data.

Mr. CUMMINGS. So how do you see that playing out? I know if there was an issue, if someone, say, filed a complaint against the police to their Internal Affairs Division and said, look, you know, I was a victim, that is one issue. But it is a whole other issue when you are trying to get a full view of the many stops—say, for example, with the Maryland State Police—and I guess that is a big manpower issue, and is there money available for that?

Mr. DINH. As you noted and as the chairman noted, there are a number of technologies that can be deployed in order to prevent or remedy racial profiling. Some of the anecdotal studies that I have reviewed with respect to the use of audio-visual equipment specifically suggests a deterrent effect in the conduct of police officers knowing that they are being recorded, and specifically of the motorist or the suspect when they are advised specifically that they are being recorded, for the obvious reason that there is an audio-visual recording of whatever actions or words that are spoken. And so there is a deterrent effect, a general improvement effect. I stress that it is only anecdotal, because it is not a statistical significant sample for these studies.

Mr. CUMMINGS. Now, what is the OJ's interpretation of the legality of racial profiling under the Federal statutes?

Mr. DINH. As you may know, the Supreme Court in a case called Whren, W-h-r-e-n, a fourth amendment case, noted in passing that it is common—that it is obvious that the 14th amendment guaranteed equal protection, prohibits the law enforcement on the basis of race, and I think that everybody in this room recognizes that constitutional prohibition.

Mr. CUMMINGS. Now, if you were to find that a Federal officer was one who was proven to be a racial profiler, what do you all have available in Justice to address that?

Mr. DINH. Each one of the law enforcement agencies have procedures to ensure professional integrity within their rank and file, and those procedures are very, very rigorous in order to weed out the bad seeds, if you will, as I noted before.

In addition to that, the civil rights division of the Department of Justice has authority under the statutes to investigate pattern and practice violations by specific law enforcement agencies or officers, and that authority is obviously being deployed throughout the country when there is a need that warrants it.

Mr. CUMMINGS. Do you know whether there are any cases presently before Justice, following up on what you just said?

Mr. DINH. There is a working group within the Department of Justice, again just addressed by Congressman Shays earlier, whether or not this is a high priority. There is established within the Department of Justice a working group that oversees and monitors all litigation affecting Federal agencies that involve racial profiling. Any such litigation would be reported to the working group.

My office is working intimately with that working group in order to ensure that whatever litigation position's taken in those litigation is consistent with our priority of eliminating, preventing, and remedying racial profiling. I believe there is a case pending with respect to the Customs Service in Chicago. I do not know the details of that case nor would my position allow me to comment on pending litigation.

Mr. CUMMINGS. I understand. I just wanted to know whether we would—whether there was anything—anybody who had been brought up to—under any kind of charges. I didn't need to know the details.

Mr. DINH. Actually, if I may amplify, one of the four components of the study undertaken by the Deputy Attorney General across the entire law enforcement community is a review of all professional responsibility complaints and/or litigation involving their personnel on the issue of racial profiling, and that review is anticipated to be completed within the fall. So I can have a much more full answer and specific answer to you in my next report, sir.

Mr. CUMMINGS. I think you said that Larry Thompson was—is doing some investigating now to determine what?

Mr. DINH. That is the study that the Attorney General ordered Deputy Attorney General Thompson to undertake. It is a study that reviews all Federal law enforcement agencies with respect to their practices and policies on racial profiling.

The four components of that study, if I may briefly go into that, is, one, a summary of the available data and studies relevant to the racial profiling issues; two, a description of the types of contacts,

the approximate number of contacts that the law enforcement agencies have with the public; and, three, a review of current policies of Federal law enforcement agencies concerning racial profiling; and, four, a review of all judicial proceedings and professional responsibility complaints, as I just explained a minute ago.

That study is continuing. We anticipate completion of that study sometime in the fall.

Mr. CUMMINGS. OK. Now, I'm just trying to figure out, I mean under the things that you just named, is there any research being done as to any other tools that you all may need to properly address any violations?

Mr. DINH. Yes, sir. There is continuing review in appendices A and B of my written testimony. There are a compendium of not only the programs that we have but also the assessments procedures for the tools that we need. I anticipate that as we review these matters, we will be making requests to you in your support and funding, authorization and funding of these tools so that we can better combat this problem that we all recognize is a matter of high priority.

Mr. CUMMINGS. Now, last but not least, when the Congressional Black Caucus met with President Bush, he said something that was just—I guess it was just one of the more silencing moments of our discussion. This was in, I think, around January, and he said that he—it really bothered him that there are Americans who believe that there are two standards of justice, or at least two standards of justice: one for those who have; one for those who have not; one for those who may be Black; one for those who may be White. And he said that he would do everything in his power to address that, so that every American would know that there's one system of justice.

And I was just wondering what, if any, other than maybe the things you've said, directives have you all gotten with regard to this issue to carry out what the President said to the Congressional Black Caucus?

Mr. DINH. Thank you very much for that question, Congressman, and it is a promise that I personally believe in also. I think that the promise and opportunities of America that my family have been so fortunate to realize should be available to all Americans regardless of immutable characteristics as you noted before.

Specific to your question, on February 27 of this year, the President issued a directive to the Attorney General specifically on the issue of racial profiling, asking him to review the use of Federal law enforcement authorities—by Federal law enforcement authorities—of race as a factor in conducting stops, searches, and other investigative procedures, and also to direct him to report back with findings and recommendations for the improvement of just and equal administration of our Nation's law.

Now, as you may recall, the Attorney General also met with the Congressional Black Caucus, at which time he announced his high priority in this issue and issued the call to Congress to authorize him funding to effect these directives within 6 months or he would undertake the study himself, under existing Department of Justice authorization and try to find funding elsewhere. I hope not from my line budget, from my office, but certainly staff from my office.

It is a matter of high priority, and we are all working very hard toward that goal.

Mr. CUMMINGS. I think the Attorney General, when he met with the Caucus said something about 6 months.

Mr. DINH. Yes.

Mr. CUMMINGS. For some reason that rings in my head. And that was in February?

Mr. DINH. That was in February, sir. And that is why the Deputy Attorney General's target date for completion of his study is sometime in the fall. That 6 months would probably run approximately September 28.

Mr. CUMMINGS. OK. I yield to Mr. Clay.

Mr. CLAY. Thank you very much, Mr. Cummings.

Mr. Dinh, I am impressed with your testimony today, and hopefully the DOJ can make progress on this issue. You mentioned in your testimony that you have several initiatives to address the problem on States that have already conducted studies.

Here's what I'm interested in: in seeing the DOJ come up with a concerted effort, a coordinated strategy to address those areas that we know are problems. And in the Missouri study, for example, we found that there were pockets and areas where police departments had very high incidents of stops and searches. You talked about a weed-out-the-bad-seeds initiative. Have you all discussed or initiated any type of program directed toward States that have already conducted the data collection and addressed the issue of weed out bad seeds? Just how do you do that?

Mr. DINH. There are two components to your question. I'd like to take each of them in turn.

Mr. CLAY. Sure.

Mr. DINH. The 6-month call to Congress for action that the Attorney General issued contemplates additional funding for us to study the data that is collected voluntarily by 37 States and mandatorily by legislation by the 12 States that are available. That is obviously a significant undertaking because it is many different jurisdictions and many different points of data, and so we would like to be able to get congressional funding for that by the end of September, if possible. If not, we will try to find mechanisms to do it ourselves.

With respect to your question about the proactive steps that we can take, the early warning systems that the COPS program have developed and worked with local and State law enforcement officials to encourage them to implement is one example of that in order to identify problems and problem officers at an early enough stage in order to take preventative measures.

This is obviously a very significant undertaking that will require significant contemplation in terms of the data available, but also in working out and coordinating a strategy. We are in the process of implementing or formulating a strategy with respect to that, and I would like to report to you back in the fall on our overall plan.

Mr. CLAY. Let me suggest that in your deliberations you also consider forming some type of Federal task forces that will send in agents of color to those areas where you have high incidences of traffic stops, of vehicle searches, so that they can report back to DOJ, and you all make the determination whether there are bad

seeds and how we eradicate those seeds from our local law enforcement. And so let me throw that out as a suggestion.

Also, have you all done any extensive studies of U.S. Customs and the stops that they make at Customs? Is that completed yet or not?

Mr. DINH. That is part of our study that Larry Thompson, our Deputy Attorney General, is conducting. As you know, as Mr. Cummings noted earlier, President Clinton ordered the collection of data by certain law enforcement agencies, specifically the INS and the U.S. Customs Service. We have that data. The Deputy Attorney General is reviewing that and will report on that as part of his overall objective, overall report.

With respect to your specific suggestion, of course we take that very seriously and I will take that back. I also note that recently, just last month, the Attorney General announced a memorandum of understanding with the D.C. Police Department where there is a cooperative effort between the D.C. Police Department and the Department of Justice civil rights division in working together cooperatively in order to improve the practices of police. I think that this type of cooperative mechanism is the kind of thing that you are contemplating in your pattern and practice investigations.

Mr. CLAY. Sure. And with the Attorney General being from my home State, I would hope he would want to eradicate any issues that are outstanding in Missouri.

Final question: The video technology, video and audio technology, in patrol cars where it is used now, do we have issues with law enforcement turning the cameras on, or is there enough technology that once the car door opens, the camera is activated? Just tell me, do we have problems with the technology itself?

Mr. DINH. I do not think there are specific questions with respect to selective deployment of the technology. I believe a lot of these systems are either automatically activated keen points or round-the-clock kind of activations so that there is sufficient coverage.

I do note that one advance of technology is the movement from analog—the normal VHS tapes that we see—to digital, the CD ROMs that we see. That improvement in the technology will significantly improve the capacity of storage within each car and also within each department so as to ensure continuous coverage of the type that you contemplate.

Mr. CLAY. Thank you for that. Appreciate it, Mr. Chairman.

Mr. SHAYS [presiding]. I thank the gentleman. There's more time remaining, and, Ms. Norton, you have the floor.

Ms. NORTON. Thank you very much, Mr. Chairman.

Mr. Dinh, I'd first just like to establish what I will call a basic understanding between the committee and yourself about the legal and constitutional ground rules so we make sure we're talking about the same things. Could Federal funds flow to States which—where there is evidence of pervasive racial profiling? That is to say, stops on the basis of race or ethnicity, while—if that continued, would we not have a prima facie violation of the Constitution and would we have a prima facie violation of any Federal statute?

Mr. DINH. I'm afraid that I am not prepared to answer that question simply because I have not taken an in-depth review of the funding sources and the implications of the Constitutional prohibi-

tion as it relates to the funding matter, but I would like to get back to you in consultation with our Office of Legal Counsel on that.

Ms. NORTON. Well, I must say that if we got hung up at the level of generality that I indicated, I'm afraid we are really in trouble. I thought you indicated that you thought that there was a constitutional prohibition against the use of Federal funds, against Federal subsidy of racial or ethnic discrimination. And now you say you are not sure if it's a prima facie violation even, and you can cite no Federal statute where there might be a prima facie violation and here when I say prima facie, because obviously that means that you've only established that there may be a violation, and that is rebuttable, and you are telling me you can't even say in answer to my question where there's evidence that a State pervasively engages in racial profiling that there is a prima facie violation of the Constitution?

Mr. DINH. Thank you for the opportunity to clarify, Congresswoman Norton. What I stated before in answer to the chairman's question was a citation to the *United States* v. *Whren,* which is a 1976 U.S. Supreme Court case, fourth amendment case, that noted in passing the constitutional prohibition contained in the 14th amendment that prohibited law enforcement on the basis of race. I did not extend my remarks to the question you raised; that is, the linkage to funding, the flow of funds to specific localities. That is an additional question that I would have to consult with our Office of Legal Counsel——

Ms. NORTON. I thought you raised the notion of the spending authority as well in your answer.

Mr. DINH. I think in my answer to Congressman Shays, I noted when he asked for speculation as to what authority that Congress may have in addressing this issue, I noted that this funding clause is a possible source, and also section 5 of the 14th amendment is a possible source for congressional authority for action to redress these problems.

Of course, as I said, the devil's in the detail. Both of those answers, one, the recognition of the 14th amendment's prohibition on the use of race as a basis for law enforcement and, two, the source of authority possibly under the spending clause and the section 5 of the 14th amendment, do not go to the specific nub of your question, which is whether the Constitution in and of itself prohibits the flow of Federal funds to localities under certain circumstances.

I do note, however, that, as I noted before, that our civil rights division has authority and responsibility that we take very seriously to investigate and prosecute pattern and practice violations, and that is a matter of continuing priority for our Department.

Ms. NORTON. So we've established that there may be a constitutional basis for enacting legislation to forbid racial profiling under the spending authority or under the 14th amendment.

Mr. DINH. I think that is correct. Of course the findings and actions and the like would have to pass constitutional muster——

Ms. NORTON. Of course.

Mr. DINH [continuing]. Under the Supreme Court's division—for example, *City of Boerne* v. *Flores*—for section 5 of the 14th amendment; *South Dakota* v. *Dole* for the spending clause. But those are things that my colleagues in the Office of Legal Counsel and Office

of Solicitor General are much more well equipped to answer than I.

Ms. NORTON. I understand, Mr. Dinh. That is why I'm trying to keep my questions very general, because I'm not trying to pin you down on the details. I'm trying to establish, as I said the legal ground rules. After all, I'm writing legislation and you can help me to make sure it's constitutional and that the President would want to sign it and that the Justice Department would want to be helpful in making——

Mr. DINH. We always can help you in that regard.

Ms. NORTON. Could I read to you Title 6 of the 1964 Civil Rights Act: No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

My question went to the Constitution but it also went to any to any Federal statute. Do we have a colorable violation of a Federal statute, namely Title 6, if there is evidence of pervasive racial profiling by one State which receives Federal funds in its highway program or any Federal funds that are connected to the violation?

Mr. DINH. I will study your question in reference not only to Title 6 of the Civil Rights Act but other provisions of Federal law and will get back to you.

Ms. NORTON. I'm sorry. Would you repeat that?

Mr. DINH. I will study not only Title 6 but all the other provisions of the Civil Rights Act and other Federal law, as you requested, and seek the counsel of my colleagues and get back to you.

Ms. NORTON. Like you, Mr. Dinh, I'm a constitutional lawyer, and I tell you that if I were in your position, and the Attorney General asked me that question, I would say the devil is in the details—to quote Mr. Dinh—but, sir, I think that there probably is a prima facie violation and maybe you want me to indeed study the details to make certain.

Has there ever been a case brought by the Justice Department under Title 6 on the basis of racial profiling?

Mr. DINH. I'm not aware of any such case, but again that would require a comprehensive review of all components, and I would like to study that. We have a Department of 125,000 so I'd like not to make a categorical answer without——

Ms. NORTON. That is very important for us to know. It is very important to know under—you haven't been there very long, so it would almost surely have to be in some prior administration. I ask you to in your written response to this committee, in your responses to the committee, to let us know whether or not in its entire history the Department has ever brought suit under Title 6 or whether any department of the government, such as the Department of Transportation, has ever conducted a Title 6 investigation based on racial profiling.

I see that I have a note that my good chairman has allowed me to go overtime, and I appreciate it and I therefore yield back the remainder of no time left.

Mr. SHAYS. Let me just say to you—I thank the gentlelady and appreciate her questions, and we would recognize that you are new into this position and we would like a more accurate answer than

one where you are not totally certain. But we would clearly want the answers to her questions and would expect that you would provide that to the committee and make sure that your staff gets it right away, Ms. Norton, as well as other members.

Before we have a vote, in fact what I'd like to do is recognize Mr. Gilman for my time and let him have a statement.

Mr. GILMAN. Thank you, Mr. Chairman. I would just like to make an opening statement before we have to go to the floor. I may have to stay over there.

Chairman Shays, I would like to thank you and Chairman Burton for scheduling this extremely important hearing timely to investigate the benefits of any other methods of taking some steps to prevent racial profiling; the benefits, for example, of the audio-visual technology in addressing racial profiling. I believe that advancing this kind of affordable and accessible technology can help curb the highly questionable practice of using mandatory racial data collection and law enforcement. That technology can also act as an objective source in disproving claims against law enforcement officers who have been wrongly accused of using racial profiling.

In short, the challenge we face is to make certain the civil liberties of our citizens and, at the same time, providing our law enforcement officers with the tools necessary to maintain law and order.

I look forward to the testimony of today's panel and working with my colleagues on this important issue. Sound law enforcement certainly is dependent upon good trust between the citizens and police officers and a sound police/community relationship. Racial profiling as a law enforcement tool undermines that trust, which is why the President has directed the Attorney General to undertake steps to conduct a comprehensive review of the use of racial profiling by Federal law enforcement authorities, and that is why we welcome having a representative from the Department of Justice before us today.

And just one quick question. Is there any question about the use of audio-visual material in the courts?

Mr. DINH. No, sir. I can imagine certain challenges based on authentication and the like, but I do not know of any specific evidentiary or general evidentiary prohibition on the use of such materials.

Mr. GILMAN. Thank you very much and thank you, Mr. Chairman.

Mr. SHAYS. Thank you. We may be able to get on to the next panel after the break. I don't know if—I still have a little more time on my time. Mr. Barr, you are here, Mrs. Morella, Mr. Platts, would you——

Mrs. MORELLA. Mr. Chairman, I just simply want to ask permission that my opening statement be included in the record and point out that I am a lead co-sponsor of the bill to End Racial Profiling Act and am very interested in this hearing. Thank you.

Mr. SHAYS. Without objection.

[The prepared statement of Hon. Constance A. Morella follows:]

7.19.01

M. mug statement

Joanne Morella

Morella Remarks on Racial Profiling

I want to thank Chairman Burton and Ranking Member Waxman for holding this important hearing. As a lead cosponsor of the End Racial Profiling Act, I am very interested in finding a solution to this problem.

Racial profiling is an inexcusable practice that deteriorates any honest and productive police force. Prohibiting racial profiling in any federal state or local agency is necessary to rebuild a trust between minority communities and individuals with all levels of law enforcement.

The majority of police officers are hard-working public servants who risk their safety to protect others but the fact is that the majority of Americans believe that racial profiling exists.

In fact, a National Gallup poll reflects that most Americans feel it is a major societal problem.

The Bureau of Justice Statistics report a strong connection between perceptions of race-based stops by police and animosity local and state law enforcement.

When those who protect and serve are often perceived as biased, communities of color are
less willing - to trust and confide in police officers,
- report crimes
- work with police in solving crimes
- be witnesses at trials
- serve on juries

We also know from studies that police departments that fail to address the perception of racially discriminatory policing within minority neighborhoods may find their law enforcement efforts undermined.

When studies are done to track racial profiling, we see that perceptions are often viable.

In a Maryland study – although 75% of speeders were white and 17% black, 80% of the drivers chosen to be searched, were black.

Hopefully, the audio-visual technology we're discussing today can drastically reduce those numbers and restore faith in our police force.

I look forward to hearing the testimony today and yield back the balance of my time.

Mr. SHAYS. Mr. Barr, opening comment or welcome?

Mr. BARR. Just a quick question for the witness.

Mr. SHAYS. Yes.

Mr. BARR. Thank you. Mr. Assistant Attorney General, thank you for being with us today and congratulations on your recent appointment.

Would you agree with the following statement: that if in fact the Department of Justice uncovers evidence of improper racial profiling, it has tools under current law and regulation to address that and take appropriate action?

Mr. DINH. Yes, sir. Most significantly, the pattern and practice authority in our civil rights division.

Mr. BARR. Thank you. Thank you, Mr. Chairman.

Mr. SHAYS. Thank you. Mr. Platts, would you like to make a comment before—would either of my colleagues like to make——

Mr. CUMMINGS. We have nothing else. Thank you.

Mr. SHAYS. Thank you.

Mr. DINH. Thank you very much.

Mr. SHAYS. Mr. Dinh, thank you so much. It's wonderful to have you here. You may be back again and we will look forward to that.

We will be in recess. We do have some votes. I think we may have two votes, so our next panel may have about 15 to 20 minutes if they want to quickly get a bite to eat, downstairs one floor. We stand in recess.

[Recess.]

Mr. BARR [presiding]. I'd like to call to order the continuation of our hearing in the Government Reform Committee on the benefits of audio-visual technology in addressing racial profiling. We will now move to our second panel, having already heard earlier this morning from the Assistant Attorney General, Office of Legal Policy at the U.S. Department of Justice.

I'd like to welcome the members of our second panel. We have two members, distinguished members of the Senate of the—is it State or Republic of Texas?

Mr. WEST. State of Texas.

Mr. BARR. State of Texas. The Honorable Royce West and the Honorable Robert Duncan. Senators, welcome. We appreciate your being with us today. We know that both of you have extensive experience in this particular area, as I understand it, both of you having been instrumental in the drafting of the Texas legislation on anti-racial profiling.

We're also happy and honored to have with us today the Superintendent of the New Jersey State Police, Colonel Charles Dunbar. And I believe the gentlelady from New York has some welcoming comments for the colonel.

Mrs. MALONEY OF NEW YORK. I just want to thank the chairman on holding this hearing on this important issue, and Ranking Member Elijah Cummings for really requesting it and helping to make it happen. I look forward to the testimony of all of the witnesses.

But I would particularly like to welcome Colonel Dunbar from the great State of New Jersey, which is right next door to New York, and we share many facilities between our two regions in the tri-State borough, and I particularly want to welcome him. He rep-

resents the region that I'm from, and I'm glad to see you. Glad you are here.

Mr. BARR. Thank you, gentle lady.

The final two witnesses on our second panel are both gentlemen who have also had actual experience with regard to the subject matter at hand, and that is racial profiling. Two very distinguished members of the bar: Mr. Mark Finnegan, a plaintiff's counsel from Ohio—Mr. Finnegan, we welcome your being with us today; and Mr. Robert Wilkins with the District of Columbia Bar Association, member of the D.C. Bar, who also has experiences that he would like to relate to us today. Counsel, we very much appreciate your being with us today.

At this time I'd like the four witnesses to stand and raise their right hands to be sworn in.

[Witnesses sworn.]

Mr. BARR. Thank you. Let the record reflect that all five witnesses answered in the affirmative. We appreciate your all being here. I believe you are all familiar with the procedures that we have here in the committee. Each witness is afforded 5 minutes to make an opening statement, and following that each member of the committee will have 5 minutes to ask questions and you'll have time, obviously, to respond. If there is material that you would like submitted in addition to your oral comments, submit them. The record will remain open for—counsel, 7 days? For 7 days for the submission of any additional material. And with that, I would like to recognize Senator Royce West for 5 minutes, sir.

STATEMENTS OF HON. ROYCE WEST, TEXAS SENATE; HON. ROBERT DUNCAN, TEXAS SENATE; CHARLES DUNBAR, JR., SUPERINTENDENT, NEW JERSEY STATE POLICE; MARK FINNEGAN, ESQ., HEBERLE AND FINNEGAN, LTD.; AND ROBERT WILKINS, ESQ.

Mr. WEST. Thank you. Thank you, Mr. Chairman, and members of the committee. It's indeed a pleasure to appear before you to talk about and be a part of the deliberation on dealing with this particular issue.

It's a pleasure to appear before you today. The issue of racial profiling, I don't think I need to get into the issue of it, I think that everyone in the United States perceives it as a problem. What I'd like to do is to spend my time talking about potential solutions to the issue of racial profiling.

In the State of Texas we passed Senate bill 1074, and I believe that each of the members of the committee has a copy and also an analysis of that particular bill.

What I'd like to do is to kind of go through the process, what we attempted to accomplish and the process by which we accomplished our goals.

Needles to say, being a veteran of the legislative process, albeit the State legislative process, I didn't get everything that I wanted but I got some of the things that I wanted, and I believe that as a result of working with my colleague, Senator Duncan, we were able to pass a pretty good bill.

Central to this particular bill is in fact the issue of video-audio recording. We believe that particular facet of the bill provides an

impartial third party to look at interactions between law enforcement and also citizens. We believe that particular aspect of the bill not only helps deal with issues of racial profiling but also protects officers from frivolous complaints, protects citizens from overzealous police actions, provides a very good training tool.

In addition, it provides evidence in criminal cases which may very well have the impact of reducing the amount of time that citizens have to spend in the criminal justice system, through the judicial process and also prosecutorial time; and we have not been able to, needless to say, measure that. I know that the past speaker was asked a question about whether or not there's any studies out in academia or anyplace else to measure the impact of the use of audio-visual as it relates to racial profiling. I know of no such studies, and we attempted to look at that when we were looking at passage of this particular bill. We believe that this is cutting edge and that given the state of technology in this country and this world, that we should in fact put in place video—audio-visual recording in police vehicles.

How did we get to this particular juncture and what does 1074 provide? Believe it or not, we were able to bring in some of the Nation's most notable and credible civil rights organizations and sit them down at the table with rank-and-file law enforcement organizations in the State of Texas. The organizations that were a part of crafting this particular bill and signed off on this particular bill were as follows: No. 1, the NAACP State chapter in the State of Texas, the ACLU, ERISA, MALDAF, all signed off on this legislation, as well as several rank-and-file organizations through the police agencies.

What Senate bill 1074 does is the following: No. 1, it puts in place a reporting requirement, a collection and reporting requirement for police agencies. I want you to just kind of visualize this. There's a minimum reporting requirement and there's an expansive reporting requirement. If police agencies decide to put in place audio-visual recording, then they are not subject to the more expansive reporting requirement but they still must continue the minimum reporting requirement.

The minimum reporting requirement is pretty much akin to the information that is currently collected, at least in the State of Texas on traffic citations. What we have mandated in the State of Texas as a result of passage of this bill is that the race ethnicity of the person that is issued the citation be recorded, as well as to record whether or not there was in fact a search and whether the search was in fact consensual.

We also provide that each law enforcement agency must promulgate policies dealing with racial profiling and that the report of the data that is being collected be turned over to the governing agency of that particular law enforcement agency. If it's a city council, then the city council.

In addition, we require training that each law enforcement officer that is certified in the State of Texas, they must go through—as part of their annual education, that they have to go through at least, of course, dealing with the issue of racial profiling. Not only the rank and file, but also the chief of police must also go through such a training and, needless to say, be certified.

We require that the law enforcement agency that oversees police officers in the State of Texas develop, help develop model policies as it relates to racial profiling and also that the institution of higher education where many law enforcement officers seek training develop a course on racial profiling.

We believe that by putting in place the training component, the audio-visuals and their collection and the reporting back to the local unit of government, that it will help address the issue of racial profiling in the State of Texas. How are we funding this? The State grappled with this particular issue. We sent out surveys in terms of the number of police agencies that we have in the State of Texas and how many police cars would need to be outfitted with these cameras, and needless to say, we've gotten back probably about a 62 percent response from the various police agencies.

The agencies reported that it was going to be in the neighborhood of some $34 million. What we've done in the State of Texas because we cannot accurately gauge how much it's going to cost, we set aside through general obligation bonds about $18 million in order to begin to address the issue. If law enforcement agencies, some of which have already received grants from the Federal Government, if those particular agencies come to the Department of Public Safety, the agency that will be responsible for providing vouchers and grants, and make a good faith effort in terms of applying for the audio-visual equipment, then—and if some particular reason we don't have the funds in order to accommodate those entities, then what we will do is provide them an exemption until the State has put up the necessary funds for purposes of providing that particular equipment.

It is my hope and desire that this noble body will also look at the issue and provide the necessary funding to deal with the issue of racial profiling.

Mr. BARR. Thank you very much, Senator. Senator Duncan, you're recognized for 5 minutes, sir.

Mr. DUNCAN. Thank you. I appreciate the opportunity to be here. I think one of the reasons I was asked to come here was to comment a little bit on how we developed a bipartisan support for this legislation in the State of Texas. I think it and, very briefly, I think what happened there was, No. 1, you have to have leadership on any issue. I think Senator West did an outstanding job of bringing the issue forward. I think that he was assisted by a lot of folks. One of those was President Bush. President Bush came forward, Attorney General Ashcroft came forward, I believe, with this leadership on this issue and stated that racial profiling should not be tolerated in this country, and I think Republicans generally in the State of Texas and others do believe that there is really no conservative principle that can support prolonging or assisting racial profiling by allowing it to continue to occur, not recognizing that it may occur.

So we worked with Senator West and I think Senator West addressed the Republican caucus in the State of Texas, Senate of Texas. We worked with Senator West because we know he has the ability to pull people together. He did. He pulled together the law enforcement community, I think, on this issue, which was a key to that. The concern that we had was that we did not want this legis-

lation to be more or less a Trojan horse for litigation under 42 U.S.C. Section 1983. We felt that under the *Monnell* decision there were some protections that needed to be preserved and we didn't need to have loopholes or provide continued or expansion of litigation perhaps with regard to the collection of data, and so we worked with Senator West.

We believe that the camera was the key to be able to balance that. We provided in there that the collection of data, there is collection of data in this bill by everyone. It changes, if you have the cameras; the level and the type of data that you collect is different. If you don't have cameras, you have to get very specific with all data and the data that you collect is on all stops, traffic or pedestrian. If you do not, if you have the cameras and the collection requirement is simply on citations and arrest and it's basically whether the person consented, the race ethnicity, and then whether or not they were searched and whether they consented to the search, and that's basically all you report. We felt like the cameras were a good compromise. That was Senator West's idea, and I think that the cameras provide law enforcement functions. They provide protection functions. They are deterrent, they provide a deterrent element to this, and we felt like it was a good investment.

Like Senator West, I believe that the States should participate in assisting municipalities in acquiring this technology. I think that it would also be helpful if the Federal Government should assist the States and the municipalities as well to make this a partnership because it is expensive, but it is a good law enforcement tool and it protects the rights of our citizens. I believe it prevents racial profiling, will help prevent it, which is what we really want to do, and then I do believe it provides a lot of other law enforcement functions separate and apart from racial profiling.

So that basically wraps up pretty much where I am on this, and I appreciate the opportunity to work with Senator West on this issue.

Mr. BARR. Thank you, Senator. Colonel Dunbar, we are happy to have you with us today and you are recognized for 5 minutes for an opening statement.

Mr. DUNBAR. Thank you very much. First, let me just mention to Senators Duncan and West that I think you're certainly taking the right road and if there's anything that we can do to assist you, we've been in this about 3 years, we'd be more than happy to work with you.

The New Jersey State Police I think has the largest fleet of in-car cameras in the country and we've had that. Virtually every one of our patrol vehicles has had a camera in it going back to 1998. I have over 23 years of experience in special agent of the Federal Bureau of Investigation. Prior to becoming special agent I served for 4 years as a New Jersey State trooper. In 1999 I was asked by Governor Whitman of New Jersey to assume command of the New Jersey State Police, an agency of just under 4,000 personnel, which has 120 different law enforcement functions. At the time of my appointment the New Jersey State Police had been at the epicenter of an issue involving racial profiling. The Attorney General of New Jersey issued the interim final reports on the State police that raised very serious questions regarding the organization. In addi-

tion, the minority caucus of the State legislatures held hearings regarding the State police initiative, very critical report.

In December 1999, the New Jersey State Police signed a consent decree with the U.S. Department of Justice which is scheduled to last for 5 years. An independent Federal monitor has been appointed and has issued the first 4 of 22 expected quarterly reports. Each of the reports have been very favorable with the monitor stating that the New Jersey State Police have in fact taken significant strides in reform. In fact, after 1½ years we are already over 70 percent compliant with the final phase of compliance in the decree. The items still outside the compliance are computerization of our management systems to track personnel activities and behaviors. This computerized system is expected to be deployed later this year.

When I assumed my responsibility, the need for strong internal control, discipline and ability to assess how the job was being done in the field was and is still paramount. It is my position that no better tool exists for today's law enforcement manager than the mobile video cameras, MVRs. There is no doubt that my present task would have been much more difficult without the MVR.

When I assumed my position, the media and the public questioned how we performed our duties. There appeared almost daily some question regarding our fairness in dealing with the public. Complaints regarding field operations increased from 260 in 1998 to 350 in 1999, 580 in 2000 and this year we're on a pace that we would have 800 complaints. Complaints come from individuals of all colors and stations of life. By consent decree we must thoroughly investigate each of these complaints and must make the findings of our investigations available to a Federal monitor. This has and will continue to be done. Without the video cameras I would not have been able to demonstrate that the vast majority of complaints received by the State police are unfounded and in some cases brought about by opportunists.

You will see such a video today that is common in our complaint cycle. When complaining as a professional who has written a very convincing letter alleged—that I received and read within weeks of my assuming office—a letter that based upon the individual's background and the fact that it was notarized would have led me to have serious questions regarding the conduct of the trooper involved, yet you will clearly see that the trooper involved in this motor vehicle stop had every reason to stop the vehicle and conduct themselves in a professional manner.

When mobile video recorders were first introduced, there were those that resisted them. Today we have troopers that will not go on patrol without them. My personal view of hundreds of videos has truly been an education. I have found individuals who have absolutely no basis for their complaints, yet they use the complaint process as a means to strike back at a trooper who is trying to do his or her job.

We receive telephone calls where the complainant states he or she will drop charges if the summons issued is dismissed. In one case a complainant stated that he was an aggressive driver and that he'd drove hard. He went on to state that the first time the

trooper pulled in front of him, he tried to go around him and then the trooper continued to try to pull him over.

On the other hand, we have also seen troopers who have been rude, have lost their composure and in several occasions have conducted themselves in a manner that is a serious violation of our rules and regulations. At the present I believe that less than 10 percent of our complaints have real merit.

MVRs are also an important tool in training. We have uncovered countless training issues that we can then use in our teaching sessions. One of the issues of recent note is that troopers may engage in conduct that they are not aware of. We have used the videotapes as spot training for individual troopers. We are also using both good and bad tapes for in-service and recruit training.

MVRs do bring with them costs for agencies and many additional legal issues. We will be storing over 50,000 tapes per year. We anticipate that we will have an ongoing inventory of over 400,000 tapes. We are spending in excess of $500,000 for new storage facilities. We have had to create new video camera policies, hire new staff. We are working on discovery issues as they pertain to tapes and addressing a variety of technical issues. We are now exploring the relocation of video cameras from within the vehicle to roof lights.

Now, after 3 years we are still seeing that most of our video cameras will not last in the field for longer than 3 years. These cameras cost in excess of $3,000 each. At present, the technology requires minute for minute duplication. This is a very time consuming prospect. We have technical difficulties with microphones and video cameras themselves.

When I began my assignment with the State police there was a major concern that cameras would not be used in the manner required. We consider this to be a serious breach of responsibility. Our legislature is pursuing possible criminal violations for tampering with video cameras and I support this. We require an officer to initiate the camera prior to the stop and continue to operate the camera until the stop is concluded. This includes activating a microphone during this entire period. We are now directing that whenever possible the video camera be activated to observe the actual violation. This is not practical in every case. However, it helps greatly in resolving complaints, as you will see in the video that will be shown.

In addition to our MVRs, we are an agency that is also heavily involved in data collection. This is a component of our consent decree. Data collection will also provide management with additional insight into field operations. However, while I do not fear data collection, I've already seen it misused. The ability to collect data, to see exactly what officers are doing and to get an up to the minute review is every administrator's dream. At the same time, the very data can be used out of context and lead to wrong conclusions. It has been said, and I agree, that one can make data appear to support any side of an issue.

I have spoken to the State police and provincial police section of the International Association for Chiefs of Police. Their position is that they support voluntary data collection, but we agree that MVRs will contribute more to resolving today's law enforcement

issues. As was stated by the Department of Justice, where MVRs were needed, last year $12 million were made available and this year only $3 million have been made available.

As you move forward in this area, I ask that you give strong consideration to providing Federal support and funding additional mobile video recorders. In my discussions with other law enforcement leaders, I know that they are very interested in obtaining more MVRs, but the cost of the units will require years of supplemental budgets to fully integrate them into the field.

Last year the Department of Justice, as I said, made available—I thought it was $10 million for purchase of video cameras. This tool is extremely important for both officer safety and professional policing, and it should be a top priority of the Federal Government. If the general public knows that both they and the officer are being monitored, it will strengthen their confidence in the way the law enforcement works.

As a law enforcement leader, it is always my hope that when an individual does not perform in the way he or she should that the individual's behavior can be changed. Make no mistake, changing behavior is no easy task. However, with the MVR if you cannot change the behavior, you can at least modify it, and that is the first step in ensuring that our police force protects the rights of all our citizens.

My understanding is that you want to show the videotape. The videotape that we're going to be viewing is a stop that took place in 1999. It took place on the New Jersey Turnpike. The trooper is in an unmarked car operating the video. You will see on the lefthand side of the screen there's a black vehicle on the far side. Now this is the New Jersey Turnpike, so I guarantee you that the vehicles there are not going 55 miles an hour. The chances are they're probably all doing 70, and I give you that speed because the comparison is the black Mercedes. I believe that is on the side of the road. You will get a closer shot. I'll also note that this videotape has been edited to delete the time it took the trooper to issue the summons.

We did provide the committee with a full copy of this, so it's not edited to hide anything. The individual that is driving that vehicle has indicated by letter to my office that he was a retired military officer and a principal in a school. He submitted a written letter which was notarized saying that the trooper stopped him, the trooper spat on him, that there was no basis for the stop. And I think the video pretty much will speak for itself.

The actual clock, what he's doing now is pacing the vehicle and the pace of the vehicle reaches up to 92 miles per hour. This section of the highway is a six-lane section. The troop vehicle which will now be shifting over the car portion is actually operating in the truck portion of the vehicle—of the roadway. Now, from a profiling point of view, as you can see, it's very difficult to see who the occupants of the vehicle are at this point because he's behind the vehicle, and he has already made the decision when he switches over the other side of the highway. This is one of the breaks in the roadway here. I'll also have you notice when a vehicle is pulled over you will notice there's a very dangerous procedure, there's almost a collision that takes place at the time that the vehicle pulls

over. By now the trooper had determined that he's going to make the stop, and again, it's very difficult to see who the driver of the vehicle is.

Now, I don't know, will they have the sound up high on this?

As you watch as he pulls over, the vehicle parks this way. Because on the New Jersey Turnpike our troopers never approach the vehicle on the driver's side of the vehicle because we've lost more troopers like that than we have lost to gunfire. So the trooper will always blade his car halfway between the roadway and the vehicle and then will approach from the passenger side of the vehicle for the trooper's own safety. Sometimes the trooper will get out of the vehicle and walk in between the two cars. Other times the trooper will go behind the vehicle and approach completely on the passenger side of the vehicle.

For privacy's sake we've edited out the license plate of the vehicle and we've also edited out the name of the trooper, and again, if you look at the vehicle here, I think you should be able to see that you really can't tell who was in the vehicle. There are two passengers in there and—the passenger and a driver, I should say.

The M indicates that the microphone has come on. Our policy in New Jersey, and this is an important policy, the microphone.

[Video playing.]

Mr. DUNBAR. The driver is saying he's sorry he knows he was speeding and he was in a hurry to get someplace.

What he's saying there is since I have a perfect driving record is it possible that I can get a warning. Now is the point where we edit the film, you will see the time jump from 957 to 1010.

Now, we elected actually to prosecute this individual because he had notarized the letter, and in fact I've liberalized the policy on prosecution. For the first year we limited the prosecutions to only five people because you had to do something extra. I did not want to show complaints, but this is one of the ones we did in fact prosecute. He was found—actually pled guilty and received, I think, a 30-day, 30-day community service and $400 fine for his actions.

I would note for the Senators that one of the things that we found extremely important is that the troopers were very reluctant to turn off their microphones in their vehicle. We mandate that from the time the stop begins and the time the stop ends that the camera and microphone must be on. There's too much that's missed in between and it leads to tremendous amount of suspicion, and that was one more of the difficult things to overcome. But we hold very strongly to the policy of activating the camera and issues of tampering with cameras and things like that.

Mr. SHAYS [presiding]. Thank you, Colonel. Very helpful testimony and the film was very informative.

Mr. Finnegan.

Mr. FINNEGAN. Thank you for inviting me here to testify. My name is Mark Finnegan and I have been certified by the Federal Court as the attorney for a class of all Latino motorists and passengers driving in the State of Ohio. I've submitted written testimony which is already before the counsel, and I've been asked to narrate a videotape. I wanted to say a couple of things of introduction for the tape and then it's a very short tape.

In Ohio what our lawsuit has shown and what the Federal Court has ruled is that in Ohio every year thousands of people are stopped during routine traffic stops in the State of Ohio by the Ohio State Highway Patrol and although the Ohio State Highway Patrol does not enforce Federal immigration law and does not give its troopers any substantive immigration law, thousands of people every year are interrogated and held for additional questioning on the issue of their immigration status.

What our lawsuit said and what the judge agreed was because the Ohio State Highway Patrol troopers have no training in immigration law and don't really understand how it works, they use as the sole reason for questioning people their Hispanic appearance. In this room, if any of you happened to be driving through the State of Ohio and got stopped, most of you would not be asked about your immigration status, including me. When I ask troopers under oath, including the troopers involved in the stop on the videotape, if they would demand to see my green card, one of the troopers said you being you or you being Hispanic, and another trooper said of course not because you're a White man.

But then when we asked the troopers why are you asking certain people for immigration cards, they knew better than to say because they look like Mexicans to me. So they would say one of two things and they said this under oath. No. 1, the motorist and passengers acted in some way that was suspicious to me, that made me think they were here without papers and, No. 2, oh, it was completely consensual, we were just chatting about their immigration status that I know gladly told me everything I wanted to know.

In the case that triggered the lawsuit, the situation, a middle-aged couple with permanent resident alien cards which were completely legitimate were stopped by Highway Patrol troopers for having a burned out parking light even though it was 1:30 p.m. on Sunday, but it was true they were driving with their parking lights and one of them was burned out. They weren't given a ticket and there's no record of their stop. But they both had their green cards confiscated and the Highway Patrol refused to give them a receipt for the green cards, refused to explain to them why they were taking the card, refused to tell them how to get the cards back. That's what triggered the lawsuit.

This videotape was part of the evidence in the lawsuit and, like I say, because the couple that was initially stopped, there was no record of any sort of them having been stopped, this is a videotape of a different stop. But it involves Latino drivers and passengers and it involves the exact same troopers in a stop that triggered the lawsuit.

In the course of the lawsuit the Highway Patrol admitted under oath that it is routine for them when they stop people who appear to be Latino that they start interrogating them about immigration status and even if you're a Puerto Rican and automatically a U.S. citizen if you fail to produce a green card you will be held for additional questioning and the Border Patrol will be called. They will ask you the question, did you pay for your green card? Anyone who knows anything about immigration law knows that there is an application fee for a green card. Also, you usually have to hire an attorney to get one. You have to pay notaries, you have to pay all

sorts of document fees. So of course the honest answer is yes, I paid for green card. Troopers repeatedly testified under oath that an answer that you paid for your green card made you suspicious and was grounds for your card to be confiscated and destroyed.

Now, the Federal Court agreed with us, specifically found that this was not consensual questioning about immigration status, that it was coercive by nature, and ordered the Highway Patrol to stop questioning people about immigration status based solely upon their appearance and also stop seizing lawfully issued green cards. The Highway Patrol appealed that decision and it's currently pending before the Sixth Circuit Court of Appeals in Cincinnati.

Now today's videotape, like I say, involves a different set of motorists, but what it will show, and it shows it relatively quickly, is that the Chevy Suburban was pulled over for changing lanes without a signal, although that doesn't show up in the videotape, and that when the trooper approached and asked to see the driver's license it was readily given but then for some reason the trooper demanded to see the driver's license of both passengers in the vehicle, which were readily given. Then the trooper asked to see the registration of the vehicle, which was readily given and is valid, as are all three of the driver's licenses. The trooper turns from the car and radios in the three California driver's licenses but for some reason then turns on his heel and comes back and demands to see the three people's green cards, and that's what the tape shows.

When I confronted the troopers with this videotape during their deposition, they said I don't remember, I make so many stops. I don't remember why I demanded to see the green card but it was because the people in the vehicle were acting suspiciously.

Well, the videotape I think is helpful and the court found it was helpful to see whether there was suspicious activity going on.

[Video played.]

Mr. FINNEGAN. See, in this tape we have no idea why the stop was made.

[The prepared statement of Mr. Finnegan follows:]

Testimony of J. Mark Finnegan, Certified Trial Attorney For Class of All Hispanic Motorists and Passengers on the Highways of Ohio
July 19, 2001

Members of the House Committee on Governmental Reform:

Thank you for inviting e to testify before your committee today. I have learned first-hand that the video-taping of state police traffic stops would benefit both Troopers as well as minority motorists subjected to those stops.

I am J. Mark Finnegan, and I am the Trial Attorney in the ongoing federal lawsuit *Farm Labor Organizing Committee v. The Ohio State Highway Patrol*, in Toledo, Ohio. On August 18, 1998, the Federal Court certified me as class-action counsel for the class of "all current and future Hispanic motorists and passengers who are involved in traffic stops by the Ohio State Highway Patrol." *See* 184 F.R.D. 583 (N.D.Ohio 1998). I am in private practice with the firm of Heberle & Finnegan, in Columbus, Ohio.

What We Learned During The Lawsuit in Ohio

Our lawsuit exposed that Ohio State Highway Patrol Troopers use federal funding every year to stop and detain thousands of Hispanic motorists and passengers traveling in and through Ohio, just to interrogate them about their immigration status. Troopers also testified that they frequently seize and destroy immigration documents from Hispanic drivers and passengers, but later learn that the documents were valid.

The Ohio State Highway Patrol freely admits that it has no mandate to investigate or to enforce United States immigration law, and that the O.S.H.P. provides no substantive immigration status training to its Troopers. Our lawsuit claimed that because O.S.H.P. Troopers have no training in immigration law, that individual Troopers are conducting immigration interrogation solely upon the Hispanic appearance of the stopped motorists

and passengers. Several Troopers admitted under oath that this was true.

At trial, the O.S.H.P. testified that the motorists "freely consent" to be questioned about their immigration status, and that they agreed to the seizure of their validly issued immigration documents. Our Hispanic witnesses vehemently denied any free consent, and alleged that they were coerced by the Troopers to surrender immigration documents and to discuss their immigration status. Of course, video-tapes of these stops and interrogations would be valuable in assessing the true nature of the questioning.

After trial, the federal court rejected the testimony of the O.S.H.P. and found that the O.S.H.P. was violating the Constitutional Rights of Hispanic motorists and passengers throughout Ohio. The Court then issued an injunction ordering the O.S.H.P. to stop detaining and questioning Hispanics about immigration status based upon their physical appearance, and to stop seizing permanent resident alien cards without probable cause. The decision is reported at 991 F.Supp. 895, 907 (N.D.Ohio 1997).

The Ohio State Highway Patrol has appealed the decision to the Sixth Circuit Court of Appeals, and we are awaiting their ruling.

Other Legal Rulings Against Ohio State Highway Patrol Troopers

In the last few years, several Ohio State court judges have dismissed drug charges against Hispanic motorists and passengers who were caught with drugs while driving in Ohio. In most of these cases, the judges were conservative Republicans, elected by overwhelmingly conservative electorates. Yet, the judges reluctantly agreed that the sole reason the Hispanic motorists had been stopped in the first place was simply because they were Hispanic. In each of these cases the Court found that the O.S.H.P. Troopers' testimony was not true concerning the underlying traffic stop. None of these stops was

video-taped. Video-tapes would vastly reduce the need for judges to weigh the credibility of O.S.H.P. Troopers versus the testimony of Hispanic motorists.

Video-tapes of these stops might have been enough to save these drug prosecutions.

My Video Tape Presentation Today:
Was This "Consensual Questioning" About Immigration Status?

Today's video-tape was made during a traffic stop by the O.S.H.P. of Hispanic motorists on the Ohio State Turnpike. It involves the same individual Troopers who are defendants in the federal lawsuit against the O.S.H.P.. The tape shows that even after the driver and the two passengers presented valid California Drivers Licenses and vehicle registrations, the Trooper immediately demanded to see each of their "green cards." I believe it also shows that especially the two passengers (who had very limited ability to speak English) were not merely engaged in "consensual" discussion of immigration status. The Hispanics were in a coercive atmosphere in which even you or I would not feel free to refuse the Trooper's demand. The video tape is a valuable tool to determine whether or not the Trooper coerced the passengers, and the federal court admitted it into evidence.

During a valid traffic stop, a State Trooper has the right to talk to the motorist about almost everything. As long as the questioning remains consensual, there is no Constitutional issue. However, once the questioning strays into immigration status, one begins to wonder whether a Hispanic might not be offended, because of course immigration status is wholly unrelated to driving a car in Ohio. A video tape record of the stop would help one determine whether the motorist and/or passengers freely discussed immigration issues or were in a coercive atmosphere.

Video Tapes As A Teaching Tool

During our lawsuit, we also proved that some of the defendant O.S.H.P. Troopers issued traffic citations disproportionately to Hispanics. According to the United States Census in 1990, Hispanics make up 3% of the population of Ohio, Indiana, Michigan, Illinois, Pennsylvania, and New Jersey. Yet some of our defendant Troopers issued as much as 14% of their traffic citations to drivers with Hispanic surnames, as defined by the United States Census. Hence, the Troopers were issuing nearly 4 times as many tickets to Hispanics as their percentage in the population would indicate.

I questioned these Troopers under oath about this discrepancy. Each was astonished that their traffic citations showed so many Hispanic Surnames. The Troopers testified that they could not explain why 3% of the population earned 14% of the traffic citations. The Troopers acknowledged that Hispanic drivers are not more likely to speed, change lanes without signaling, fail to wear seat belts, to drive dangerous cars, etc. Confronted with the traffic citations, several of the Troopers testified that the records must be incorrect–even though the traffic citations were in their own handwriting!

I believe that if these Troopers could review their traffic stops on video tape, even over a one or two month period, that they could see with their own eyes either that: 1) they stop Hispanic motorists more often; or 2) they at least write traffic citations to Hispanics at a rate 4 times greater than their percentage of the population.

Even More Grave Allegations

One of the Troopers who worked with many of the defendant Troopers in the federal lawsuit told me that he personally witnessed some of his fellow Troopers profiling and

stopping Hispanic drivers. He told me that when he reported it to his supervisors, he was disciplined, and that later those same supervisors threatened him with criminal charges for engaging in perjury. I do not know if this Trooper is telling the truth, but wouldn't it be helpful to be able to view videotapes of the stops where this Trooper claims that profiling took place?

Conclusion

In Ohio, several courts have found that some Ohio State Highway Patrol Troopers have violated the Constitutional rights of Hispanic motorists and passengers. A federal lawsuit on the issue has been being fought for the last five years, with no end in sight. Video-taping of traffic stops would be useful to judges in making decisions about racial profiling. At the same time, the videotapes would help defend Troopers who do not racially profile, and would be a valuable teaching tool for Troopers who may sincerely not realize that they may actually be treating minority motorists and passengers differently.

Finally, video tapes of state police traffic stops would bring "transparency" to the process that would provide needed factual support to lawmakers, judges, troopers and motorists alike. It a simple method to resolve the heated debate concerning possible racial profiling of motorists by state police forces.

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Mr. SHAYS. Thank you. Mr. Wilkins.

Mr. WILKINS. Thank you, Mr. Chairman. Thank you, Mr. Chair, and I thank Chairman Burton, in his absence and Congressman Cummings also in his absence, for their leadership in having this hearing, and as well as the entire committee for your interest in this issue.

I'm going to just try to briefly discuss what happened in my particular circumstance and lawsuit and then get to, right to the issue of what I see as the benefits, but also the limitations of audio-visual technology in addressing racial profiling.

Unfortunately, I am a victim of racial profiling. I was with my cousin and my uncle and his wife when we were returning from my grandfather's funeral when we were driving through western Maryland and stopped by the Maryland State Police allegedly for speeding, but rather than just writing a speeding ticket, the trooper demanded that we sign a consent to search form allowing him to search our rental car for drugs or weapons. When I explained to the trooper that—as well as my cousin, who was the driver—that we did not wish to consent, his response was, well, if you've got nothing to hide then what's your problem and this is routine, nobody ever objects and basically that there was some sort of problem or that we were suspicious or trouble because we weren't willing to consent to this search.

And when we wouldn't consent, he said that we would have to wait for a drug sniffing dog to be brought to the scene and I told him the name and date of the U.S. Supreme Court case that said that he couldn't do that, but none of that seemed to matter to this trooper, who responded that this was routine. And he knew that I was a lawyer, and I told him that I was in fact a public defender in Washington, DC. So I knew exactly what his rights were and our rights were, but none of this mattered because he said they were having problems with rental cars and drugs and therefore they were going to have to take this action.

And indeed they did force us to wait for the dog to come and we had to stand outside of our car in the rain as this German shepherd climbed all over and on top of and under our car sniffing for drugs that weren't there.

We sued and learned that the Maryland State Police had actually issued an intelligence bulletin, which is appended to my testimony, that directed their troopers to be on the lookout for Black males in rental cars from Virginia traveling through that area early in the morning and late at night because they were likely to be drug traffickers, and so in our case we actually had a smoking gun and we actually had the trooper's statements that they were concerned with rental cars and drugs that we could link to that smoking gun, and that gave us some leverage in dealing with the Maryland State Police as far as being able to make a case that they were engaging in a pattern and practice of racial discrimination.

We used that leverage to extract a settlement that not only included new nondiscrimination policy and training, but also data collection on who was being stopped and searched and for what reasons and the race of the people being stopped and searched. And with that data being available to us for several years so that we could monitor that along with the Federal Court and see how they

were doing with combating racial profiling, unfortunately that data showed that the problem was persisting. And there's more information about that in my written testimony, but suffice it to say the data showed that when the Maryland State Police searched the hundred Whites and the hundred Blacks they were just as likely to find drugs or contraband. The problem is that for every 100 Whites they were searching they were searching 400 or 500 Blacks, and so it was anything but equal justice under law and there was no real reasonable explanation whatsoever for that disparity. And unfortunately those disparities continue till today, though not quite at as high a level.

So to get to audio-visual technology, I think that audio-visual technology would have been helpful had it existed in 1992, when we were stopped by the Maryland State Police, because we unfortunately were in a situation where it was going to be our word against this trooper's about what happened and what we said and whether we were behaving suspiciously.

And I have appended to my testimony not only the settlement agreement, but also the report that the trooper wrote after we notified the Maryland State Police that we intended to sue, and the report had some very important falsehoods in it that were designed to show that we were more suspicious than we really were and that he was more considerate of our rights than he really was and that we were agreeable to all of this detention and drug sniffing dogs when in fact we weren't, and I did everything I could in the most peaceful manner that I could to protest what he was doing.

And so it's quite a powerless feeling when you're going into a lawsuit and you know that it is your word against someone else's and you don't know whether the jury is going to believe you, even though you know that you're telling the truth, and so I think that the audio-visual technology can help diminish that imbalance of power that victims feel and provide an independent third party witness. But it's not a panacea because, as you can even see from the tapes that we reviewed, you can't see everything and you can't hear everything during the incident, and so it's not going to capture everything. Of course, it will be helpful, but also the videotapes can't really help you look at whether there are patterns and practices the way that you can if you have data collection because you can't look at every single videotape as a police department manager and you can't really use the tapes as a substitute for data that will show you trends in certain areas or with certain officers.

And so while I'm encouraged by this hearing and encouraged that you're interested in supporting in whatever ways you can the expansion of audio-visual technology, I still think that you need to support and consider legislation such as Congressman Conyers' legislation and legislation that Congresswoman Norton mentioned earlier today, because ultimately you need to take more strong steps and proactive steps, and I think that the loss of Federal funding is a good incentive to encourage the State and local jurisdictions to be proactive.

Thank you.

[The prepared statement of Mr. Wilkins follows:]

TESTIMONY OF Robert L. Wilkins, Esq.

Concerning

"The Benefits of Audio-Visual Technology in Addressing Racial Profiling"

Before

The Committee On Government Reform

Rep. Dan Burton, Chairman

THE UNITED STATES CONGRESS

HOUSE OF REPRESENTATIVES

Rayburn House Office Building, Room 2154

July 19, 2001

10:00 a.m.

Mr. Chairman and Members of the Committee. Thank you for the opportunity to appear before you today to testify regarding "The Benefits of Audio-Visual Technology in Addressing Racial Profiling".

I believe that I speak for many others all over the country in thanking and congratulating this Committee for holding hearings on this very important issue. Unfortunately, the problem of "racial profiling" is a real one. Furthermore, the perception among many in communities across the nation is that racial profiling results in unfair and discriminatory treatment in some areas of law enforcement, particularly in traffic stops. For those reasons, I strongly believe that these issues deserve not just further study, but also aggressive action to eliminate the perception and reality of racial profiling on our nation's highways. Thus, while I support the use of audio-visual technology as a potentially useful tool in investigating individual claims of racial profiling, I urge you to pass H.R.2074, The End Racial Profiling Act of 2001 (introduced by Congressman Conyers), because that bill provides a more comprehensive solution to this very important problem.

I. THE INCIDENT

Regrettably, I can speak about racial profiling firsthand, because I have confronted it face to face.

On May 8, 1992 at approximately 5:55 a.m., myself, my cousin Norman Scott Wilkins, my uncle (Scott's father) Nu'man El-Amin, and his wife Aquilah Abdullah were eastbound on I-68 coming through downtown Cumberland, Maryland. We were returning from my grandfather's funeral in Chicago. We had left Chicago the previous afternoon and driven all night, because we were all due back at our jobs; I even had a court appearance in Washington that morning. Scott was driving; I was in the front passenger seat, and my uncle and his wife were in the back. I should also add that my family and myself are African American, while all of the police officers involved were white.

Officer V.W. Hughes, from the Maryland State Police stopped our car and told my cousin that he had "paced him" doing 60 in a 40 mph zone. Ofr. Hughes took Scott's license and the rental car contract and returned to his marked scout car. (The car, a Cadillac, was rented by my uncle for the trip.) Approximately five minutes later, Hughes returned and asked Scott to step

out of the car. After a brief discussion between the two of then, Scott leaned toward the car and said "Daddy, they want to search the car."

At that time, Uncle Nu'man and I got out of the car. I politely explained to Hughes that I was a public defender, and I asked what was going on. Hughes showed me a "Consent to Search" form that he had asked Scott to sign. Scott had not signed it, and I told Hughes that we did not consent to him searching anything and that my understanding of the law was that he could not search our car unless he was arresting Scott and was making a search incident to that arrest. Hughes informed me that such searches were routine, that he had never had any problems before with people refusing consent, and that "if we had nothing to hide, then what was the problem." I responded that we had a right not to be search and that this is not a police state. My uncle told him that he was not going to allow him to search all of our things out there in the rain. I asked Hughes what justification he had for this request, and simply replied "he wanted to search the car." He also mumbled something about "problems with rental cars coming up and down the highway with drugs." I told him that we were coming from the funeral of my grandfather, the late Rev. G.R. Wilkins, Sr., in Chicago and that we were driving all night so that I could make a court appearance in D.C. I told Hughes that if he did not believe me, I would get a copy of the obituary from the trunk. He responded that "he did not want to see any obituary, he wanted to search the car." We continued to refuse, so he informed us that we would have to wait for a narcotics dog to arrive. We got back inside the car.

At 6:15, about fifteen minutes after we got back into the car, my uncle and I got out to speak with Hughes. By this time, Officer Syracuse, another Maryland State trooper, had joined him. My uncle asked Hughes whether he was going to write Scott a ticket, and he responded that he was going to give him a warning. My uncle then asked him how much longer for the dog, and Hughes said probably about five more minutes. My uncle asked him to write the warning now so that we could be on our way. Hughes refused, stating that we would have to wait for the dog. I told Hughes that what he was doing was wrong, because the United States Supreme Court had ruled, in a 1985 decision called *United States versus Sharpe*, that he could not detain us for a dog search unless he had reasonable, articulable suspicion that we were carrying drugs, and he had no such reasonable suspicion in this case. I also told him that he was supposed to detain us for as brief of a time as possible, that it had already been at least twenty minutes, and that the detention

was therefore too long. Hughes pretty much ignored my citation to legal authority and informed me again that this was "routine," that they did it all the time, and that we would just have to wait.

At 6:26, Sergeant Brown from the Allegheny County Sheriff's Department came to the car and informed us that he was going to be taking a dog trained in the detection of narcotics around the car. Brown told us that we had to step out of the car to the curb. We told him that we were not getting out of the car, because it was unnecessary and it was raining. When I asked Brown why we had to get out of the car, he said that it was procedure and that it was for our safety from the dog. We informed him that we felt a lot safer inside the car, with his dog outside. Hughes then told us that if we did not cooperate, "we could not get through this." Brown took my uncle's driver's license at that time, and we got out of the car.

The four of us stood outside in the rain while Brown slowly and thoroughly took his German shepherd around the Cadillac. The dog sniffed everything, but it never barked or did anything unusual. Several cars passed us along the highway during this time. When Brown finished, we were told that we could get back inside the car.

So there we were. Standing outside the car in the rain, lined up along the road, with police lights flashing, officers standing guard, and a German Shepard jumping on top of, underneath, and sniffing every inch of our vehicle. We were criminal suspects; yet we were just trying to use the interstate highway to travel from our homes to a funeral. It is hard to describe the frustration and pain you feel when people presume you to be guilty for no good reason and you know that you are innocent. I particularly remember a car driving past with two young white children in the back seat, noses pressed against the window. They were looking at the policemen, the flashing lights, the German Shepard, and us. In this moment of education that each of us receives through real world experiences, those children were putting two and two together and getting five. They saw some black people standing along the road who certainly must have been bad people who had done something wrong, for why else would the police have them there? They were getting an untrue, negative picture of me, and there was nothing in the world that I could do about it.

A few minutes later, Hughes returned to the car with the two driver's licenses and a $105 ticket for Scott. At 6:34 a.m., we finally continued on our way. In addition to the anger, frustration and embarrassment, the detention caused us to hit the peak of rush hour traffic on I-

270 and the beltway, and I missed my 9:30 court appearance.

II. THE PROFILE

After such a humiliating and degrading experience, my family and I were determined to take whatever action we could to ensure that something like this would never happen to anyone else. We decided to take legal action, and were fortunate to obtain the services of the Maryland Chapter of the American Civil Liberties Union and the law firm of Hogan & Hartson. Once we began the legal process, one of the first documents we received from the Maryland State Police was the now infamous "Criminal Intelligence Report," a blatant racial profile.

The Criminal Intelligence Report discussed the crack cocaine problem in the Cumberland, Maryland area, and recklessly and indiscriminately advised state troopers that the traffickers "were predominately black males and black females" and that these dangerous armed traffickers generally traveled early in the morning or late at night along Interstate 68, and that they favored rental cars with Virginia registration. (Attached as Exhibit 1.) Well, we fit the profile to a tee. We were traveling on I-68, early in the morning, in a Virginia rental car. And, my cousin and I, the front seat passengers, were young black males. The only problem was that we were not dangerous, armed drug traffickers.

It should not be suspicious to travel on I-68, early in the morning, in a Virginia rental car. And it should not be suspicious to be black. Yet the Criminal Intelligence Report, which was issued just two weeks prior to our incident and posted in the barracks to which these state troopers were assigned, encouraged them to believe that they were justified in stopping and searching us "because they had problems with drugs and rental cars," as Trooper Hughes related to me on the highway when I was imploring him for an explanation. These troopers had taken some information about a small number of individuals and generalized it to apply any black person in a rental car. That simply was not right.

And it wasn't even good police work either. The experts from the training academy of the Maryland State Police testified in depositions that profiles do not work well for highway drug interdiction. Drugs are found in all types of vehicles, driven by people of every race and age, and in various different circumstances. Thus, the experts testified that any profile used for highway interdiction would either be too narrow, excluding potential trafficking situations, or too broad,

making nearly everyone a drug trafficking suspect.

Putting aside whether the profile was bad police work, which it was, it was simply wrong. It does not represent "equal justice under the law" to treat blacks traveling on the highway in rental cars differently than whites. Thus, it is absolutely critical that any discussion of racial profiling properly defines the term. Some people define racial profiling as law enforcement action "based solely" upon the suspect's racial or ethnic appearance, but that is wrong. A ban of law enforcement actions "based solely" on race would not prohibit the Maryland State Police from reissuing the very same unconstitutional profile from 1992 and using it to detain me tomorrow, because its troopers could argue that they did not stop or search me "solely because" I am black, but because I am black **and** I was driving a rental car on a highway known to be used for drug trafficking. To use another example, a state trooper could decide to stop and search all blacks whose cars have broken tail-lights but not stop any whites with broken tail-lights without violating the "sole basis" test, because the trooper would have another reason besides race for stopping blacks. Nonetheless, the trooper's actions would violate the letter and spirit of "equal protection of the law." This august body should not pass a bill for the sake of feel-good politics; it should pass a bill that actually addresses the problem. Good intentions are not going to solve this seemingly intractable problem. We need good policies and procedures. I attach language below from the Montgomery County settlement with the United States Justice Department for your consideration:

> [E]xcept in the situation described below, MCPD officers will not, to any degree, use the race or national or ethnic origin of drivers or passengers in deciding which vehicles to subject to a traffic stop, or a checkpoint or roadblock stop, and in deciding upon the scope or substance of any action in connection with a traffic stop or a checkpoint or roadblock stop. Where MCPD officers are on the lookout for, or are seeking to stop, detain, or apprehend, one or more specific persons who are identified or described in part by race or national or ethnic origin, MCPD officers may rely in part on race or national or ethnic origin in taking appropriate action.

I believe that this language properly defines what we need to prohibit when we talk about racial profiling in the highway context.

III. THE SETTLEMENT

In January 1995, we settled the lawsuit. (See Exhibit 2.) The Maryland State Police (MSP) agreed to, among other things:

1. Pay a modest financial settlement of $50,000 in damages to the four of us who were in the car and $46,000 in attorney's fees for the three years of legal work done by our lawyers.
2. Prohibit the use of race-based drug courier profiles as a law enforcement tool. The new MSP policy would "specifically prohibit consideration of race as a factor for the development of policies for stopping, detaining, or searching motorists."
3. Train all new and previously hired troopers on the contents of the new policy.
4. Maintain computer records of all traffic stops in which a consent to search is given by a motorist or a motorist is searched with a drug-sniffing dog. Information about the date, time, reason for the stop and race of the people stopped would be collected. This information would be collected for several years and be forwarded on a quarterly basis to the federal judge monitoring the lawsuit and us, the plaintiffs.
5. Discipline troopers who violated the non-discrimination policy or failed to maintain proper documentation of stops and searches.
6. Remain subject to the jurisdiction of the federal court if the computer records showed a pattern and practice of discrimination, so that we, if necessary, could seek further equitable relief.

My family and I, with the help of the ACLU and Swidler, Berlin, Shereff Freedman, LLP., began to monitor the MSP with the hope that the suffering we endured would be stopped or minimized by the Settlement.

IV. THE OUTCOME

I wish that I could report a happy ending, but that is not yet possible. Unfortunately, the MSP data began to show a disturbing trend immediately, which continued through 1997. During that period, MSP data showed that 70-75% of the people searched on I-95 were African American, though African Americans were only 17% of the drivers on the highway and only

17% of the traffic violators.

The disparities raised serious questions. Initially, the MSP responded by arguing that since 70-75% of the people who had illegal drugs or other contraband seized from them were African American, there was actually no disparity at all.

But those numbers told only half of the story. Because we had the more detailed computer records from the Settlement, we learned that:

1. For every 100 blacks searched, and every 100 whites searched, the number of people found with drugs or contraband was almost exactly the same. Thus, if you used the practices of the MSP and searched 100 blacks, you would find drugs just as many times as when you searched 100 whites

2. However, for every 100 whites searched by the MSP, over 400 blacks were searched. This disparity in law enforcement use of traffic stops and searches was therefore the sole explanation for the fact that 70-75% of the people arrested for drug violations were African American.

3. This disparity existed despite a lawsuit, a settlement, new policies, updated training, and the knowledge that MSP supervisors, the ACLU and a federal judge were monitoring traffic stops by MSP troopers.

We were therefore forced to seek further court action against the MSP, because the data showed a serious violation of the Settlement Agreement. In 1997, United States District Court Judge Catherine Blake made a preliminary finding based on this evidence that the MSP was engaging in a pattern and practice of discrimination. Indeed, we believe that the subsequent events have shown that while the MSP had issued a policy statement on paper, they had done little or nothing to enforce it. Thus, a new class action lawsuit was filed in 1998 on behalf of the Maryland NAACP and minority motorists who have been subjected to discriminatory stops and searches on I-95. Both the *Wilkins* lawsuit and the new *NAACP* class action have been on hold for over a year as we conduct settlement negotiations.

Let me hasten to add that this problem is in no way unique to Maryland. On the contrary, it is a nation-wide problem, and the ACLU and other organizations have begun, or are developing, race-profiling litigation in about a half dozen states in addition to Maryland. Moreover, the Civil Rights Division of the U. S. Department of Justice has recently entered a comprehensive consent decree with the State of New Jersey concerning profiling by the State

Police and a similarly comprehensive agreement with the police in Montgomery County, Maryland. Unfortunately, the limited statistical and anecdotal evidence suggests that the problem most likely exists in many States.

Also, it is not a problem with all or even most police officers. The statistics that the MSP gathered pursuant to the Settlement show enormous variation among troopers. A relative few singled out minorities consistently, while most did not, and many troopers seemed to be even-handed in terms of race. What is more, troopers who are even-handed seemed equally effective in locating contraband. We are convinced that effective policing does not require race targeting; fairness is not at war with effective law enforcement.

V. THE USE OF AUDIO-VISUAL TECHNOLOGY

I believe that my experience with this issue gives me a unique position to comment on the use of audio-visual technology to fight racial profiling. In general, I support the use of video cameras in police vehicles, because they can help document what happens during highway detentions and searches. Thus, several years ago, we began to request that the MSP install video cameras in all of its vehicles, and the MSP has begun to do so. Indeed, this is one area where we were readily in agreement with the MSP, because MSP management and the individual troopers seemed to favor the cameras

In our particular case, I think that we could have proven our claim of profiling much easier if the MSP vehicles involved had video cameras installed. Specifically, cameras would have helped:

- Prove we were not suspicious by showing what actually happened.
- Prove the MSP was using the racial profile from the "Intelligence Report" by documenting MSP trooper Hughes' statement about "problems with drugs in rental cars" which could have then been tied his briefing on the Intelligence Report.
- Prove that the encounter actually occurred. In our case, the MSP had issued a ticket, and they admitted that the stop and search occurred. But in several instances, troopers have illegally stopped and searched individuals without issuing tickets or warnings, allowing themselves room for "deniability" if a complaint is filed later.
- Disprove false statements. In his report of the incident, MSP Trooper Hughes made at

least four false statements designed to make it appear that the initial traffic stop was justified and that we consented to the search by the drug-sniffing dog. A camera and audiotape would have shown that Hughes included false details in his report, while he also excluded important details:

- Hughes falsely claimed to have followed and "paced" our vehicle exceeding the speed limit when my cousin Scott, the driver, saw his marked vehicle pull behind us from the shoulder of the road and therefore double-checked to make sure he was not speeding.
- Hughes made it appear that our travel plans were suspicious by falsely asserting that we traveling from Pittsburgh to Baltimore, when we told him that we returning to the Washington/Virginia area from a funeral in Chicago (and offered to show him the funeral program).
- Hughes falsely claimed at he explained our rights to us by telling us that we did not have to sign the consent to search form, when he actually berated us and said we must "have something to hide" if we did not want him to search our car.
- Hughes falsely claimed that we "agreed" to wait for the dog, when we in fact told him that he had no right to detain us for the dog search, and I told him that he was violating U.S. Supreme Court precedent by making us wait for the dog.

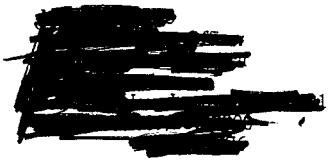
However, video cameras are no panacea, because there are serious limitations to the usefulness of audio-visual technology in combating racial profiling. For three principal reasons, the use of video cameras alone to address racial profiling is an incomplete solution:

- Under inclusive because cameras can help adjudicate individual claims, but they not practical or feasible to evaluate the big picture. Police officials cannot view all videotapes to determine whether there are discriminatory patterns and practices – it is too time consuming -- data collection makes overall evaluation of practices and trends much easier.
- Under inclusive because cameras may not show what precipitated the stop (before the lights go on), and they may not capture everything said and done during the stop
- Under inclusive because cameras do not provide data to compare persons who were stopped and searched to similarly situated drivers who were not stopped or searched --

specially designed studies must be done for this purpose.

In conclusion, the increased use of video cameras will be useful in the fight against racial profiling, but they cannot replace data collection, good management practices, proper non-discrimination policies, and strong enforcement of those policies. I hope that this information was useful to the Committee, and I urge you pass H.R.2074, The End Racial Profiling Act of 2001.

Thank you.



May 10, 1999

State Police
P.O. Box 7068
West Trenton, New Jersey 08609

Dear Sir:

With all due respect to the New Jersey State Police Officers and to the authority granted to them to perform their duties in the most courteous, honest, respectful and just way possible, I feel it is very necessary to write this letter of Complaint.

A New Jersey State Trooper stopped me between Exit 9-11. I was traveling North. I travel this route almost daily to East Orange, New Jersey. I observed a fast moving black car approaching me in my rear view mirror. My speedometer has been set as I do every day between 65-68. As this black car got closer to me.I observed flashing red lights from the front of the car. I immediately pulled over because this black car almost forced me into two other cars in right lane.

After stopping my car on the side, I sat there on the curb for five minutes or more before the officer approached my car. When he approached me he came to the right side. It really frightened my friend who was sitting in the passenger seat. She was very scared because she kept saying you were not speeding, you were not speeding. So I said to her what were we pulled over for? That naturally made both of us more frighten. The Trooper came to the right side of the car with is hand on his weapon. My friend thought maybe I should pull off. I remain parked. We were really afraid because we didn't know why we were stopped. I was driving a 1997 Mercedes Benz black and my girlfriend is very light complexion and she thought maybe he thought that she was white with a black man.

He approached her side of the car with his hand on his gun and signal her to let the window down. She kept yelling to me "Eric don't move, can't reach for your ID's until he asked for them." When the window was down he leaned into the window across my girlfriend and stated: "You were speeding 92 miles per hour, he stated you were changing lanes without using your signal, he stated you were passing on the right side". I responded, Sir are you going to give me a warning because none of what he was saying made sense.

I handed the Trooper my drivers license, registration, insurance card and my disabled handicap registration. He took these documents to his car and stayed for another ten minutes or more. He finally came back to the right side of the car with his hands on his gun. My guest rolled the window down and he briefly stated what he has written, he handed me my documents back and walked away. He had a very nasty attitude.

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After he left I looked at the tickets, three of them and I could not recognized his name. He gave the wrong telephone number. I tried to reach out to his headquarters with no success until about a week later.

Finally on 4/24/99 I contacted Sgt. Reid who spend a considerable amount of time trying to help me locate where the office was located and who he was. Based on the ticket number, Sgt. Reid finally told me to register the complaint and send it to his office.

To date I am still not sure whether the person in the unmarked car a Trooper and working in an official capacity or not.

My complaint is summarized as follow:

He stopped me for no apparent reason

The officer appeared very angry, disturbed with never a smile.

The officer almost caused an accident as he forced me off the road (I am a handicapped victim)

The officer pulled behind me and waited 5-7 minutes before he approached my car from the right side with a passenger on the right side.

The officer approached my car with his hands on his weapon.

When the passenger window was down and the officer had his hand on his weapon he leaned into the passenger window over the female passenger and asked for my ID. The passenger indicated that the Trooper was spitting in her face.

The passenger didn't utter a word because she was scared and frightened out of her wit. I think she was breathless until the officer walked away.

The officer's name could not be identified

The officer gave the wrong telephone number for his headquarters.

The writing on the summons could hardly be read.

I Respectfully request that all these summons be dismissed.

This request is based on the following:

- I have not received a driving violation for years.
- I take pride in driving correctly.
- I am a handicap driver and I set my speedometer wherever it is appropriate when driving.
- My speed was set when I entered the Turnpike at Exit 7A.

I request to see the radar report, as stated if I was driving 92 miles per hour why did the Trooper state 80 miles per hour on the summon.

I would like very much that this matter be solved at this level, if not, I respectfully request that you provide to me the name and address where I may be able to register this complaint at the next level of authority. I don't feel it is necessary to forward this type of complaint to the Governors office.

Mr. SHAYS. Thank you, Mr. Wilkins. I thank all of you. I apologize to my two colleagues in the elected side of our, of this panel for missing your testimony. I'd like to just read a comment that Sherman would have made had he been here to you, Senator West, saying I personally want to congratulate you for your hard work to combat racial profiling in Texas and for the bipartisan effort that resulted in the passage of a new Texas law that prohibits racial profiling. And also Senator Duncan, he said I also salute you and other Texas Republicans' efforts to work in a bipartisan fashion to enact the Texas racial profiling law.

I think you described it in some measure. I would like either of you to just tell me, was this something where both parties had consensus on or was there a bit of struggle at first? Was this, for instance—Mr. Duncan, did you have to be persuaded over time or did you—were you aware of this problem originally? I would imagine, for instance, Mr. West being, I assume, an African American, that you would have been more aware of this kind of problem and so, Mr. Duncan, maybe both of you could just respond from your own perspectives as to how you did this.

Mr. DUNCAN. I think Senator West does an excellent job in the Texas Senate of raising issues like this, that while those of us who are not of African American descent or Hispanic descent may not have those personal experiences or have our constituents talking to us, he was more aware of it. He made this issue aware or made our caucus aware of this in the Texas Senate, continued to pull all of the law enforcement groups together. They worked with—including the Associations of the Chiefs of Police, and I think whenever he was able to develop that undercurrent or the grassroots sort of support from those associations, he got the attention of a lot of members who normally wouldn't be involved in that, proactively in that type of an issue.

Mr. SHAYS. If you don't walk in that moccasin you don't always know what it's like.

Mr. DUNCAN. That's right, or if you don't represent a number of constituents who walk in those shoes. So it helps to have someone like Senator West to bring the issue forward and raise it to the level that he did. I think President Bush helped and Attorney General Ashcroft whenever I think they took a proactive staff. I know it did affect the members, the Republican and more conservative members of the Texas Senate, that this is not an issue that is—there is no conservative principle that supports anything that perpetuates the practice of racial profiling, and I think Senator West got that across.

Mr. SHAYS. Senator?

Mr. WEST. And might I add, this was an unusual session for the Texas Legislature, and if I had to kind of sum up what we did, we dealt with a lot of civil and individual rights this session like none other before in the history as far as I know. I mean hate crimes passed in the State of Texas this time around and also racial profiling. So did DNA that Senator Duncan kind of led the effort on. So we had a whole host of individual and civil rights bills that have been considered in previous legislation but had never been passed and it was passed this session, racial profiling being one of them.

Mr. SHAYS. Colonel Dunbar, Mr. Finnegan, this is really a tremendous panel because we have people who help promulgate very important law, we have both of you who can explain two sides of the benefit of the visual look at an arrest or, excuse me, a question, a stop issue, and, Mr. Wilkins, to have you as someone who has gone through it from the side of being truly a victim of it. I thank all of you for that contribution. Colonel, I would think and, Mr. Finnegan as well, that if you know you're an officer and you know you're on tape—they say it sometimes on the floor of the House, Members act differently when there's TV cameras on—I think they would act differently but over time, and maybe I'll start with you, Mr. Finnegan, he knew, the officer knew he was on tape, and did he not know he was doing something wrong or did he just forget the TV was on or was it a combination of both? And maybe you can respond from your perspective, Colonel, but first you, Mr. Finnegan.

Mr. FINNEGAN. Well, what was interesting I thought about the tape was that the trooper goes up and announces that it's, you know, you were paced slightly over the speed limit, and that is a friendly warning, and yet there are five troopers wandering around in the background. So we know that there was something funny about the stop, and I thought a lot of the troopers were trying to stay out of camera range.

Mr. SHAYS. I only thought there were three.

Mr. FINNEGAN. There were five as it turned out and a sixth one showed up with the dog. That is what the questioning was about. They were trying to hold them up, like with Mr. Wilkins, until the dog got there. No, he really thought it was all right if you saw someone with brown skin to start asking them about immigration status, and he was the trooper that when I said would you demand to see my green card, he said, you being you or you being Hispanic—and the Highway Patrol actually had a written policy still in effect that said if a person appears to be in illegal status institute questioning about immigration. And I said what do you mean "appears," and some of the troopers said they look like Mexicans, others said——

Mr. SHAYS. So the bottom line point is that whether they evolved into this practice they really weren't as aware as you would think they would be that maybe they were over the line.

Mr. FINNEGAN. That's right, they thought they were doing the right thing.

Mr. SHAYS. So it tells me there's a value in just having this because I would think—which gets me to you, Colonel. I would think that supervisors would periodically look at these and maybe at random, and I would think you would be able to improve the practices of your officers in the process of also protecting them and the citizens.

Mr. DUNBAR. Well, first of all, we do have a policy that supervisors have to review tapes. Actually we review tapes on three different levels. We have a supervisor reviewing the tape, we have an inspection staff that comes in and reviews the tapes, and we have an office within the Attorney General's Office called the Office of State Police Affairs that comes in and reviews the tapes. Unfortunately, I think what Mr. Finnegan says is correct, that what ends

up happening is that for whatever reasons practices begin and they're unacceptable practices.

I've seen tapes somewhat similar to this where the individual believes that they're doing the job. In fact, we teach what's called noble cause corruption, and what noble cause corruption means is that the ends—the means justifies the ends, and that's something that we are trying to get away from. People will ask and I've seen—well, in New Jersey we've had a series of Supreme Court decisions that limit checks as far as, you know, lost driver's license and so on, but this, Mr. Finnegan's tape, is an issue that we are looking at in New Jersey. That I have seen, and it is a—I think you made an interesting observation when you asked a question of, you know, you would think, well, you know, the reality of it is if a person doesn't believe or know what he or she is doing wrong is wrong, that's what—you end up with problems, I think, as was shown on that tape.

Mr. SHAYS. Let me ask one last question and then I don't know if Mr. Barr, if you have some questions you'd like to ask. Mr. Wilkins, in the work that you have done, and maybe others could answer as well, is it conceivable that even an African American might get caught up in racial profiling against another African American? Is that something that can happen as well? I mean, would that ever be in your experience, Senator West or Mr. Wilkins, or is it almost always 99 percent of the time a Caucasian would do that.

Mr. DUNBAR. There's actually a Justice Department study that was done by the Bureau of Statistics that actually points that out. There's really no difference between African Americans and non-African Americans in relationships with the public. So from my point of view, I think it's very possible.

Mr. WILKINS. Yeah, I think that it's definitely conceivable and it definitely happens that African American and other police officers of color can engage in these practices because I think that the practices themselves just mirror invalid and erroneous and illegal stereotypes and part of just American culture, and so you can't expect police officers or troopers to really be immune from it no matter what the color of their skin is. I do think in some occasions that some of the whistleblowers and the police officers and the troopers that have come forth to try to help address problems have been African American and other minority ethnic and racial groups, and so I think that there is sometimes more of a sensitivity by some of those troopers, but they can definitely get caught up in the same problem.

Mr. SHAYS. I can't imagine almost anything scarier than to think that you can be in a society where you have laws and you realize how protected you feel from them, but not feel they wouldn't be administered fairly and equitably and it has to be, you used the word "powerless" and that's—but you have to feel even worse than powerless, you have to feel extraordinarily vulnerable and it must be very scary and it must, I can even think, it's a hard word to describe. I think it would be scary as hell, frankly.

But we, for some reason I guess, divided each panel into half an hour slots and I have ended up taking 10 minutes. I don't know if we each should go for 10 minutes and if you would like to jump

in or how you'd like me to proceed. Why don't you go for 10 minutes?

Mrs. MALONEY OF NEW YORK. Thank you very much and, first of all, I want to comment that my colleague Elijah Cummings worked very, very hard to have this hearing, and I appreciate the chairman for holding it and we're trying to locate him. He has a conflict with another meeting that he has to be part of, but he wants to get back to questions, and thank you and particularly, Senators West and Duncan, thank you for your testimony and your hard work to enact this law. I hope I have time to hear from you about your reactions to the Conyers law that is similar to yours, and I particularly want to hear how the exemption provisions work in your legislation.

But first I'd like to really talk to Mr. Wilkins and thank him for coming forward with his personal experience and for your hard work really to reach a settlement that helps people, and part of your settlement was that the police are required to collect data on traffic stops, correct, and why do you think that data collection is such an important tool for combating racial profiling?

Mr. WILKINS. Well, I think that it's proven to be very important in the State of Maryland because we had a situation where our lawsuit got a lot of publicity. I mean it's not often that you have a Harvard law graduate attorney who cites the Supreme Court precedent to the trooper and still gets stopped and then you get a smoking gun with a written racial profile and all of that turns into a lawsuit. So there was a lot of pressure on them and there was a lot of people watching how they were going to react to this issue and these allegations, and we reached a settlement and they adopted a new policy and they trained every trooper as to that new policy and they started gathering data, and they knew it was going to a Federal judge and to the ACLU and to me and they knew that none of us was going away, and yet with all of that, all of that attention and pressure and everything else, we got this data that to this day can't be explained on any other basis except that there must be some discrimination going on in the Maryland State Police because these disparities just can't be explained any other way. And so if you have policies in place and people being watched and it's still taking place, you know that this is a pretty pervasive and a cultural and a problem that's going to take a lot of management and attention, and you can't expect that just putting some video cameras in cars or just adopting new policies is going to eradicate it.

It's a problem that unfortunately is as endemic to policing as racial discrimination is endemic to the culture of this country, something that's going to take generations and lots of hard work and special sensitivity to deal with.

And so that's why I think that the data collection is important, because you would think that with all of that there wouldn't be any problems in Maryland still today and yet there are, just like you would think that with the video cameras in the cars you wouldn't see troopers doing some of the things that we see them doing. And so I think that you really need all of these tools in your arsenal to try to fight this problem.

Mrs. MALONEY OF NEW YORK. What you're basically saying is that you have to change attitudes?

Mr. WILKINS. Exactly.

Mrs. MALONEY OF NEW YORK. And it's a longer, harder road. I am particularly sensitive not only to racial profiling against minorities but also against women. Violence against women was not treated seriously by many law enforcement officers and most notably the attacks in Central Park, where many women reported that they approached police officers and they wouldn't help them when they had been mauled and attacked.

And so maybe we need more attention not only in audio-visual technology and collecting data, but really in educating attitudes in our society and, Colonel Dunbar, you testified that in some cases audio-visual technology can be used to exonerate police officers that have been wrongly accused of racial profiling. Protecting innocent police officers from false accusation is very important, but do you agree that racial profiling does exist?

Mr. DUNBAR. Yes.

Mrs. MALONEY OF NEW YORK. And wouldn't you agree that in order to deal with the problem of profiling we need to understand the scope and severity of the problem and that requiring data collection is a way to do that?

Mr. DUNBAR. I think actually everything that Mr. Wilkins said is right on the money, that it is a very complex issue and what people are looking for is a quick fix. Mr. Wilkins talked about generations. I mean, unfortunately, I think, and I think you used the term "attitudes," it is about changing attitudes. It is about changing policing and the thing that we've adopted in the State police is that we will do our job constitutionally and with compassion, and I go out and I sell that every single day. It is data collection, it is the video cameras, it is training and it is supervision on a daily basis.

Mrs. MALONEY OF NEW YORK. Do you believe you need both data collection and the videos or could you have one or the other?

Mr. DUNBAR. No, I think it's beyond that. I think you need data collection, I think you need the video, and I think you need constant training and supervision. People are looking for a quick fix. There is no quick fix to this.

Mrs. MALONEY OF NEW YORK. I agree, I agree. I know I, along with many women, we went to the police department after these assaults in Central Park, and I believe that New York's police officers are the bravest in the world. They're not afraid of anything. That's why they're police officers. They're there to protect people, but for some reason some of them didn't think that hitting or beating or stripping a woman was a crime, and one officer made a comment to me that we can't change attitudes and, you know, admitting that attitudes are a problem.

What is happening in the police field on attitudes, Mr. Wilkins, Mr. Dunbar, Mr. Finnegan, anyone who would like to comment? I agree with you, Mr. Wilkins and Colonel Dunbar, that it's a deep problem that goes farther than videos and data collection. It goes to attitudes of how you treat another person.

Mr. DUNBAR. One of the things I think I need to say, I think there are a lot of police officers, probably the vast majority, that

do their job and they do the job professionally. There are those individuals that don't. We are a reflection of society. We have taken on the position that we have gone back, and just as Mr. Wilkins talked about in Maryland, we've gone back, and we have like almost a eight or nine-phase program where we've gone back and trained all 3,000 troopers and made a commitment to train all the new troopers coming in. We are truly interested in changing our organization but the thing——

Mrs. MALONEY OF NEW YORK. Are you trying to change attitudes?

Mr. DUNBAR. Oh, absolutely.

Mrs. MALONEY OF NEW YORK. Because training is training. You do this, that, and the other, but are you also looking at attitudes. How is policing affecting attitudes?

Mr. DUNBAR. That is—it's one of those situations where you find someone who does something wrong, one of the things I have stressed since I've been on the job in Internal Affairs, and the basis there is if you're doing something wrong you're going to get punished, and my contention is that if people know they're going to be punished for doing something wrong——

Mrs. MALONEY OF NEW YORK. Some people may not think they're doing wrong.

Mr. DUNBAR. Well, whether you think or you don't think it doesn't make any difference because if you are doing it wrong, as I think was the case in Mr. Finnegan's situation, you're going to be found wrong by somebody, and that is part of changing the attitude, getting them to understand that what they were doing is not acceptable.

Mrs. MALONEY OF NEW YORK. I will say that I have been stopped twice in my life, just I don't know why, and I guess just routinely to check if you have a license or a registration or your inspection card, and I gave it to them and I said thank you very much and I went on. So it's routine to stop people just to check if they have a license, I guess.

Mr. DUNBAR. Well, that's one of the things you can do, but the issue as you said, the issues of changing attitudes is no small, no small feat. In fact, I said in my opening statement that my philosophy is that if I can't change behavior I want to at least modify it. And you talked about violence toward women. If you take a look especially in New Jersey at what's happened with domestic violence laws, there's been a radical change from the seventies to where we are now, where it used to be no one ever got arrested. Now if there's a domestic incident in New Jersey, you're going to be arrested and there's a change of policy and a change of attitude.

Mrs. MALONEY OF NEW YORK. I agree, it used to be you beat up a stranger on the street you get arrested and you beat up your wife and they say it's a domestic problem, and I applaud New Jersey and New York that have made tremendous strides in domestic violence and other areas, not enough, but tremendous strides.

How has the early warning program worked in addressing the attitudes of the troops? You've started this early warning program. Could you talk about that a little?

Mr. DUNBAR. We have and we haven't. The early warning program is actually in the trial stage. It actually goes on-line the end

of November. I think that is a key element that when you talk about changing the attitudes, you can see things where you get complaints about individuals. Even if you don't substantiate, if you get the similar complaint you need to look harder, and I think that's what the data collection issue goes to, that if you see a pattern where a person is just stopping certain people, stopping one sex as opposed to the other sex, you need to be able to look at that, and my only fear with data collection is that—as again as I said in my opening statement, is that there is a tendency to make data appear to serve whatever purpose and it really needs to be much more thought out that this is the number, this is the end. It truly is more complex and I mean, quite frankly, as I said before, I think Mr. Wilkins had it right when he said that it is at least a three-pronged data collection: Videos, attitudinal change, training and so on.

Mrs. MALONEY OF NEW YORK. Well, my time is up. I want to thank all of you, and really request that you look at Ranking Member Cummings' legislation on racial profiling and give us any comments you may have. And I just want to close not only by thanking all of you for being really leaders in this field and trying to address it and make it better for all Americans, and I thank especially my colleague, Elijah Cummings, who has been working on this since we came back into session, working to get this hearing and working to move forward legislation. I want to comment on his extraordinary leadership.

And thank you, Chris, for having the hearing, very, very much.

Mr. SHAYS. Thank you. Mr. Burton, I know, has worked with Mr. Cummings, and we do want to thank Mr. Cummings for having this hearing. And, Mr. Barr, you have the floor.

Mr. BARR. Thank you very much, Mr. Chairman.

Colonel Dunbar, what is the cost that you-all have occurred to install a camera in each cruiser?

Mr. DUNBAR. The immediate cost is approximately—this was just for the State police. The immediate cost was between $6 and $7 million.

Mr. BARR. No. For each camera.

Mr. DUNBAR. For each——

Mr. BARR. What does it cost for each——

Mr. DUNBAR. $3,000 per camera.

Mr. BARR. $3,000. Is there any significant upkeep cost to it?

Mr. DUNBAR. Yes. We have to—not only the additional tapes that we buy, but then the storage of the tapes, we're committed to keeping them—I think it's for 60 months, if I'm not mistaken. We have a repair contract that costs us several hundred thousand dollars. We also have now had to create a unit to collect the tapes, store the tapes, make the tapes available for discovery. It is no cheap deal.

The State of New Jersey, initially I had spoken to the former Governor, and a bill was passed for $10 million for local municipalities. But this is an area—and I will tell you, Mr. Barr, in talking to the other superintendents, this is an area that all of us would be very, very desirous of having some help from the Federal Government in the purchase of this equipment.

Mr. BARR. Would you—and I know there are a lot of different needs that you all have, and we're all trying to do our best to help meet those needs within the balance of both our budgetary and jurisdictional concerns. Would you place this fairly high up on the priority list in terms of assistance that might be provided by the Congress?

Mr. DUNBAR. Yes. Yes, I would. And I'll tell you why. I don't think you had a chance to see the video but——

Mr. BARR. I did.

Mr. DUNBAR. OK. What's transpired is that we're receiving numerous false complaints, and they do a couple of things. They tie up my Internal Affairs investigators so we can't concentrate on the complaints that are there and that are valid. That's a downside. I think that this issue of racial profiling—in fact I call it biased-based policing as opposed to racial profiling, because it really goes beyond racial profiling. It's a national issue and it's something that's eroding confidence in the police, and we have to have that confidence back. And I just think that the video camera right now—while I don't believe in quick fixes, I think video cameras is in fact somewhat of a quick fix because it allows people like myself to really see what was going on. And I for one am not hesitant in disciplining my personnel if they're doing something wrong. I also want to stand by them if they're doing the right thing.

And, you know, in my agency, there was resistance when we first fielded them. Now there are troopers who will not go out on patrol without them. And one of the things that we have done in our organization is that I have made it a paramount issue that manipulating that camera or playing with that camera will get you in serious trouble. But I think this is a major issue for—it's such—such a major issue that I went to our Governor, our former Governor, and asked her to give 24 of our vehicles to two of our cities that did not have them and couldn't afford them, just so they could see how good a tool they are.

Mr. BARR. What has been the reaction from outside groups, some of the groups that the Senators in Texas have worked with? ACLU, the NAACP, other citizens groups, have they been supportive?

Mr. DUNBAR. We have not heard on the legal aspect of this, and there are some States that prevent you from doing recordings and so on. But by and large, I think that the ACLU and the NAACP are more concerned about the issues of profiling, and anything that can be done is looked upon favorably, and probably Mr. Wilkins would be in a better position to answer than I.

Mr. WILKINS. Well, in Maryland we—"we" meaning working with the ACLU and the NAACP—have asked as a remedy for a court order for videotapes to be placed in cars. And that's something where we agree with the Maryland State Police, not on the court order, but they want the videotapes as well. It's just a matter of cost for them. So it's something that we all agree would be beneficial. We are all on the same page there.

Mr. BARR. In terms of protecting the privacy of the individuals, do you have a mechanism in place? Obviously every person that's stopped isn't cited, every person isn't arrested; yet there is a record of them having been stopped. What mechanism do you have in place to protect the privacy of the individuals?

Mr. DUNBAR. Well, you want to have a record, I think, of the stop, and you want to have the most complete record of the stop. We don't release the tapes. There is some issue that, you know, for example, I think Pennsylvania is one of those States where you're not allowed to record an individual without their consent. We don't have that problem in New Jersey. As long as the trooper's there, there is no expectation of privacy.

We have also explored the possibility of actually putting up signs on the interstates that—similar to radar being used—cars use videotapes. And the reason we want to do that is we want people to know that they are in fact being videotaped. I just think that we live in a very aggressive—one of the things that review—and I review a lot of tapes, and one of the things that I've seen is that we live in a very aggressive society. We have road rage. We have a bunch of individuals that are very, very impatient. And I think that the public, knowing that their actions are going to be recorded, will possibly dissipate bad behavior on both parts. But as far as privacy issues, we've not really run into any of them.

Mr. BARR. If I could, Mr. Chairman, ask the two Senators from Texas that same question in terms of protecting the privacy of individuals who might, or whose car might appear on those tapes. Obviously if they're used in a court proceeding, the information has to be disclosed; but for other purposes, is there a mechanism in place in Texas to protect the privacy of these tapes and the information on them?

Mr. WEST. The issue of privacy never came up during our deliberation, Mr. Barr. I believe that from a constitutional standpoint, at least from my study of the criminal law, that when you're driving a vehicle, it's a privilege, No. 1; and, No. 2, when you're driving on the highways and byways of a State of this country, that you give up a certain amount of privacy as it relates to your operation of that motor vehicle——

Mr. BARR. I'm really talking about dissemination of the tapes. For example, I don't know what the statistics would be, but as I mentioned before, every car that's stopped does not result in an arrest or citation. I presume most of them do because the reason they're being stopped is because there's probable cause that the officer presumably can establish. But if you have an individual, and for purposes of court proceedings that tape is never introduced in evidence, it's not used in a court proceeding, can the public have access to those, or somebody that just might have some interest in saying, hey, I'd like to see who was stopped out there and try to make an issue out of it?

Mr. WEST. In our bill we did a couple of things. No. 1, as it relates to the tape itself, it's on file for 90 days. I believe that it is in fact subject to public disclosure, whether it's the person that's driving the car, or—not as a result of the police officer stopping the car—as a result of constitutional law where you have to give up a certain amount of freedom in order to exercise that particular privilege, that it would in fact be subject to an open records request.

Mr. DUNBAR. Mr. Barr——

Mr. BARR. That's interesting. Yes, sir.

Mr. DUNBAR. In New Jersey, for example, the tape we showed here today, even though this case has gone to court and there was

a guilty plea, we still had to get a legal opinion. We took out the license plate and we took out all references to the individual. We will not give out these tapes to anyone unless there's a court proceeding and we're directed to give them up. It is just our policy that they're like our records. We won't make them available to anyone unless there's a specific legal request. We consider that—we consider that the same as one of our reports. They're just not given out.

Mr. BARR. Thank you.

Mr. DUNCAN. I would like to comment. I think that it makes sense to have some sort of a privacy policy in there, because obviously if you create a governmental record that would be subject to open records. At least in Texas I think it might be. And, you know, I think that you can—we probably should have looked at that, or should look at that at some point in time, because I think it is an important issue when you're preserving these records. Although they may be important records later down the road to where you have to have some access to them or the public needs some access. I don't know how to balance that, but I do think that you raise an important issue.

Mr. DUNBAR. Mr. Barr, one other issue that I don't know whether Texas has thought about this yet, and that's the fact that I think our time period that we keep them is 60 months, and I know it may be 30, but it's based on what our civil—if you file a civil suit, plus 6 months, because what's going to happen is if you have those records, and a year later Mr. Wilkins decides to sue, and you've destroyed the records, that's going to be very problematic.

So from the very beginning we tied it to 6 months—6 months—30 months I think from the time of the incident, and it goes 6 months beyond. So if you filed at the 24th month, we would still have 6 months that we would retain that. We want to have the ability to produce that because, if we don't produce it, there's going to be a question of what happened to it. So your 90-day—unless your civil claim is 90 days, it's going to be problematic for you.

Mr. BARR. Thank you. Thank you, Mr. Chairman.

Mr. SHAYS [presiding]. I thank the gentleman. And now Mr. Cummings, the gentleman who's responsible for all of you being here.

Mr. CUMMINGS. Thank you very much. And to the gentlemen, I want to thank you for your testimony. I want to apologize. We have a catastrophe in Baltimore, in my district, literally about 8 blocks from my house. So I've been kind of running in and out trying to deal with that, with the train derailment. So I apologize. The timing is just not good. I just wanted—to you, Mr. Royce, and to you, Mr. Robert.

You know, one of the things that I'm noticing, and a little bit earlier Mr. Waxman talked about—I think it was Mr. Waxman—talked about this study that was done and how Whites perceive the problem and how Blacks perceive the problem. I mean when I go into my district and I talk to women—and particularly, believe it or not, women seem to be as much or more sensitive to this problem than a lot of men. And the reason why they're so concerned about it is because it's their sons, a lot of women concerned about their sons and their husbands being profiled. So how did you raise

it to a level where people didn't play games with the legislation, but actually said, wait a minute, we do have a problem? And just because people realize they have a problem doesn't mean they're going to deal with it, as you know, from any kind of—being in the State legislature. So how did you get it to that point where people felt, you know, yeah, we do have a problem and need to do something about this?

Mr. WEST. Mr. Cummings, as I stated earlier, this legislative session—and I think Senator Duncan would agree with me—was pretty strange in Texas. We dealt with a lot of civil and individual rights issues. There was actually bipartisan support for it and passed. In terms of the issue of racial profiling, it was brought up last legislative session, but no significant action was taken.

What we did this time around was to bring in the NAACP, who initially raised the issue with me, and the American Civil Liberties Union and La Raza and MALDAF, those types of organizations, with law enforcement. And the first question I asked them, I said, is there anyone in this room that does not believe that racial profiling is an issue in the State of Texas? I said, if so, raise your hand. No one raised their hand. I said, well, we don't have to dwell on whether it's a problem. Let's now dwell on a solution to the problem.

And so that's the way we started the process of coming up with something that we believe can help address the issue.

Mr. DUNCAN. I will comment that Senator West can be very persuasive, too, and he did challenge me to go with him——

Mr. CUMMINGS. I'm sorry. I meant to say—I've got to put glasses on for one thing. I'm sorry, Senator West. I said Senator Royce. I apologize.

Mr. DUNCAN. I was going to say that Senator West had challenged me on several occasions. He and I worked on several issues together over the years, and he said, I want you to grow a beard—I can't grow a beard, for one—but grow a beard and we'll go dress in jeans and go walk out on the streets of Dallas and see how we're treated, and I want you to see firsthand.

We didn't do that, because I got to thinking about that might not be a good idea, but I think he did personalize the issue with me, and I think we have to do it as policymakers, try to walk a mile in those shoes. And I think that's the role that Senator West played in this issue.

Mr. CUMMINGS. The reason I asked you all this question is because you are from Texas, a southern State, and be able to—and I served in the Maryland Legislature for 15 years and it just seems like, you know, there are a lot of issues that we grapple with, but we never could get them to a point where we had effective legislation. We have it now, but—and I don't know if it's as detailed as this legislation that you all have. So you're to be congratulated.

Mr. Wilkins, I'm pretty familiar with your case, being from Maryland. The—you think the cameras would have made a big difference in your situation?

Mr. WILKINS. I think that they would have made a difference in—because the trooper—the report that he wrote up after he found out that we were going to file a lawsuit, he was very careful to make it appear that, one, we were more suspicious than we were

by saying that instead of coming from a funeral in Chicago and returning to the D.C. area, that we were traveling from Pittsburgh to Baltimore, but yet we had a Virginia rental car—which was not true—and he didn't say anything about the funeral.

He also, all of a sudden, I guess, was very concerned about our rights, because he wrote in his report that he told us that we had a right not to sign the consent form. Yet he was the same trooper who said if we didn't sign the form, then we must have something to hide. And he said that we agreed to wait for the dog, which was going to raise an issue in court as to whether we were really detained because, if we had agreed and in effect consented to wait for the dog, then he could argue and the State could argue that there wasn't a detention.

And so there were all of those issues that we were very concerned that we were going to have to fight about. But I can promise you, if there had been a videotape, there wouldn't have been a fight at all. Fortunately, we were able to settle the case on favorable terms but, you know, a videotape would have helped.

Mr. CUMMINGS. To all of you—and you all may have answered this question already—but, you know, we're always trying to figure out what it is that we can do to be helpful to States and what makes sense. Sometimes I think the Federal Government does a little bit too much intruding, but I'm just wondering what, if you all could—I mean if there's things we could do to help you do your job, what would it be to get this done; I mean to further what you're trying to accomplish?

Mr. WEST. Thank you for asking the question. I think it's very critical, and Mr. Barr asked the question about the cost of video cameras, and Colonel Dunbar indicated what the cost is for the great State that he represents. Needless to say, Texas has over 20 million people. I firmly believe that Congress should take the lead, working closely with the State and also with local units of government, be they parishes, counties, or cities, in funding a process where we put in place video cameras; video and audio in all police vehicles—that are used for traffic purposes in this country.

I think that it has several positives, many of which have been noted here today. No. 1, it protects the citizen, it protects the police officer, it provides evidence of any criminal wrongdoing that subsequently can be utilized in a court of law if necessary. But in most instances, if you have a smoking gun videotape, then what you're going to have is less need for police officers to take time off of the street and spend time down at the courthouse, as well as prosecutorial costs related to it; which we can't measure now because we hadn't tried this before.

I think that it is very important that Congress uses its vast resources and influence through purse strings to put in place the requirement that we have educational programs geared toward what racial profiling is, that we look at adopting the Department, the Justice Department definition—which Texas has done—in reference to racial profiling throughout this State; and that we have funds—obviously you send funds to the State—that you require States to have training programs that include racial profiling; and, in addition, through your funding mechanism, require States to re-

quire units of government to adopt policies concerning racial profiling.

Mr. CUMMINGS. Anybody else?

Mr. DUNBAR. I just want to echo what he just said. I think that, as was testified this morning, last year they gave $12 million to video cameras from the COPS program. This year I think the budget was $3 million. This is a time for increases, not decreases.

The other thing that I just want to briefly mention is there's a variety of both State and I think Federal proposed bills on racial profiling. And one of the things that—as the head of a State police organization, one of the things that I found very problematic is proving intent. And the issue of intent is going to be one—if these bills are passed, I think it's going to be very difficult to prove.

But yet, again, what Mr. Wilkins said with video cameras. For example, if you have documentation that does not coincide with what you have in your video camera—and in New Jersey what we have been doing is we have been going after the administrative violations or false reports and so on, and that is a way I think that you can document misdeeds.

And if racial profiling bills get passed, I think the next struggle you're going to see is, you know, how do you prove intent? And that's a question that I'm asked every single day by the media, you know; what about this case, what about that case? And that is going to be a challenge, and I think that it really needs to be looked at.

What is it that we're going to look for? What is going—what is it—you know, how do you get in the mind of an individual? We discussed earlier about attitudes. How do you get to what that person is thinking?

And this morning you started off in your statement talking about the issues that we're discussing, going back hundreds of years, and I think what you said this morning is right on the mark. And to me the issue of racial profiling becomes an issue of race in America and our struggle to appropriately deal with it, and I think law enforcement is making an honest effort.

We need help financially, and you know, dare I say, we need some time to try to change things, because I think things are changing.

Mr. CUMMINGS. You know, I see my time is up. It's so interesting when we talk about the perceptions of how some White people look at racial profiling and maybe African Americans or Hispanics may look at it. But, you know, as an African American man, I can tell you that you begin to live your life with an extra bit of caution. I mean if you talk to most Black men, they will tell you that they make sure that their lights are fixed on their cars, they make sure that no tags are hanging down, they make sure that everything is in place, because we don't want to be stopped and because we're afraid of what's going to happen. And as I practiced law for 15 years, I saw so many instances of where a little incident like a stop resulted in three or four or five charges: assault against the police officer, disorderly conduct, resisting arrest. That's the trilogy normally.

Mr. WEST. That's right.

Mr. CUMMINGS. And so somebody has a record and they have a record until they die, usually. So I just want to thank you all. You've been here a long time. Ms. Norton, I didn't know whether—but I just want to thank you all. Because being Black in America and being male is not easy, and I don't mind saying it to anybody. Even as a Congressman, it's not easy. And we're seeing our jails being filled with African American men and women now at a phenomenal rate, disproportionate rate. And I just think that the things that you all—Senator West and Senator Duncan and, you, Colonel Dunbar and, you, Mr. Wilkins, and, you, Mr. Finnegan, all of you, you're doing something to touch the future. And the things you're trying to do is prevent some things from happening in the future.

And I think that if all of us just looked at—every time I go to an elementary school—and I'll be finished with this, Mr. Barr. Every time I go to an elementary school, I look at those little kids in my district, and then I ride about five or six blocks away and I see new jails being built, and I know that those jails are being built for them, and it breaks your heart, and so—but hopefully, the kinds of things we're talking about today will allow those people to do the things that was intended for them by God, so that they can grow up and sit at a table, like you, and be productive.

And I just wanted to put your testimony in some kind of a context, and what you're doing in context, and to thank you for them. I really do thank you.

Mr. BARR. I thank the gentleman from Maryland. Mr. Finnegan, if you would, please describe for us or summarize for us the laws that were available that you were able to use successfully in your case to obtain relief for your clients in Ohio.

Mr. FINNEGAN. The law—there were no specific laws. The basic was a straight 1983 action for a constitutional violation under the fourth amendment for improper search and seizure; and under the equal protection clause, questioning people based solely on their appearance and race. We also used Title 6 because, of course, the Highway Patrol gets—it was about $3 million a year from the Federal Government to do this racial profiling. And Title 6 survived summary judgment. It's not up in front of the Sixth Circuit right now on appeal, like the constitutional issues are, but the judge did find that Federal money was being used to do this.

Recently Title 6 took a hit with the U.S. Supreme Court ruling that there's no private cause of action under Title 6, which very well may throw out a large part of our case. And one thing I'd like to urge, I guess—I don't know if this committee has jurisdiction—that Congress take a close look at Title 6 because I think Congress intended that when Mr. Wilkins had his rights violated by the State police, that he would have a private cause of action to go in against the State police; and that when my clients and the Farm Workers Union were violated by Ohio, that they would have a right. That just went away, I think, under the Supreme Court decision of *Sandoval* v. *Alabama,* and we would sure like to see Congress go back in there and say, we mean for individuals whose rights are violated to have the right to go to court. Not just the U.S. Department of Justice, because I think, as we've all seen today in the first round of testimony, the Department of Justice

has a lot on their plate. And for them to prosecute on behalf of Mr. Wilkins and to prosecute in Ohio on behalf of the Farm Worker Union takes us out of the equation. And there's a lot we can get done as long as Congress give us a private cause of action.

But those were the two laws that we used primarily, and they're all alive in front of the Sixth Circuit right now.

Mr. BARR. Thank you. Colonel Dunbar and Senators West and Duncan, what's been you-all's experience with regard to the reaction of your State prosecutors? Have they been supportive in the use of cameras in cases?

Mr. WEST. Do you want to go first?

Mr. DUNBAR. I live in Bergen County and I prosecuted Erol Lexis so much that he's taking his forfeiture funds and trying to buy cameras for all the local police departments.

I think everybody likes to have best evidence, and if you can come into court and you can show what you're doing, I think it makes the landscape much clearer. We've gone through so much turmoil in the last 3 years because of the issue of racial profiling. I think that any workable solution is something that people are willing to try.

We have 21 counties. I don't know of any county prosecutor that has raised any objection to the use of video cameras. I think that there are going to be legal challenges because some of the things we're running into is when we have malfunctions in the equipment, valid malfunctions, when the microphone inadvertently gets shut off, and that is also going to be a challenge for us, is trying to determine whether it's a real malfunction or not a malfunction. But the concept has been, I think, universally accepted not only by the county prosecutors. In fact I don't think I've heard anything negative after the first year when the police officers resisted, and since then—this still sells. I mean nothing's ever 100 percent, but there are still some people that are going to resist it, but I think everybody pretty much has learned to live with it.

Mr. BARR. And has that been a similar experience for you-all in Texas?

Mr. WEST. Yes. And I think, Mr. Barr, you have to look at most of the COPS money that's been coming to the States has been used to purchase cameras for the DWI squads, and needless to say, it's been very effective in recording drunk drivers on the road. So prosecutors are just kind of chomping at the bit, so to speak, to be able to get this type of tool for prosecutorial purposes.

Mr. BARR. Colonel Dunbar, are you aware of any incidents in which State troopers in New Jersey were accused of racial profiling or other inappropriate behavior and those charges were substantiated by the audio-visual evidence?

Mr. DUNBAR. No. However, through our own review of tapes, internal review, we have developed, I'm trying to think—a number of—a handful of tapes that reflect problematic behavior. But as far as just responding to complaints, no. In fact, most of it's going the opposite way.

Mr. Barr, one of the things we have found—and this isn't necessarily racial profiling—one of the things we have found is just rudeness on the part of the police officer, and I think that also

feeds into the issue of—it's how you're treated, and that also—we found that, and we have taken disciplinary action cases like that.

Mr. BARR. Thank you. Have there been any problems with the—are you-all's officers unionized or from any of the police——

Mr. DUNBAR. Can you do something about unions?

Mr. BARR. Police unions, the——

Mr. DUNBAR. Yeah.

Mr. BARR. Have they had any problems with the use of the cameras?

Mr. DUNBAR. In speaking to counsel for the committee, the president of our State Troopers Fraternal Association was willing to come and testify today on behalf of the cameras. And again they see the same thing that—the issue has been raised. We now need to have a third person present to speak for the trooper or the complainant. And again, in the last 2 years it's been a turnaround on the unions where they are now very support—they've seen over the last 2 years that this tool—they labeled it Big Brother when it first came out, and what you have to understand in New Jersey it was—we got it. It wasn't because we were like real forward looking. It was kind of forced on us. We had some problems. And troopers thought it was being forced on them. Now I don't think that's the case, and we have three unions in the State police and all three of them support them.

Mr. BARR. Thank you. The gentlelady from the District of Columbia is recognized for 10 minutes.

Ms. NORTON. Thank you, Mr. Chairman. Let me, Mr. Finnegan, let me say to all four of you that I apologize I wasn't here to hear all of your testimony, and I'm briefed on it by my staff. It does seem to me it was all very valuable testimony.

Mr. Finnegan, I appreciate what you had to say about the Sandoval case. That was an English-only case, English-only for driver's license case. And the Supreme Court said that the essential distinguishing point, I think, to your case is that they said that the English-only driver license did not involve deliberate discrimination. It does seem—and, of course, Title 6 does cover deliberate discrimination. It does seem that racial profiling is inherently deliberate discrimination. You have to have a thought in your head that I want that man because that man is Hispanic, or that woman is Black. So I hope you're home free. I'm not certain. We'll see.

Mr. Wilkins, I must express my gratitude to you again that you have made yourself available for what is perhaps the most instructive case ever to have been filed about racial profiling. I'm not sure what we would have done without not only your case but your ability in official and unofficial hearings—because you have come to the Congress on numerous occasions to educate us—but your ability to lay out the facts and what law applied. And it has been very valuable to have had a talented young lawyer to testify.

It cannot have been very valuable to have been that talented young lawyer, however. And I do want to say that in thinking through my own bill, which of course is based essentially on the spending authority, to say if you spend our money you can't use it in a discriminatory way—and other approaches, because there's another very important bill that's been filed, the Conyers bill. I believe both approaches are very important.

I believe that it is very important that someone like Mr. Wilkins always be able to pursue his rights and that there be a statutory basis to do that. But the fact is that Mr. Wilkins is a Harvard-educated lawyer. And when you consider how pervasive racial profiling is, it does seem to me that we're barking up a very slow-moving vehicle if we believe that case-by-case is going to do it.

Indeed, Maryland can't boast now, even given the Wilkins case, that it's a model jurisdiction, even though his case alone—because he was so principled—succeeded in getting structural change in that State. So I am interested in a proactive approach.

See, there are two approaches here. One is preventative. There's always two approaches in law enforcement. One is preventative and one is remedial. Now, Mr. Wilkins was forced into a remedial context, the lawsuit approach. And we'll try to get a bill here that would give the next Mr. Wilkins all the tools he needs to pursue his rights. Lawsuit approach, adversarial case-by-case, essentially the officer is put on trial, and the city, the State, or the county is put on trial. And, you know, if you've got the upfront money and the lawyer is willing to do it on a contingent fee basis and the whole works, you may prevail. It is very important.

I am the former chair of the Equal Employment Opportunity Commission, so I very much favor precisely that approach. Indeed I wish Title 6 would have been used the way Title 7 had been used. We would be nowhere in this country if private attorneys hadn't brought case after case under Title 7 of the 1964 Civil Rights Act to help rid the country of racial discrimination. So obviously, I think that these are two valued approaches but that, particularly given the fact that racial profiling may well be more likely to occur in poor African American neighborhoods, that it would be a shame if we were only left with a case-by-case adversarial approach.

I'd like to ask you all a set of a questions, beginning with Mr. Dunbar. Mr. Dunbar, I was very concerned because perhaps the highest profile State of them all has been New Jersey, that yesterday in the New Jersey Star Ledger was a report that 90 percent of the people—I'm not sure if this has been brought out, I haven't been here, but that 90 percent of the people who consented to searches and stops in New Jersey are members of handpicked——

Mr. DUNBAR. Members of——

Ms. NORTON [continuing]. And racial minority groups.

Mr. DUNBAR. I didn't know if it was 90 percent. I think it was around 80 percent.

Ms. NORTON. Well, I'm quoting from the New Jersey Star Ledger, and it's yesterday—it's a site that we got out of—from yesterday. I'd just like to ask you if that surprises you and whether you think it makes a comment on the effectiveness of whatever it is you are doing now.

Mr. DUNBAR. Does it surprise me? No. I've said all along—while you were out, we were talking about changing attitudes. Changing attitudes is something that does not happen overnight. I think that—and this is one of the things that—one of the things that article does not talk about. It does not talk about the reduction in the number of consent searches that take place, for example, this year.

Ms. NORTON. Why has there been a reduction?

Mr. DUNBAR. Why has there been a reduction?

Ms. NORTON. Yeah.

Mr. DUNBAR. Because we've gone back and we've changed attitudes. You know, we ask questions. If, you know, you make a stop and the person produces license, registration, and insurance card, why are you asking questions beyond that? But the numbers have come down, and I think the numbers will continue to come down.

In New Jersey, I think 4 months after I took my job, the issue was, you know, was everything resolved? And I don't think it's going to happen in a matter of a months and it may not happen in a matter of years.

Ms. NORTON. Could I ask all four of you a question? I need to be informed about the possible effectiveness, or not, of the approach I'm pursuing, and I'd like from the—in the context where all of you operate, I'd like your response to the following question: Do you think it would help law enforcement in this field, help those who are trying to do the right thing, the way Mr. Dunbar is, help get compliance the way Mr. Wilkins has had to do through a lawsuit, if in fact the head of the State police or the police chief in a given area were to have in his arsenal a bill which would essentially deny his jurisdiction of coveted highway money if in fact the jurisdiction did not have enforceable legislation and did not pursue it such that the practice began to diminish?

Would it make a difference? Or perhaps is the threat of a lawsuit what will make the greatest difference because people just don't want to be sued?

Now, either way, you pay money perhaps. You pay money on the lawsuit and perhaps it has a deterrent effect. You might have to pay money and lose money if you don't have an enforceable policy to bring down racial profiling. Do you think it would have an effect on the practice and on how law enforcement went at eliminating the practice to have this preventative approach in the arsenal of strategies to use against the practice? In any order you'd like to speak.

Mr. FINNEGAN. Well, I'd like to start out that the traffic—the series of traffic stops that set off our lawsuit in Ohio occurred in early and middle 1995, and we've been litigating ever since and we've been winning ever since. But the State of Ohio hasn't change one bit in its practices about questioning people because of the color of their skin. So a lawsuit—and in fact I think some of the State—some State officials have actually scored points in the more conservative parts of the State by standing up for tough law enforcement. Even if a few thousand minorities get questioned and held up, you know, it's good to be tough on crime right now.

I think the taxpayers of Ohio would really be upset if we lost any highway money because that's a constant grumble, that the highways need to be improved. That would get people's attention a lot faster than this kind of obscure lawsuit that's been cooking away in Toledo for 5 years.

So I think every weapon—we've been at it for 5 years and there's no end in sight for our lawsuit. And I know from talking to Mr. Wilkins, he's back to round two in his case. The lawsuits are important, and Title 6 is important, but Title 6 is important specifically because Federal funding is threatened. And in our lawsuit the traffic and drug interdiction team was almost all Federal money.

The Drug Enforcement Agency that started the Highway Patrol on questioning on immigration was almost all Federal money, and almost all the immigration detentions had been Federal money. So until the Federal Government gets on the ball, I think things aren't going to change in Ohio.

Mr. WILKINS. I'd like to echo that and also note that the new lawsuit that we filed in Maryland, because there were continuing problems on I–95, there is a Title 6 claim which is now at risk with Sandoval because the disparate impact portion of that claim is likely to be dismissed because of that decision and therefore we'll be forced to try to prove discriminatory intent, which is more difficult. And I would say as well that, you know, we've been litigating this and it's been 9 years since my stop, and I was young and single and in shape now, and now I'm old and out of shape and have two kids and married, and so this has been going on for a long time. And we only got $50,000 in damages for the four of us, along with about another $46,000 in attorneys' fees for all of the work that we did up until the time that we settled the case. And so money was never going to be something that was going to be a deterrent and to the State of Maryland, at least the money that they were risking in our lawsuit. And I think that what you're doing is very important.

Mr. WEST. I concur. We need to make sure that we tie these Federal dollars in terms of the dollars that the States are getting to some sort of policy that, needless to say, you want to see implemented. I know that in Texas we've taken some steps toward dealing with issues of racial profiling. I believe that it's something we need to do across this country.

Mr. DUNCAN. I'll take a little different approach. I will note that—I'm always concerned when we create new remedies through the civil court system. I think, as Mr. Finnegan said, there are laws in place. I think they're filing suits and they're winning. I would hate to see us change those laws. I think those laws work and they're carefully balanced, and I don't know that's necessarily the way to approach it.

The other end of it is—and, you know, I guess—I serve on the finance committee, and Senator West has as well in the Texas Senate, and, you know, I'd rather have incentives that are proactive. Texas, which is considered to be the bastian of conservatism in the South, has enacted a very aggressive bill. We did it on our own. We didn't do it because of any threat from Congress to cutoff our highway funds. We did it on our own, and I think that we would like to do more with regard to video cameras.

We need help with training. I think some of the things that Colonel Dunbar has raised, and I think Mr. Finnegan as well as Mr. Wilkins, I think all of these issues that they have raised have really gone to the core of training and attitude changes that need to occur from the top down.

The bill that Senator West passed, Senate bill 1074, has significant training requirements, and it also does something very important. It requires each local law enforcement agency in Texas to have a policy on racial profiling to address it at that grassroots level. I had preferred to see the States work as laboratories with assistance from the Federal Government in the form of incentives

because there are a lot of issues like racial profiling and other issues that I think are important that we address, and I think Texas is a good example of how it can be done without the threat of pulling highway funds which are, you know, very important to all of our States. Thank you.

Mr. SHAYS [presiding]. Would the gentlelady yield just a second to point out to Mr. Duncan that you Texans are amazing. Did you say to me you're the bastian of conservatism of the South? There are about eight other States that would probably want to contest that.

Mr. DUNCAN. Well, we might want to team up with them and have a co-title here.

Mr. SHAYS. I just couldn't resist. You guys are awesome. Excuse me for interrupting.

Ms. NORTON. Well, I thank the gentleman for his intervention. Let me add that I want to congratulate the State of Texas for its forward leadership, and I suppose that I live in a country which does not make my civil rights dependent upon what State I happen to be in. At the time that the 1964 Civil Rights Act was passed, New York already had a very strong civil rights law, but if I traveled to Texas I would have encountered overt intentional racial discrimination.

So, to give you another example, I come out of the civil rights movement, where if I got on a train from New York to Washington, I sat anywhere I wanted to. I'm a fourth-generation Washingtonian. If I went to see my grandfather in North Carolina, I had to change my seat. I thought we were long past—we bow to States' rights in this place, but I thought we were long past the point where we would make anybody's human rights contingent upon the State that person happened to be in.

The whole notion that I could have my rights in Texas, and get to Louisiana and lose them, ought now be a thing of the past. And I think none of us would—you have to forgive me, but that's such a throwback. I accept it with respect to almost everything else. Let the States be the States. Let them blossom. Please don't let racism and discrimination blossom State by State.

Mr. Dunbar.

Mr. DUNBAR. You know, in New Jersey, much of what's been done was done as a result of the Attorney General's review of the State police, but it was also in concert with the discussion with the Department of Justice in which we entered into a consent decree back in 1999 which gave us specific things that we have to change.

What my concern is, is that—and this goes back to the discussion of data collection and so on—is that, you know, what happens? For example, if we have 100 searches and 4 are problematic, that's 4 percent; if we have 10 searches and 4 are problematic, that's 40 percent. Those are the type of issues that I have concerns with, that when you—you know, when you're talking about, you know, enacting a bill, what's going to be in that bill, you talked about—and I certainly agree with you, and in fact I wouldn't have taken this job if I didn't agree with you—that change has to take place, but at the same time you asked me before about what has changed.

I think there's a number of things that have changed. Percentages have not changed. The numbers have changed. You know, I

often say when I talk to my troopers, I say that if we had one racial profiling case, how can I go out and say we don't have a problem? I mean that's the bottom line. And that's the exact terminology that I use every single time. If it happens one time, it's too much.

But at the same time, you know, as a law enforcement officer—and I really can't overemphasize. I think that other law enforcement leaders, most of the ones that I discuss with, the two issues they come up with are racial profiling and unions and difficulties with both of them.

I would like to be able to sit here and have you say that, you know, everything we're doing is great. If you look at—you know, if you took that article and you made reference to that, in that same article there were comments made by the Department of Justice, independent monitored, which has reviewed every single thing that we do from top to bottom, and they've indicated we've made significant strides and changes. But what we focus on is not what's been done or being done, it's what's not done.

And I really can't dispute that the issues are there, but there is a genuine effort, I think, on the part of the local legislation in New Jersey and on the part of the Governors and certainly the Attorney General to bring about change.

Do I think that money would get attention? Yeah, probably it would. But I would just ask if we're going to do something, let's look at, you know, what is it that we're going to do and what is the impact? Are we going to just use an arbitrary number? You know, how do you say, for example, in racial profiling that if you've got a department that has two cases, that's OK?

Ms. NORTON. Well, my bill would not use any numbers. It simply would require enforcement and require you to have an enforceable law and say what the law is. So I agree that the circumstances differ.

Let me finally say that one of the things, it seems to me, to consider in adopting a proactive approach is that it is probably always better to prevent discrimination than to remediate it. There's a lot of hard feelings and a lot of bitterness. Bitterness on the person who believes he experienced it; great bitterness on the part of the person who stands accused. Because even those who engage in it today don't like to be fingered for doing it.

I also believe that many of the police involved are not to blame. I believe that there is a kind of imperative that police consciously and unconsciously feel, and that whether it is Mr. Dunbar or the chain of command below him—and I know how difficult it is to make police focus on something like this when there's so many law enforcement matters to focus on. But the fact is that one way to get management to take its responsibility seriously, not focusing on cop by cop, who often is not the problem, but on the folks who have the most to lose, the Governor who would lose State funding, who the Governor appointments who could be held accountable, one might get a rise out of States which have had trouble. I don't know if you would except by the precedent. The precedent is that we have had enormous success by tying transportation funds to stated policy objectives that we care about.

A second reason why I press this approach is what you've heard from our two litigators. In this Congress litigiousness is the enemy. There are Members who would prefer to jump out of one of the windows of the Rayburn Building than to be involved in a lawsuit; who believe that lawsuits are absolutely a waste of money, if not inherently evil; crowd the courts; people running after one another, blaming one another; why don't they work things out?

It seems to me if you start from the beginning with a strong proactive remedy, you eliminate the cop problem, you eliminate the money problem, you eliminate the hard feelings problem, and you eliminate one of the great problems of this society, and that is that African Americans still feel very put upon in this society.

There is a huge racial divide in this society, 35 years after I was a kid in the civil rights movement. If you ask the average African American, do you feel there is discrimination in this country, he'll say "you bet 'ya." and that's notwithstanding the enormous strides we've made.

Why is he still saying that? As long as you can be stopped on the street based on the color of your skin, nothing the society does will matter to average Black man. There is nothing that is a great—that is—gives you a greater sense of indignity than having a policeman stop you and having to say, what did I do? For a lot of reasons, not the least of which we need to begin to heal the racial divide in this town.

I certainly hope that the testimony of all five of you will in fact help us to begin to march down that road toward the finish. I thank you very much, Mr. Chairman.

Mr. SHAYS. I thank the gentlelady. She obviously speaks with much experience. We thank all the panel. And I'm not asking to extend this panel, because I know you've gone longer than you expected, but is there any one last short comment that any one of you want to make or feel you need to make?

Mr. DUNBAR. Send money.

Mr. SHAYS. That is short. Gentlemen, you're an excellent panel. I congratulate the staffs for putting this panel together, and I apologize to the next staff for keeping them waiting so long.

Mr. DUNBAR. Thank you.

Mr. BURTON [presiding]. We'll now welcome our third panel to the witness table: Rachel King, Raymond Kelly, Lieutenant Brian Boykin, and Chris Maloney, would you please come forward, please.

[Witnesses sworn.]

Mr. BURTON. Be seated. Ms. King, do you have an opening statement you'd like to make?

STATEMENTS OF RACHEL KING, LEGISLATIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION; RAYMOND KELLY, FORMER COMMISSIONER, U.S. CUSTOMS SERVICE; BRIAN BOYKIN, FELLOW, NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES; AND CHRIS MALONEY, PRESIDENT, TRITECH SYSTEMS, INC.

Ms. KING. Yes, sir.

I thank you very much for inviting me to testify today. I have prepared a written statement which I submitted already, so I'll be very brief and just basically make two points.

While we believe that the use of video cameras and audio-visual technology is very important and a very useful law enforcement tool, it cannot in and of itself be used to address the problem of racial profiling. It needs to be used in conjunction with other programs, specifically data collection programs.

And the second point I'd like to make is that the Federal Government needs to intervene to help the States in addressing this problem.

I'd like to just tell you a story that illustrates how video cameras are not the absolute solution to the problem of racial profiling. The ACLU represented a client named Sergeant Joe Rossario, who's a Black man who was traveling across the country with his 12-year-old son.

When he entered the State of Oklahoma, within a half hour of entering the State he was stopped two different times, the second time by two troopers who were driving patrol vehicles. Each vehicle had a video camera. In spite of the presence of these video cameras, this is what happened to Mr. Rosaria. He was detained for over 2 hours. His car was searched without his consent. His son was kept separate from him and terrorized by the police dog. They were kept in patrol vehicles with the heat blasting even though it was 90 degrees outside. Their possessions were strewn along the side of the road and gone over by a drug-sniffing dog, and their car was dismantled, looking for drugs.

Obviously having video cameras in those patrol vehicles did not keep two people, innocent people, from having their constitutional rights violated. One of the video cameras, according to one of the troopers, was malfunctioning, and the other one was functioning, but they could not find the tape. So there was virtually almost no recording of the incident.

You will see that with video cameras there are limitations in that there can be malfunctions, tapes can be lost, and cameras can be tampered with; but an even more important limitation of the camera is they can give you a snapshot in time about one stop and search, but they cannot give you an overall picture of what's happening in the community around the issue of racial profiling, and that's why you need to have data collection as well.

Video cameras are a good supplement to data collection because they can be used, for example, to audit any data collection programs to make sure there's accuracy in the data collection efforts, and they can also be used for training for police officers and conducting proper traffic stops.

I know of no State that is using video cameras at the present time as exclusively in addressing a racial profiling. If you look at my written statement, I've attached on the back of it a map of the United States that shows the various jurisdictions which are using data collection programs. There are a number of States that are using both data collection and video cameras. Those include New Jersey, Missouri and North Carolina. Texas, as we heard, passed legislation that would require both video cameras and data collection, and Indiana and Minnesota are also both considering legisla-

tion that would require both video cameras and data collection. While we support all these State efforts, we still believe that Federal support and intervention is necessary, and that's why we support H.R. 2074, which is a comprehensive bill to ban racial profiling.

We'd like to specifically thank members of this committee who are sponsors of that bill, notably Congresswomen Morella and Norton, and Congressmen Shays, Cummings, Davis, Clay and Owens. We'd like to thank them very much for their support of this important legislation.

This bill does several important things that are needed to address the problem of racial profiling. First of all, it defines racial profiling. We have to have a Federal definition of racial profiling. We can't have racial profiling be one thing in Arkansas and something else in Oklahoma. People who are traveling across the country need to know what the law is. It bans racial profiling and makes it clear that it is illegal. Until very recently the Federal Government has actually trained law enforcement officers in the use of racial profiling as a legitimate law enforcement technique, and the government needs to make it clear that it's no longer a legitimate technique.

The bill also provides a carrot-and-stick approach to requiring States and localities to adopt programs to address racial profiling by both withholding Federal funds if States are not in compliance, but also giving important grant money that's necessary that the States need to establish data collection programs and other types of best practices programs, including video cameras in the cars. And last it requires the Attorney General to report to Congress on the state of racial profiling in the country.

I'd just like to finish with one remark about the privacy concerns. The ACLU, as you know, is very concerned about individual privacy rights, but in this case we think in general the benefits of video cameras outweigh the individual privacy concerns; however, we do not believe that these video tapes should be publicly released except, of course, in criminal and civil litigation. There may be times that a very compelling public interest outweighs the privacy of the individual, for example in the Rodney King beating, but in no way should they be released without first going forward and having that determination made by a court.

I'd be happy to answer any questions later. Thank you.

Mr. BURTON. Thank you, Ms. King.

[The prepared statement of Ms. King follows:]

COMMITTEE ON GOVERNMENT REFORM

HEARING ON
THE BENEFITS OF AUDIO-VISUAL TECHNOLOGY
IN ADDRESSING RACIAL PROFILING

Testimony of

Rachel King
July 19, 2001

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I. Introduction

Good morning, my name is Rachel King and I am a legislative counsel for the American Civil Liberties Union in the Washington National Office. With nearly 300,000 members, the ACLU is one of the nation's oldest and largest civil rights organizations. We are glad to have an opportunity to discuss the use of audio-visual technology in addressing racial profiling. Ending racial profiling is one of our organization's top priorities.

Although we support having video cameras in patrol cars, we oppose using video cameras as the sole method of addressing the problem of racial profiling unless they are used in conjunction with data collection programs. A comprehensive approach to ending racial profiling includes: (1) a ban on racial profiling (2) data collection and (3) incentive programs to enforce the ban. The ACLU supports H.R. 2074 (S. 989 is the Senate companion bill), "The End Racial Profiling Act of 2001" a comprehensive, bi-partisan bill that outlaws racial profiling and uses a carrot and stick approach to both require data collection and give departments tools to address racial profiling. It is noteworthy that one title of H.R. 2074 would provide

funding for a number of "best practices" including installing video cameras in police cars.

II. Benefits of Cameras

a. Ending Police Abuse

The ACLU supports using video cameras in police cars because recording police encounters is likely to reduce the likelihood of abusive police searches and seizures. Assuming audio is included, it would also encourage police to give *Miranda* warnings. Video cameras are a silent witness to police encounters. They serve a watchdog function and provide a record of the encounter. Video cameras can be used to detect police abuse but also to protect police from wrongful accusations of abuse. Videotapes of citizen interactions can be a useful training tool for police.

b. Limited Help to End Racial Profiling

Using video cameras or audio recording devices in and of themselves will not solve the problem of racial profiling. Racial profiling is using race as a justification for the police to initiate a law enforcement encounter whether it be a patrol officer conducting a traffic stop or a customs official stopping an airline passenger or any other type of law enforcement encounter. Video cameras will not

stop the practice of racial profiling. However, they could cut down on the abuses that might occur in a stop resulting from racial profiling. Thus, their benefit to ending racial profiling is limited, but their benefit in ending abusive stops and searches is much more direct. The following example illustrates the limitations of cameras.

III. Shortcomings of Cameras

In August of 1998, Sergeant First Class Gerald Rossario was driving with his 12-year-old son Gregory on a trip to visit his family. As soon as they crossed the border from Arkansas into Oklahoma, Sgt. Rossario was pulled over twice within a half an hour, the second time by two Troopers in different vehicles.

Two officers detained and interrogated Sgt. Rossario and his son for two hours. The officers accused the Sergeant of having drugs and demanded to search his car even though they did not have probable cause to do so. Sgt. Rossario refused saying that he was subjected to random drug tests in the army and would never use drugs and did not have any on him. Over Rossario's objection, the Trooper stated he would search the car without his consent. The Trooper then handcuffed Rossario, manhandled him, thrust him into his car and strapped him in. The Troopers placed 12-year-old

Gregory in a different car from his father, with a police dog that barked at him and frightened him. They also questioned the child about his father's drug use.

The troopers rummaged through Rossario's possessions and took apart the car looking for a secret compartment. While the search was going on, they kept the Sergeant and his son detained inside the patrol cars with the heaters blasting even though it was 90 degrees outside. Finally, after failing to find any evidence of wrongdoing, the Troopers left Rossario and his dismantled car. The total damage was over $1000.

Both trooper vehicles contained video cameras. Early on in the search, a Trooper put one of the on-board cameras into the trunk of the car claiming that it was malfunctioning. The second camera worked, but the Trooper claimed that one of the videotapes had been misplaced.

In spite of the fact that the police car was equipped with a video camera, the Oklahoma Troopers violated the constitutional rights of two innocent people.

This story illustrates the limitations of video cameras.

- Cameras can malfunction;

- Tapes can be lost; and
- Police often control the equipment and sometimes misuse it.

There are other limitations in using video cameras as a method of addressing racial profiling. The camera is usually recording through the windshield of the patrol car and through the back windshield of the car that has been stopped. This makes it very difficult to determine the race of the person from the videotape. Most departments do not have any systematic way of collecting information from the videotapes. The tapes are either stored on a shelf, or in some cases the tapes are reused. Systematically reviewing, storing or extracting information racial profiling information from videotapes would be far too time consuming. Data collection is more cost effective. The police officer records the race of the person stopped at the time of the stop. This information can be recorded by using tools as simple as a pencil and paper or as sophisticated as a hand held computer.

Another concern is that video cameras are expensive. For example, the state of Texas is allocating $18 million to purchase video cameras for its police cars just for the coming fiscal year. Many jurisdictions will not be able to afford the cost. We would not want

Congress to see allocate money for video cameras in place of allocating funds for data collection programs.

To my knowledge, there are no states that are using video cameras as the sole means of addressing racial profiling. Several jurisdictions have recognized that both video cameras and systematic data collection are necessary to address racial profiling and police abuse. For example, North Carolina, New Jersey and Missouri are using video cameras in patrol cars and collecting data on all traffic stops. Texas just passed legislation that requires both data collection and video cameras and Indiana and Minnesota both have bills pending that would provide for both data collection and video cameras. I have attached a map that details which states have data collection programs.

Montgomery County, Maryland probably has the most state of the art technology in the country. Not only do police officers there have video cameras in their patrol cars, they also have hand held wireless devices, similar to "Palm Pilots" that officers use to collect information during every traffic stop.

IV. A Comprehensive Solution: H.R. 2074

To seriously address the problem of racial profiling we recommend that a number of steps be taken – banning racial profiling, data collection, assistance to states and federal law enforcement agencies to develop accountability systems.

a.Ban Racial Profiling

The first step to address racial profiling is to define it. H.R. 2074 defines racial profiling, bans and permits individuals to seek declaratory and injunctive relief.

b. Data Collection

Data collection is important because without it we will not know the extent to which the problem exists. We will be forced to rely on anecdotal information. Some will claim the anecdotes show that racial profiling is a serious problem; others may claim they show it does not exist. Without solid information, policy makers will never know. Also, if departments choose to implement programs to deal with racial profiling they will have no means of measuring the effectiveness of these programs without data. Many police departments are collecting data either voluntarily or because they are required to by state law or executive order; however, the vast majority

of departments are not collecting data. Policy makers cannot rely on voluntary participation because those departments that have the most serious problems will probably not voluntarily choose to collect data. While some police officers resent collecting data it is worth noting that when the idea of video cameras in patrol cars was first introduced it was almost universally opposed by police. Now, the use of video cameras is almost universally embraced by the police.

Before establishing data collection programs, Police Departments should also do some type of community outreach. If they collect the data on their own without the participation of some type of community advisory board or task force, the community will argue about the accuracy of the data. Community participation encourages support and buy in to whatever efforts the Department is trying to make.

H.R. 2074 gives the Attorney General the authority to, at his discretion, limit some federal monies to departments that do not put in place programs, including data collection, to address the problem of racial profiling.

Training

All Departments offer some type of training. Some even offer diversity training and sensitivity training. But very few departments have good integrated training on how to conduct traffic stops. Ironically, police officers are often trained to handle emergencies like terrorist attacks, airplane disasters, or school shootings, even though most police officers will never encounter one. However, they will rarely be instructed in how to conduct a traffic stop, in compliance with the Constitution and how to protect themselves and the public while doing it, even though routine traffic stops are approximately 60% of what officers do. H.R. 2074 provides a grant program to help establish necessary training programs.

Accountability and Oversight

Ideally, data collection would be used as part of an overall early warning system. For example, the City of Pittsburgh has a system that not only tracks data on traffic stops, but also information on personnel issues like citizen complaints and absenteeism. In one case, Pittsburgh Police Chief McNally used this data to identify an officer who was contemplating suicide and get him help before a tragedy occurred. In other instances, there may be signs that an officer's behavior is becoming increasingly abusive. Early warning

systems might prevent a fatal wrongful shooting. Ideally, frontline supervisors can review data daily and audit the data by randomly questioning citizens who have been stopped or by reviewing videotapes H.R. 2074 provides grant money to help Departments develop early warning, and other best practices programs.

V. Privacy Concerns

We do not think that the careful use of video recordings is a violation of privacy. However, any video recordings should be made available to the person videotaped. In general, videotapes should not be released to the public except to the extent that they are used in criminal or civil litigation or to resolve a dispute between a citizen and police officer. There may be times when an overriding public interest warrants releasing a videotape, (e.g. the Rodney King beating) but before the tape is released the privacy interests of the individual must be weighed against the benefits of public disclosure.

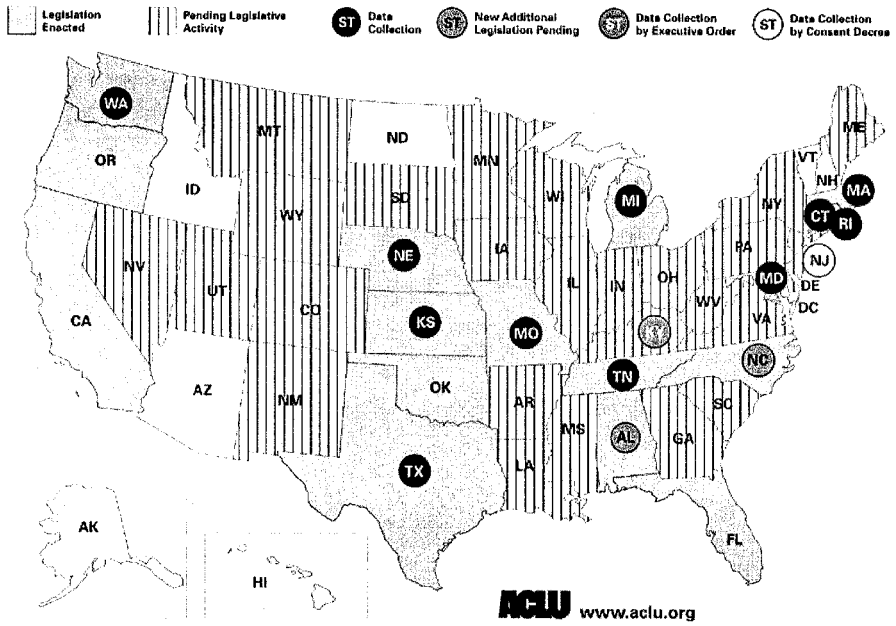
VI. Conclusion

Video technology has the potential to be helpful in addressing police abuse and the problem of racial profiling, but only if it is part of a comprehensive program. No one technique is sufficient. The End Racial Profiling Act is a comprehensive response to police profiling.

We hope that each member of the Committee will co-sponsor H.R. 2074 and help support its swift passage.

State Action on Racial Profiling

as of July 11, 2001



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Mr. BURTON. Mr. Kelly, do you have a statement, sir? And thank you for being on our third panel. I know that there was some question about whether or not you would prefer to be on the first panel, but I guess everything worked out.

Mr. KELLY. Yes, thank you. Thank you for the invitation to be here today, Mr. Chairman. Although I know the title of today's hearing is the Benefits of Audio-Visual Technology in Addressing Racial Profiling, with your permission I'd like to outline what one Federal agency, the U.S. Customs Service, has done to address the allegations of racial profiling. It also involves the use of some technology.

In my experience, there's no greater threat to the credibility of law enforcement than racial profiling. Anyone who ignores this threat or delays in taking precautions against it risks not just the reputation of the organization in question, but the very compact and trust and fairness between government and the people upon which the civil society rests.

I served as the Commissioner of U.S. Customs from August 1998 to January 2001, and before the beginning of my tenure, Customs began to receive allegations from certain members of the traveling public that in specific incidents agency personnel had selected commercial air passengers for physical searches based on race. These allegations, of course, were very disturbing, to say the least. It was certainly not the agency policy to use such tactics in their enforcement mission. In no way were we prepared to accept it as part of our practice.

As you know, one of Customs chief responsibilities is to keep dangerous contraband from crossing U.S. borders. The fact is the great majority of travelers entering our country are law-abiding, but there exists a small percentage who are not and who contribute to the illegal menace by smuggling narcotics. It's a difficult job of the Customs Service to stop these individuals. The job is even more difficult when it comes to stopping those who conceal drugs on or in their bodies, particularly those arriving by commercial air.

To put this in the proper perspective, Customs searches an extremely small amount of the approximately 80 million commercial air passengers entering the U.S. each year. To accomplish this difficult aspect of its mission, Customs has been granted very broad search authority, the broadest of any law enforcement agency in the land. Inspectors can stop, search and detain travelers based on reasonable suspicion. That is based on specific factors that may lead those officers to believe someone may be carrying drugs. Those criteria are clearly outlined in the intensive training provided to Customs personnel. Under no circumstances whatsoever do these factors ever include a person's race.

When complaints of racial profiling surface, we move quickly to review all aspects of our personal search policy. Our preliminary review showed no specific incidence of bias, but we did find lapses in management and supervision that contributed to instances of improper conduct, poor judgment and insensitivity to the rights of travelers.

Not satisfied with an internal assessment alone, we immediately appointed an independent outside commission of government and community leaders to conduct a study of Customs' personal

searches beginning in April 1999. Commission members were given unfettered access to Customs facilities and personnel across the country.

In the meantime we began a number of immediate reforms. First and foremost we increased the role of supervisors in the personal search process. Where in the past any individual inspector could decide whether or not to make a personal search, we ensured that a supervisor approved that decision. Moreover any decision to move someone to a facility for a medical examination had to be approved by a port director, the highest-ranking Customs official onsite. We bolstered training for our employees. We mandated new cultural interaction and personal cert training for all of our officers. That's about 8,000 in all. The agency has a total of about 20,000 employees.

We also rewrote our personal search policies, eliminating any phrase that could be remotely construed as bias, and compiled them in a single handbook. We increased legal oversight of the process. We made Customs lawyers available 24 hours a day by phone to inspectors to advise on the legal grounds for searches. We implemented a new policy that requires Customs officers to consult with the local U.S. attorney's office for any prolonged detention. In the past Customs could hold someone indefinitely without permitting contact with friends or family. New notification rules allowed anyone detained to inform someone of his or her delay within 2 hours.

Recordkeeping in general was poor. Data collection on personal searches was weak and inconsistent. We instituted mandatory data collection on the race, gender, age and citizenship of persons searched as well as the reasons for the search. We formed a national passenger data analysis unit at headquarters to examine that data. I received updates every morning on the searches we conducted. We made major investments in new nonintrusive technology and x-ray equipment. These included the purchase of body scan machines and mobile x-ray equipment that minimized the need for physical contact and the time-consuming trips to the hospital. That technology was deployed at major international airports across the country.

We undertook a major information campaign with the traveling public. That campaign began with an outside consultant's review of our passenger processing areas. Based on a consultant's findings, we implemented a series of changes, including better signage, enhancing the role and visibility of the Customs passenger service representatives, and designing new declaration forms to eliminate confusion for travelers. We also put out new brochures that explained why Customs performs inspections and searches. These included a document entitled, "Why Did This Happen to Me," which explained the personal search process to those who are referred for a secondary inspection. We also developed a passenger rights brochure that explains the rights of travelers and their obligations under U.S. laws. We created a new customer satisfaction unit at headquarters to handle complaints and other issues, and a national comment card program to which travelers can submit their feedback to Customs.

To sum up, improved supervision, better training, enhanced legal oversight, better data collection, better technology, better communication with the traveling public, these were the pillars of our reforms. Now, while changes like these require time to take hold, we're very encouraged by the earlier results. Nationally Customs was searching far fewer people than it ever did before while maintaining its overall level of seizures. In the year 2000, Customs cut the number of personal searches significantly, from just over 23,000 searches to just over 9,000, yet the number of positive searches yielding drugs remained relatively constant. Those numbers showed us that we could engage the narcotics traffickers vigorously without allowing the rights of the law-abiding public to become casualties in the counterdrug find.

In addition, our comment card program indicated that our changes were being well received by the public. We mandated that officers who give anyone who goes through a secondary inspection a comment card. They were also made available to any traveler passing through our processing areas. As of the close of 2000, we received well over 15,000 cards. Eighty percent complimented Customs and the work of our inspectors. I understand that rate has held steady through today.

In June 2000, the Personal Search Commission issued their report. They acknowledge, in their words, a series of bold reforms Customs had taken. While the report did not find specific evidence of bias, it did state that more precautions could be taken and offered 20 recommendations to further safeguard the rights of travelers. I assembled a special high-level internal committee of Customs managers to assess, implement and monitor those findings.

Having been involved with this issue for a long time, I know one thing for certain, this is not a problem from which we can simply walk away and declare victory. Policies must be monitored constantly to ensure that changes become embedded in the culture of the organization. Could we prove that racial bias never existed in the Customs Service or guarantee that it never would again? It's a difficult question to answer. Obviously we couldn't scrutinize people's thought processes, but we knew that we could strengthen a system of checks and balances that dramatically reduced the possibility of bias, and we could reinforce through constant training and supervision that there is no place for such a tack, not in the Customs Service nor anywhere else in law enforcement.

Thank you, Mr. Chairman.

Mr. BURTON. Thank you, Mr. Kelly.

[The prepared statement of Mr. Kelly follows:]

Testimony
Raymond W. Kelly
Committee on Government Reform
July 19, 2001
Washington, D.C.

Chairman Burton, members of the sub-committee on Government Reform, thank you for your invitation to testify today. In my experience, there is no greater threat to the credibility of law enforcement than racial profiling. Anyone who ignores this threat, or delays in taking precautions against it, risks not just the reputation of the organization in question...but the very compact of trust and fairness between government and the people upon which civil society rests.

Today I'd like to talk to you about one agency's approach to dealing with this issue. The U.S. Customs Service, where I served as Commissioner from August 1998 through January 2001. Before the beginning of my tenure, Customs began to receive allegations from certain members of the traveling public that, in specific incidents, agency personnel had selected commercial air passengers for physical searches based on race. These allegations were very disturbing, to say the least. It was certainly not agency policy to use such tactics in our enforcement mission. In no way were we prepared to accept it as part of our practice. As you know, one of Customs' chief responsibilities is to keep dangerous contraband from crossing U.S. borders. The fact is, the great majority of travelers entering our country are law-abiding. But there exists a small percentage who are not, and who contribute to the illegal drug menace by smuggling narcotics. It's the difficult job of the Customs service to stop these individuals. The job is even more difficult when it comes to stopping those who conceal drugs on or in their bodies, particularly those arriving by commercial air.

To put this in the proper perspective, Customs searches an extremely small amount of the approximately eighty million commercial air passengers entering the U.S. each year. Today, that figure is about one out of every nine thousand travelers who arrive. Some might ask: why even bother with such a small amount. Customs bothers because those searches yield thousands of pounds of cocaine, heroin, marijuana and "ecstasy" each year. Customs bothers because those searches also act as a deterrent to the countless more drugs that would enter by commercial air if we did nothing at all.

To accomplish this difficult aspect of its mission, Customs has been granted very broad search authorities she broadest of any law enforcement agency in the land. Inspectors can stop, search, and detain travelers based on reasonable suspicion-that is, based on specific factors that may lead those officers to believe someone may be carrying drugs. Those criteria are clearly outlined in the intensive training provided to customs personnel. Under no circumstances, whatsoever, do these factors ever include a person's race. When complaints of racial profiling surfaced, we moved quickly to review all aspects of our personal search policy. Our preliminary reviews showed no specific incidents of bias. But we did find lapses in management and supervision that contributed to instances of improper conduct, poor judgment, and insensitivity to the rights of travelers. Not satisfied with an internal assessment alone, we immediately appointed an independent, outside commission of government and community leaders to conduct a study of Customs personal search practices in April of 1999.

We also appointed an independent advisor to review the commission's findings and provide recommendations. Commission members were given unfettered access to customs facilities and personnel across the

country. They were also provided with whatever statistics and information they needed to compile their reports In the meantime, we began a number of immediate reforms First and foremost, we increased the role of supervisors in the personal search process. Where, in the past, any individual inspector could decide whether or not to make a personal search, we ensured that a supervisor subsequently approve that decision. More, any decision to move someone to a facility for a medical examination had to be approved by a port director, the highest-ranking customs official on site. We bolstered training for our employees. We mandated new cultural interaction and personal search training for all our officers...that's about eight thousand people.

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Yet, the number of positive searches yielding drugs remained relatively constant. Those numbers showed us that we could engage the narcotics

traffickers vigorously, without allowing the rights of the law-abiding public to become casualties in the counter-drug fight. In addition, our comment card program indicated that our changes were being well received by the public. We mandated that officers give anyone who goes through a secondary inspection a comment card. They were also made available to any traveler passing through our processing areas. As of the close of 2000, we received well over 15,000 cards. Eighty percent complimented Customs and the work of our inspectors. I understand that rate has held steady through today.

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Thank you again, Mr. Chairman, for this opportunity to testify.

Mr. BURTON. Mr. Boykin.

Mr. BOYKIN. Good afternoon, Mr. Chairman and other members of the committee. Thank you for allowing me the opportunity to address you. Before I proceed, I would like to take time out and express our sincere appreciation to Mr. Cummings and other Members of the Congressional Black Caucus for championing and helping us afford many of our initiatives that have come before Congress and other special bodies. Thank you for allowing me as a representative of the National Organization of Black Law Enforcement Executives [NOBLE], to testify concerning the benefits of audio-visual technology in addressing racial profiling.

My name is Brian Boykin, and I have been in law enforcement for nearly two decades. Before I proceed, I'd like to share a bit of information about our upcoming 25th anniversary training conference. This historical event will be held July 28th through August 1st at the Marriott Wardman Park Hotel. During this week more than 2,000 of our members with at least 300 Federal, State and local executive-level managers will converge in D.C. to attend our training conference. Additionally we will have an internal contingency of delegates from many other countries in attendance.

As most concerned Americans, one of our key topics of discussion will be racial profiling. We will reconvene our racial profiling task force to discuss these critical issues. We feel honored that we have some of the most innovative and forward-thinking professionals that will bring a wealth of information to the table to share with all interested parties. Our national president, Ms. Iona Gillis, and our executive director, Mr. Maurice Foster, asked me to extend each of you an invitation to be our honored guest during this training conference.

As you may be aware, in May 2001, NOBLE released our comprehensive plan for combating racial profiling entitled, "NOBLE Perspective: Racial Profiling, a Symptom of Bias-Based Policing." This valuable information can be obtained and downloaded by visiting our Web site at noblenational.org I have a prepared statement they would like to share with this committee.

NOBLE was founded in 1976 and consists of many of the most influential chief law enforcement executives throughout the country. NOBLE has been actively involved and concerned over the decline and state of citizen-police relations. Furthermore, NOBLE is unique in that our members, by virtue of their race and/or ethnicity, may be faced with some of the same negative concerns with law enforcement that many minorities complain about frequently.

Issues concerning racial profiling, also referred to as DWB, driving while Black, or driving while brown, have significantly affected our country. As stated in the law enforcement code of ethics, as a law enforcement officer my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality and justice. Unfortunately recently there has been several events involving rogue law enforcement officers that have cast a negative light and caused the public to doubt the true significance of the law enforcement code

of ethics. However, we believe that most law enforcement officers are proud to serve the community, and they do it with honor.

Moreover, we believe that audio-visual technology, also known as in-car video systems, coupled with other management safeguards will have a profound benefit in restoring trust between law enforcement and the community and helping refute claims of bias-based policing.

In-car video systems have been in use in this country for more than a decade. As many of you have probably witnessed on police dramatization shows like COPS and the World Series police videos, police are challenged with some extraordinary situations each and every day. As a law enforcement manager and a practitioner, I can assure you that the benefits both to the community and also to the officers far outweigh the few concerns that you may hear from some opposing groups.

In-car video systems enhance police accountability both to management and also to community. The video systems capture a true and accurate picture of what happens on the scene. Additionally it preserves evidence and allows the scenes to be recreated without concern of memory deterioration from the police officer and the citizen. Additionally, the system affords citizens, attorneys and the media to review the true actions and behavior of law enforcement. This technology can confirm or dispel claims of officers violating civil rights. Furthermore, the tapes can be presented as evidence both in civil and criminal proceedings.

Last and most importantly to me as a law enforcement professional, an in-car video system is an extra added layer of safety for police officers who protect our society each and every day. Studies have repeatedly shown that cameras positively modify and influence people's behavior. Whether it's an irate or unruly citizen or an officer that is violating a citizen's rights, the system should aid in capturing this inappropriate and/or illegal behavior.

In closing I would be happy to have an in-car video system to be my front seat partner.

Again, Mr. Chairman, I appreciate the opportunity to speak to you concerning this matter.

Mr. BURTON. Thank you, Lieutenant Boykin.

[The prepared statement of Mr. Boykin follows:]

Testimony Concerning Visual Technology In Addressing Racial Profiling

Good Morning. Chairman Burton and other distinguished members of the Committee on Government Reform. Thank you for allowing me as a representative of The National Organization of Black Law Enforcement Executives (NOBLE) to testify concerning "The Benefits of Audio-Visual Technology in Addressing Racial Profiling." My Name is Brian Boykin and I have been in Law Enforcement for nearly two decades. Before I proceed, I would like to share a bit of information about our upcoming 25th Anniversary, Training Conference. This historic event will be held July 28- August 1, at The Marriott Wardman Park Hotel. During this week, more than 2000 of our members- with at least 300 federal, state and local executive level managers will converge in D.C. to attend our training conference. Additionally, we have an International contingency of delegates from many other counties in attendance. As most concerned Americans, one of our key topics of discussion will be Racial Profiling. We will re-convene our Racial Profiling Task Force to discuss these critical issues. We feel honored that we have some of the most innovative and forward-thinking professionals that will bring a wealth of information to the table to share with all interested parties. Our National President, Ms. Ida Gillis and our Executive Director, Mr. Maurice Foster asked me to extend an invitation for you to be our honored guest at our Training Conference. As you may be aware in May 2001, NOBLE released our comprehensive plan for combating Racial Profiling, titled "A NOBLE Perspective: Racial Profiling- A Symptom Of Bias- Based

Policing. This valuable and informative documentation may be obtained and downloaded by visiting our web-site at WWW.NOBLENATIONAL.ORG. I have a prepared statement that I would like to share with this committee. NOBLE was founded in 1976 and consists of many of the most influential chief executive and command level law enforcement officials throughout the country. NOBLE has been actively involved and concern over the declining state of citizen-police relations. Furthermore, NOBLE is unique in that our members, by virtue of their race and/or ethnicity may be faced with some of the same negative concerns with law enforcement that many minorities complain about frequently. Issues concerning Racial Profiling also referred to DWB (Driving While Black/Driving While Brown) have significantly effected our country. As stated in The Law Enforcement Code of Ethics, "As a Law Enforcement Officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality and justice." Unfortunately, recently there has been several events involving rouge law enforcement officers that have cast a negative light, and cause the public to doubt the true significance of The Law Enforcement Code of Ethics. However, we believe that most law enforcement officers are proud to serve the community and they do it with honor. Moreover, we believe that audiovisual Technology AKA In-Car Video systems coupled with other management safeguards, will have a profound benefit in restoring trust between law enforcement and the community and helping refute claims of biased-policing. In Car Video Systems have been in use in this country for more than a decade. As many of you have probably witnessed, on police dramatization shows like COPS and

The World's Scariest Videos, police are challenged with some extraordinary situations each and every day. As a law enforcement manager and a practitioner, I can assure you that the benefits, both to the community and the officers, far out weigh the few concerns that you may hear from opposing groups. In Car Video systems enhances police accountability both to management and the community. The video system captures a true and accurate picture of what happens on the scene. Additionally, it preserves the evidence and allows the scene to be recreated without concerns of memory deterioration from the police officer or the citizen. Additionally, the system affords citizens, attorneys, and the media to review the true actions and behavior of law enforcement. This technology can confirm or dispel claims of officers violating citizen's civil rights. Furthermore, the tapes can be presented as evidence both in civil and criminal proceedings. Lastly, and most important to me as a law enforcement professional, An In Car Video system is an extra-added layer of safety for the police officers who protect our society each and everyday. Studies have repeatedly shown that cameras positively modify and influence people's behavior. Whether it is an irate or unruly citizen or an officer that is violating citizen's rights, the system should aid in capturing this inappropriate and/or illegal behavior. In closing, I would be happy to having an In Car Video system to be my front seat partner. Again, Mr. Chairman, I appreciate this opportunity to speak with you concerning this matter. Thank you for allowing me on behalf of NOBLE to provide this testimony.

Mr. BURTON. Mr. Maloney.

Mr. MALONEY. Yes. Thank you, Mr. Chairman.

Mr. Chairman and members of the House Committee on Government Reform, on behalf of TriTech Software System, I would like to thank you for this opportunity to testify at this important hearing. The purpose of my testimony before you today is not to explore issues and allegations relating to racial profiling, but rather to address practical technical considerations relating to a nationwide effort to quantify and remedy racial profiling practices.

I personally believe that the use of existing technology such as audio-visual applications can provide many of the capabilities we are collectively seeking. However, audio and video technology can only address some of the data collection requirements, and the utility of the information when collected lends itself only to a narrow range of very local applications within the organization sponsoring it. The current available systems to collect this audio-visual information are costly, and the storage and retrieval of this data is time-consuming and requires dedicated personnel at additional expense.

TriTech has created a solution that is not only an effective and powerful information technology tool, but is uniquely affordable in the marketplace where cost is always a principal consideration. This solution can be used on a stand-alone basis or as a complement to the collection of information with audio-visual applications.

I would like to begin with a brief overview of TriTech Software Systems and its position within the public safety law enforcement marketplace.

TriTech Software Systems, headquartered in San Diego, CA, has developed integrated and support software solutions for public safety for nearly 20 years. Our computer-aided dispatch solution VisiCAD is installed in more than 125 agencies and six countries. In October 2000, TriTech deployed Voyager, a suite of portable wireless applications targeted primarily at the needs of the law enforcement community. The Voyager suite of applications runs on virtually any personal digital assistant, two-way pager or smart phone capable of wireless communications. TriTech's Voyager contact application facilitates collection of data relating to contact demographics and enables statistical reporting and analysis.

Technology solutions may address two perspectives related to racial profiling: First, to potentially discourage officers from engaging in racial profiling practices, and, second, to provide objective evidence to either support or disprove allegations of racial profiling. Audio-visual technology has been used effectively by many police departments to disprove allegations of officer misconduct and to provide an added measure of officer safety.

The primary advantages afforded by audio-visual technology are its visibility to suspects and its acceptance by police officers as a supportive defensive tool. However, as a racial profiling tool for analysis, audio-visual technology is limited as a stand-alone solution for several reasons. First, an officer willfully engaging in racial profiling activities could elect not to record the stop. Two, the reasons for escalating a search after an initial contact could be difficult to capture from a video camera. And three, the information

captured using audio-visual tools cannot be used to populate a data base against which statistical analysis can be applied.

Tools for data collection must be easy to use, allowing the officer to more easily perform his daily duties while capturing this important data. Tools such as Voyager greatly facilitate both data entry and data retrieval in or out of the patrol car by allowing officers to query criminal data bases while simultaneously documenting the stop.

In addition to ease of use, data collection tools must be affordable. Video systems installed in the patrol vehicles and the required costs of storage and retrieval are expensive. Of the more than 18,000 law enforcement agencies in the United States, more than 80 percent lack the financial resources to procure such equipment. By contrast, our solution operates on a variety of inexpensive hand-held devices at a low monthly cost, as little as $100, and appeals to all agencies regardless of size.

In conclusion, Voyager contact is an affordable innovative data collection tool that offers a stand-alone or complementary technical solution to law enforcement. The benefits include a data collection mechanism that is secure, portable and easy to use, and affordable by even the smallest agency; applications that empower officers to enhance officer safety through immediate access to criminal justice information; and last, protection against civil litigation through its extensive operational audit trail.

Thank you for the opportunity to testify on this important matter. TriTech Software Systems would be honored to work in concert with the House committee to provide any requested information or technical guidance in this matter. Thank you very much.

[The prepared statement of Mr. Maloney follows:]

Testimony of Chris Maloney
President, TriTech Software Systems
Before the House Committee on Government Reform

July 19, 2001

Chairman Burton and Members of the House Committee on Government Reform:

On behalf of TriTech Software Systems, I would like to thank you for the opportunity to testify at this important hearing. As you may know, to date, approximately twenty percent of the states have adopted legislation requiring law enforcement agencies to collect contact demographic data. This collected data includes the gender, perceived race and ethnicity of the person stopped, as well as whether a search was initiated and if any warning or citation was issued. Within Congress, I understand that the "End Racial Profiling Act of 2001", documented in Senate Bill 989 and House of Representatives Bill 2074 proposes authorizing the Attorney General to mandate data collection by state and federal law enforcement agencies on any police "stops" and to require the Attorney General to report on the results of data collection studies. Legislation is perhaps needed to address the occasional abuses that occur, but legislation alone cannot effect a valid, reliable assessment of profiling practices. To effectively assess and address the issue of racial profiling in the United States, legislation must provide a means for the development of a technical infrastructure to facilitate data collection, reporting and analysis. The purpose of my testimony before you today is not to explore issues and allegations relating to racial profiling or to debate the definitions and actions mandated by current and proposed legislation, but rather to address practical, technical considerations relating to a nationwide effort to quantify and remedy racial profiling practices.

Regarding today's hearing, I personally believe that the use of existing technology, such as audio/visual applications can provide many of the capabilities we are collectively seeking. However, audio and video technology can only address a small facet of the data collection requirement, and the utility of the information when collected, lends itself only to a narrow range of very local applications within the organization sponsoring it. The current available systems to collect this audio/video information are costly, and the storage and retrieval of this data is time-consuming and requires dedicated personnel at additional expense. TriTech has created a solution that is not only an effective and powerful Information Technology (IT) tool, but is uniquely affordable in a marketplace where cost is always a principal consideration.

I would like to begin with a brief overview of TriTech Software Systems and its position within the public safety/law enforcement marketplace. Then I will continue with a discussion of the technical infrastructure and considerations

essential to enable law enforcement agencies to successfully engage in contact demographics analysis. Finally, I will conclude with some general observations relating to the benefits of the technical solutions and other measures the Committee may wish to consider for discussion.

About TriTech Software Systems

TriTech Software Systems, headquartered in San Diego, California, has developed, integrated and supported software solutions for police, fire and the emergency medical services (EMS) for nearly twenty years. Our computer-aided dispatch (CAD) solution, VisiCAD, is installed in more than 125 public safety agencies in six countries.

In October 2000, TriTech deployed Voyager, a suite of portable, wireless applications targeted primarily at the needs of the law enforcement community. Unlike traditional law enforcement technologies, the Voyager suite of applications runs on virtually any Personal Digital Assistant (PDA), Pocket PC, pager or "smart phone" capable of wireless communications. Through our well-established market experience and research, we identified several recurring themes in law enforcement that are addressed by our product suite, including a demand for portable, cost-effective tools to enable affordable access to criminal justice databases. These themes also include a heightened awareness of the issues attendant to racial profiling. The data elements needed to determine if racial profiling occurs are not routinely collected. TriTech's Voyager Contact™ application facilitates collection of this data relating to contact demographics and enables statistical reporting and analysis. It is a simple, yet powerful and effective means to address this specific element of law enforcement operations.

Technical Considerations

Technology solutions may address two perspectives relating to racial profiling: first, to potentially discourage officers from engaging in racial profiling practices, and second, to provide objective evidence to either support or disprove allegations of racial profiling. Audio-visual technology, typically cameras installed in law enforcement vehicles coupled with remote microphones worn by officers, has been used effectively by many police departments to disprove allegations of officer misconduct and to provide an added measure of officer safety. The primary advantages afforded by audio-visual technology are its visibility to suspects and its acceptance by police officers as a supportive, defensive tool. However, as a racial profiling deterrent and tool for analysis, audio-visual technology is limited as a stand-alone solution for several reasons:

1. An officer knowingly and willfully engaging in racial profiling activities could elect not to record selected "stops" or contacts.

2. The reasons for escalating a search after an initial contact, whether justified or improper, could be difficult to capture from a vehicle-mounted camera.
3. The information captured using audio-visual tools cannot be used to populate a database against which statistical analysis can be applied.

Technical solutions associated with deterring racial profiling activities and providing a basis for substantive analysis must address law enforcement agency-level considerations as well as database considerations in order to be successful over a continuum.

Local Law Enforcement Agency Considerations

Some local law enforcement agencies are reluctant to proactively collect and analyze contact demographic data due to existing heavy workload and minimal budgets, and a perception of potential unfounded accusations by community members and civil rights advocacy groups. Even agencies willing to proactively engage in contact demographic analysis may face resource limitations. The right tools, used correctly, can generate enthusiasm, acceptance and a willingness to be part of the solution. To obtain the tools for any level of data collection and analysis will require access to federal or state level grant funding. These grants must be readily obtainable, and commensurate with the operational requirements levied upon the law enforcement community through legislation.

Additionally, the look up tools and tools for data collection must be easy to use and complement other activities performed by officers in the field. Voyager Contact, as an example, greatly facilitates both data entry and retrieval anywhere it is used. For instance, when an officer using Voyager Contact conducts a traffic stop, he/she records the information relating to the reason for the stop, the gender and perceived race of the individual stopped and subsequent actions taken on his wireless device using simple check boxes, drop-down menus and text entry. After connecting, he/she immediately transmits the information to a central database, where it is available for review, analysis or crime-solving purposes. Without a tool like Voyager Contact, the officer would complete a handwritten form and either enter it into a computer or submit it to a clerk for data entry at the end of his/her shift. A wireless handheld solution such as Voyager eliminates the redundancy of handwriting reports and subsequently entering the data, and immediately allows the information to be available as a crime-solving tool or supervisory review.

In addition to ease of use, data collection tools must be affordable for broad market acceptance. Video systems installed in patrol vehicles cost thousands of dollars each, plus installation, maintenance and recurring costs of storage and retrieval of the captured audio and video. Of the more than 18,000 law enforcement agencies in the United States, more than 80% lack the financial resources to procure and use such equipment. Since less than 11% of all

agencies have more than 50 full-time sworn officers, system support resources presents an additional budgetary challenge. By contrast, Voyager Contact operates on a variety of handheld devices, several of which cost less than $300. So, in this scenario, an agency pays for its devices, a one-time activation fee, its wireless airtime through the provider of choice and a monthly fee to use the application. This average cost, including airtime, is less than $100 per month, per unit, which may be shared among authorized users on a shift-to-shift basis if necessary.

Finally, data collection solutions must require minimal infrastructure investment and support. Unlike traditional mobile data solutions that run on costly private radio backbones, Voyager Contact uses commercially available wireless transmission media, and requires absolutely no investment in infrastructure. TriTech, as the application service provider (ASP), supplies and maintains the various servers and databases associated with the application. On the critical issue of proprietary data and security, TriTech's Voyager ASP applications and the process for accessing various proprietary data sources has been vetted by the FBI's Wireless Application Test Program (WATP) in Clarksburg, West Virginia. TriTech never has any direct access to this data, but rather has software that allows the multi-level encryption and secure protocol handshakes to occur between the authorized users and the required information.

Database Considerations

Issues relating to local law enforcement agencies' adoption of technical solutions to affect the capture and analysis of data relating to racial profiling must be considered in parallel with questions and decisions relating to database structure and access.

The database structure, whether local, regional or national in scope, along with the data elements to be collected, must be defined at the outset of a legislated data collection effort. Adoption of existing standards, such as National Incident-Based Reporting System (NIBRS) brevity codes to ensure compliance with National Criminal Information Center (NCIC) database structures will ensure that, in the simplest terms, the data collected is the same across agencies and accurately supports the desired analyses. A national database, if is to be developed, must precede and provide the foundation for any regional or local databases.

Similar to local and regional records management systems that aggregate local Uniform Crime Report (UCR) and NIBRS data, local and regional databases developed in parallel or subsequent to a national standard can provide an excellent source of data for local analysis. The Voyager Contact application and database were designed based on input from NIBRS-compliant agencies, and could either provide a basis for development of a national database or be modified to reflect a national standard identified for racial profiling data elements.

In addition to defining the database structure and data elements to be collected, benchmarks must be established against which to define and measure officers' activities, along with the process and responsibility for analyzing the data collected, both at the local and national level. The process must account for how issues such as proximity to national borders will be factored into regional analysis.

Benefits of Voyager Contact

In conclusion, Voyager Contact is an affordable, innovative data collection tool that offers a standalone or complementary technical solution to agencies undertaking a contact demographic data collection and analysis effort. Among the benefits afforded to agencies adopting Voyager Contact are highlighted as follows:

1. Voyager Contact provides a data collection mechanism that is secure, portable, easy to use and affordable by even the smallest agency.
2. Voyager Contact and other related Voyager applications empower officers and enhance officer safety through immediate access to criminal justice information, regardless of their location.
3. Voyager Contact offers a superb management tool and protection against civil litigation through its extensive operational audit trail.

Thank you for the opportunity to testify on this important matter of national concern. TriTech Software Systems would be honored to work in concert with the House Committee on Government Reform to provide any requested information or technical guidance as you continue your assessment of technology solutions to address contact demographic initiatives, in order to avoid abusive racial profiling practices.

Mr. Chris Maloney
President, TriTech Software Systems
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Mr. CANNON [presiding]. Thank you, Mr. Maloney, and I apologize for not having got here earlier, but I hope we have just a pleasant exchange on some of these issues and build a record that will be helpful, although it looks like we're going to go.

Do you want to take like 2 or 3 minutes? I'll take 2 or 3 minutes. Why don't I recognize Mr. Cummings for a couple of minutes, then I'll take a couple of minutes, then we will go vote and come back. Why don't we take 5 minutes and let me recognize you, Mr. Cummings, for 5 minutes. Then we will go vote and come back.

Mr. CUMMINGS. Let me just ask you, Ms. King, when you listened to Mr. Kelly's testimony, did that surprise you, to go from 23,000 to 9,000 searches was it, Mr. Kelly?

Mr. KELLY. Yes, sir.

Mr. CUMMINGS. And still be effective.

Ms. KING. No, sir, it did not. I was actually aware of those numbers. The ACLU has sued the Customs Service, and so we are following this issue closely. We have been very impressed with some of the reforms Mr. Kelly has made and do believe they have made a difference, although we would point out, as Mr. Kelly did himself, that there is still some disparity in numbers coming back that needs to be explained, and it sounds like they're looking toward trying to figure out how does that still exist.

The question about does it surprise me, it doesn't because racial profiling is pretty ineffective. So it doesn't surprise me they can get the same results without submitting innocent people to such humiliating treatment.

Mr. CUMMINGS. Are there things—were you here earlier when the gentleman from Texas, the two senators, testified? Were you here?

Ms. KING. Uh-huh.

Mr. CUMMINGS. OK. The legislation they talked about, are you familiar with it?

Ms. KING. Yes, I am.

Mr. CUMMINGS. Is that more or less model legislation, or is it still a lot to be desired there?

Ms. KING. It's pretty good, although we weren't very pleased with the opt-out provision, which is if you—they have two different data collection requirements. You have to collect data on all traffic stops and all pedestrian stops unless you have purchased and are using video cameras or have tried to purchase video cameras and can show that you couldn't afford to, in which case then you can opt out of collecting data on all stops and only have to on arrests and citations. And we would prefer not to have the opt-out provision. We think that more data and the video cameras would be better, but it's still a good, overall I'd say good piece of legislation.

Mr. CUMMINGS. Mr. Kelly, when you all went from the 23,000 to the 9,000, I mean, you know, all of us travel and come through the airports and travel overseas and whatever. And I am trying to figure out what is it that you did different? I mean, in other words, you will still—you said initially that there was—you named several things that you all were doing wrong. You kind of generalized, but at the same time you said that you reduced the number, and I'm trying to figure out what is it that you did, and how did you determine how to reduce the number? You follow me?

Mr. KELLY. Yes, I do. I think you have to understand how Customs is constructed. It has 301 ports of entry into the United States. And I think it's fair to say—and people who have been in Customs for a while would support me on this—that the process just wasn't watched adequately by management. It just wasn't supervised. So it was going on pretty much at the initiation of an individual inspector. So the process itself wasn't watched on the local level as far as supervisors are concerned or managers, and it wasn't being watched on a national level.

I think when, in fact, the word got out that it was being looked at and that you needed total and complete data collection, which also wasn't happening, those two factors were the most important in making significant changes in how the Customs Service operated. Collecting that data, everyone who is searched has to be recorded, gender, location, reasons for that search, supervisor had to authorize it, and then managers up the chain of command were certainly accountable for looking at it, those two things alone were the major reasons for a change, and I have been in policing a long time. I was in New York City Police Department for 31 years.

Again, I think those two facts, the total data collection and management involvement, can go a long way to significantly reducing the problems associated with stop and frisk.

Mr. CUMMINGS. I have some other questions, Mr. Chairman, but I think we are approaching this vote.

Mr. CANNON. Thank you. I note it looks like we're going to have a 10 minutes of debate, then a motion to recommit and then final passage. So I think we probably need to recess until after we finish that, and I suspect that's going to take 20 or 30 minutes, if that will work for the panel. OK. Thank you.

So we'll recess for 30 minutes, and until we finish this vote.

[Recess.]

Mr. CANNON. We thank the panel for its extraordinary patience. Thank you for coming back. And I think we'll just continue with Mr. Cummings' time.

Mr. CUMMINGS. Ms. King, on racial profiling, extensively is it your sense that this problem is greater on the State level than on the Federal level? In other words, is it more of a problem?

Ms. KING. It's difficult to answer your question, sir, because we have basically a lack of information. We have reliable data or at least initial data out of New Jersey and Missouri and Maryland and California and Rhode Island, and from the Customs Service, but I'm not aware of any other Federal agencies that have compiled and distributed data, although President Clinton did order it to be collected back in June 1999. There hasn't been any distribution of the results of that. So it's hard to say whether it's more prevalent in one or the other level.

Mr. CUMMINGS. Mr. Kelly, when your people had to collect data, did that impede them in any kind of way? They had to collect data; is that right?

Mr. KELLY. Yes. That's correct.

Mr. CUMMINGS. Did that impede their efforts in any way?

Mr. KELLY. None whatsoever.

Mr. CUMMINGS. You know that's the usual argument, right? You know, many police departments say it interferes with what they

have to do. And I would like for you to comment on that also, Lieutenant.

Mr. KELLY. It's a necessary part of doing business. They have to do it. In New York City, for years, there still is a form that's used and should have been used and just wasn't used. It wasn't because it was taking up too much time. It simply was not given the appropriate attention by management for years. So I don't see it as, in my view anyway, interfering with normal law enforcement business.

Mr. CUMMINGS. Mr. Boykin.

Mr. BOYKIN. Yes, Mr. Cummings. As you indicated, many times you'll hear individuals in law enforcement comment that it increases the time spent on a traffic stop, and it inconveniences the citizen. Additionally, in many instances, you might hear they might actually have to ask the race of the individual. And I think much of the problem in many localities is that the policies have, and in some instances cannot be explained thoroughly enough to the officer. And many times they don't have a good explanation for why they're doing what they're doing. So I think there lies part of the problem.

But in many of the agencies that we've had contact with, there's been little or no inconvenience to the citizen.

Kind of going back to the initial question that you asked Ms. King related to it, that what we're finding throughout the country is that many agencies have not, No. 1, been collecting this data long enough; and No. 2, once they get the data collected, they are having a time and an analyzation of that data to produce a viable product.

Mr. CUMMINGS. Mr. Maloney, you may have explained this, but in a previous panel they were talking about—I forget who it was—was talking about how—and I think you talked about it briefly—how you can collect the data, but then you've got to be able to process it. And your technology—and I assume yours is not the only company that has this kind of technology, I mean, this technology is designed to be reviewed daily, or, I mean, how is that done, and how do you minimize personnel hours to have—to review it?

Mr. MALONEY. That's a very good question. I think the issue up until this point has been most of the departments that are under consent decrees to collect this data have done so on paper, and that requires a lot of back-end processing. Somebody's got to data-enter the paper after the fact. And that is sort of an onerous job for the officer to do, because there's not really a benefit to the officer to filling out a form.

So the good news about new hand-held wireless technology is that the officer can fill out the form very easily, very quickly. There's edit checks inside the Personal Digital Assistant to make sure he's filling out the right information, and then once he hits the send button, the information is transmitted back into a central data base for immediate analysis and processing.

So, in essence, the computer is doing more of the checks and the analysis work, and the officer has to do very little other than just fill out some basic information.

In addition, on the back end, one of the nice things of this technology is that the officer is going to get information back once

they're entering the information. So when they put in a license plate or a driver's license of a suspect, they're going to be looking up criminal information at the State and the Federal level so they can get that back and help them do their job better, because they may be pulling over somebody who has a criminal history, maybe it's a stolen vehicle, and they're not going to know that until they do that look-up. So both of those in parallel with each other make it a very positive experience for the officer, and they actually want to do this.

Mr. CUMMINGS. Mr. Kelly, did you find that there was a lot of—in other words, there were people reluctant to do the things—you know, the things that you put in operation? Were they reluctant—there was not a great deal of supervision before, and people usually don't like change, and I can imagine in a quasimilitary operation, change becomes very uncomfortable. Did you find changing the mindset to be difficult?

Mr. KELLY. Yes. There was some initial resistance. The union is about 11,000 members of the Customs Service in the bargaining unit. There were concerns and questions through the union. But I think management went out and explained the reason for it. As the Lieutenant said before, you have to give the rationale, the reasons, to the employees as to why they're doing it. I think part of it was that they saw themselves becoming more professional, more like full players in the law enforcement community, and I think this was part and parcel to, you might say, their development. And it was—I think you can see by the numbers that it's been accepted, and it was accepted relatively quickly. Yes, there was initial resistance, but I think they realized themselves that there wasn't adequate supervision, that there wasn't adequate control, so that there wasn't adequate data collection. Some places were collecting data, other places were not, and we explained this to them.

At the same time, we made most of these changes just prior to Senate Finance Committee hearings that were to take place, three sessions on the Customs Service in the spring of 1999 to be modeled after, to a certain extent, the hearings that the Senate Finance had on the IRS earlier.

So we tried to impress on them the necessity of making change; this is the right thing to do; let's all get on board. I think a lot of the confluence of the events came together and was accepted relatively early on, with much to my pleasant surprise.

Mr. CUMMINGS. One last comment. You know, I think that if they had to go through and be subjected, as a part of the exercise of sensitivity, being searched and, you know, body search and all that kind of stuff, I think maybe they might look at it a little differently, because I think what happens is—Martin Luther King, Jr. said, "you cannot lead where you do not go, and you cannot teach what you don't know." And so often I think people need to be sensitized to that extent, because I don't think they like to see that happen to their wife or to themselves or relatives.

Thank you, Mr. Chairman.

Mr. CANNON. Thank you, Mr. Cummings.

I'd like to, first of all, salute you, Ms. King and Lieutenant Boykin, for your organizations' efforts in ending racial profiling. And I want you to know that I join you in condemning this offen-

sive practice and calling the State and local and other prosecutors to seek to stop this illegal act.

I also want to see us have some reaction to those people who falsely accuse law enforcement officers of racial profiling.

I might just point out here as a side-bar, Ms. King, are you familiar with the study last year or so of racial profiling in Salt Lake City?

Ms. KING. A little bit, yes.

Mr. CANNON. My recollection is we came out of that pretty well as a police force. And in part we have a number of Hispanics on our police force. The chief of police is Hispanic. I think there was a great deal of sensitivity to it, and I think people just thought it was wrong. So I'm pleased that, by far, the largest city police force in the State of Utah came away from that clean. And by the way, that happened in the context of an increase of 128 percent in our Hispanic population over a 10-year period. So I think there was a difficult challenge there, and we met that pretty well in Salt Lake.

Would the two of you describe your organizations' efforts to help support the use of audio-visual technology as one of the possible tools that can help eliminate racial profiling?

Ms. KING. Ah, yes, sure. As I guess I was talking before you came in about our support of H.R. 2074, which we would very much like you to consider becoming a sponsor of, And one aspect of that bill is a grant program that provides moneys to jurisdictions to do these kind of best practices programs, setting up data collection programs, oversight programs, accountability programs, training programs and video cameras if that's what the jurisdiction feels would be beneficial to them. So that's one area right now that's pending where we're actively promoting that legislation.

Mr. CANNON. Are you doing anything in the community beyond the legislative action?

Ms. KING. We're doing all kinds of stuff on this. I mean, we're bringing litigation, and we're working both at the State and Federal level and on legislation and also on public education. This is one of our top priorities.

Video cameras per se, as I said earlier, I don't see that as the sole solution to the problem of racial profiling, so we're really focusing more on data collection. I think in an ideal world, we'd have the technology like they have in Montgomery County, which is video cameras in every car and also hand-held devices, like those described earlier. And in an ideal world, everybody would have both pieces of technology, but it's not an ideal world.

Although we support video cameras, we wouldn't want to see funding go to video cameras if it meant taking it away from data collection programs.

Mr. CANNON. The really cool thing is that the cost of these devices are coming down so dramatically. Maybe we'll see more of it over time.

Lieutenant Boykin.

Mr. BOYKIN. Yes, Mr. Cannon. As my colleague had indicated, we're strongly in support of in-car video systems as a method to combat racial profiling. And like she indicated, we also recognize that's only one of many aspects that we need to look at. One that we might want to start at is our hiring practices. If you tradition-

ally and historically look at the types of people that law enforcement have hired, and even the way that we try to attract them, if you would actually take a close look at the commercials and the brochures that police departments are putting out, they're high-action types of videos. They're high-action types of brochures with police dogs and helicopters and SWAT teams and people with guns. That's the type of people you're going to get. That's the type of psychological profile of the individual you're going to get if that's what you're actually putting out as a persona for what you're looking for.

I think we need to take a close look at that as an aspect. We certainly need to look at our training and education aspect. And like Ms. King, we're doing quite a bit in the community, because we believe that it's a full-circle process. We're actively out there.

And as I stated in my opening statements, that I think NOBLE is in a very unique situation because many times our members and executives are faced with some of the same challenges that are the minorities. We live in many of these communities that are receiving this level and type of services. So we believe that we have an obligation to these minority communities to make a marketable change.

For that reason we have many community-based programs. We're trying to educate both young and old of their actual constitutional rights in the community. We went in partnership with Allstate Insurance Co. and created a brochure and videotape entitled, "The Law and You," which actually speaks loud to actually what individual rights are. The highlighted message is whether you're right or wrong. And we've seen incident after incident that the street is not a good battleground for a citizen to try to take up their cause. So that's important to us.

Additionally, we went in partnership with the Community Policing Consortium, in which we go to police departments and provide training in the community. We're actually bringing community in with the police department and talking about what's important to them, developing problem-solving modules.

So that's just a little bit of what we believe is the solution to this.

Mr. CANNON. Thank you very much, Ms. King and Lieutenant Boykin.

I understand that the ACLU and NOBLE have long supported the use of audio-visual technology as a tool to substantiate charges of police brutality. Are you aware of how effective this technology has been in regard to preventing or documenting police brutality?

Ms. KING. I don't know about any studies on it. The anecdote that I gave in my testimony was of a racial profiling incident where both patrol cars actually had videos on board. So I think that if police want to figure out a way to avoid having the cameras document what's going on, they can do so. Of course, sometimes the cameras help to the benefit of the officer as well who has been wrongfully charged, but I don't know of any studies that show effectiveness.

Mr. BOYKIN. I would just have to echo what Ms. King indicated. Again, referring back to my opening statements of what I said, I think it's a pretty well and common known fact that people generally behave better in front of cameras, whether you're a criminal or a police officer. So that added benefit right there certainly, I be-

lieve, would not only benefit the police department, but also the community at large, and that's very important. We have a vested interest in our community to make sure that all communities are receiving the proper and adequate quality level of police law enforcement services.

Mr. CANNON. Thank you, Ms. King.

Ms. King, today we've seen how audio-visual technology can both substantiate charges of racial profiling and, likewise, perhaps to disprove some claims.

In addition to what your organization has done as far as this technology in Texas, where else has the ACLU supported State legislative efforts to support the use of this technology to combat racial profiling?

Ms. KING. Well, I'm aware of legislation pending currently in Indiana and Minnesota. I'm quite certain our affiliates would support both of those bills, especially the Minnesota bill. It's a very good piece of legislation.

And other than that, in terms of legislation—I guess New Jersey wasn't legislation. It was under consent decree. And North Carolina was, I believe, legislation for their video cameras, and we did support that bill.

Mr. CANNON. Thank you——

Ms. KING. And Missouri as well.

Mr. CANNON. Ms. King and Lieutenant Boykin, it's our understanding that audio-visual tape evidence is admissible evidence in court. Do you agree with that?

Ms. KING. Uh-huh.

Mr. BOYKIN. Most definitely. We believe that it certainly should be admissible.

Mr. CANNON. Mr. Kelly, please, would you describe for the committee how the Customs Service uses audio-visual technology to record activity, and specifically how such evidence is used when Customs agents are accused of inappropriate actions?

Mr. KELLY. It's not used in that regard. The only aspect of technology that's used as far as personal search is concerned is a body scan—the body-imaging machines that are now at airports at 10 major cities throughout the country. Basically what that does is an x-ray light looks through the clothing of an individual, but not through the body, and that is only done on a voluntary basis. That's when someone has been singled out for a pat-down. If that individual does not want to be touched, they can volunteer to go in front of this machine. It looks through, as I say, the clothing and not the body.

If that person does not have contraband in their possession, that picture is immediately destroyed. The supervisor has the responsibility to seeing to that happening. If, in fact, drugs are found, the contraband is found, that picture is taken. So that is a visual aspect of the technology that's in place now in the Customs Service.

There has been some talk about the possibility of audio-visual components being used as far as personal search is concerned. I think there are some privacy issues that might arise there. In fact, if you use them, say, in a room where someone is asked to take off a piece of their clothing, that's an area of concern. It's been dis-

cussed, but to the best of my knowledge, the agency hasn't moved forward in that regard.

Mr. CANNON. Mr. Cummings, do you have any other questions?

Mr. CUMMINGS. I don't have anything else. I want to thank you all for being with us, and your testimony has been extremely helpful.

Mr. CANNON. I would also like to repeat our thanks to you for your patience under these long and trying circumstances, and thank you for coming. And the committee will stand adjourned.

[Whereupon, at 4:35 p.m., the committee was adjourned.]

[Additional information submitted for the hearing record follows:]

I

107TH CONGRESS
1ST SESSION

H. R. 2074

To prohibit racial profiling.

IN THE HOUSE OF REPRESENTATIVES

JUNE 6, 2001

Mr. CONYERS (for himself, Mr. SHAYS, Mr. SCOTT, Ms. JACKSON-LEE of Texas, Mr. SERRANO, Mr. WU, Mr. PAYNE, Mr. MENENDEZ, Mr. HONDA, Mr. STARK, Mrs. MORELLA, Mr. GREENWOOD, Mr. FRELINGHUYSEN, Mr. JOHNSON of Illinois, Mr. FERGUSON, and Mr. WALSH) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To prohibit racial profiling.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 "End Racial Profiling Act of 2001".

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.

TITLE I—PROHIBITION OF RACIAL PROFILING

Sec. 101. Prohibition.

Sec. 102. Enforcement.

TITLE II—PROGRAMS TO ELIMINATE RACIAL PROFILING BY FEDERAL LAW ENFORCEMENT AGENCIES

Sec. 201. Policies to eliminate racial profiling.

TITLE III—PROGRAMS TO ELIMINATE RACIAL PROFILING BY STATE AND LOCAL LAW ENFORCEMENT AGENCIES

Sec. 301. Policies required for grants.
Sec. 302. Best practices development grants.

TITLE IV—DEPARTMENT OF JUSTICE REPORT ON RACIAL PROFILING IN THE UNITED STATES

Sec. 401. Attorney General to issue report on racial profiling in the United States.
Sec. 402. Limitation on use of data.

TITLE V—DEFINITIONS AND MISCELLANEOUS PROVISIONS

Sec. 501. Definitions.
Sec. 502. Severability.
Sec. 503. Savings clause.
Sec. 504. Effective dates.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—Congress makes the following find-
3 ings:

4 (1) The vast majority of law enforcement
5 agents nationwide discharge their duties profes-
6 sionally, without bias, and protect the safety of their
7 communities.

8 (2) The use by police officers of race, ethnicity,
9 or national origin in deciding which persons should
10 be subject to traffic stops, stops and frisks, ques-
11 tioning, searches, and seizures is a problematic law
12 enforcement tactic. Statistical evidence from across
13 the country demonstrates that such racial profiling
14 is a real and measurable phenomenon.

1 (3) As of November 15, 2000, the Department
2 of Justice had 14 publicly noticed, ongoing, pattern
3 or practice investigations involving allegations of ra-
4 cial profiling and had filed five pattern and practice
5 lawsuits involving allegations of racial profiling, with
6 four of those cases resolved through consent decrees.
7 (4) A large majority of individuals subjected to
8 stops and other enforcement activities based on race,
9 ethnicity, or national origin are found to be law-
10 abiding and therefore racial profiling is not an effec-
11 tive means to uncover criminal activity.
12 (5) A 2001 Department of Justice report on
13 citizen-police contacts in 1999 found that, although
14 African-Americans and Hispanics were more likely
15 to be stopped and searched, they were less likely to
16 be in possession of contraband. On average, searches
17 and seizures of African-American drivers yielded evi-
18 dence only eight percent of the time, searches and
19 seizures of Hispanic drivers yielded evidence only 10
20 percent of the time, and searches and seizures of
21 white drivers yielded evidence 17 percent of the
22 time.
23 (6) A 2000 General Accounting Office report on
24 the activities of the United States Customs Service
25 during fiscal year 1998 found that black women who

1 were United States citizens were 9 times more likely
2 than white women who were United States citizens
3 to be X-rayed after being frisked or patted down
4 and, on the basis of X-ray results, black women who
5 were United States citizens were less than half as
6 likely as white women who were United States citi-
7 zens to be found carrying contraband. In general,
8 the report found that the patterns used to select
9 passengers for more intrusive searches resulted in
10 women and minorities being selected at rates that
11 were not consistent with the rates of finding contra-
12 band.
13 (7) Current local law enforcement practices,
14 such as ticket and arrest quotas, and similar man-
15 agement practices, may have the unintended effect
16 of encouraging law enforcement agents to engage in
17 racial profiling.
18 (8) Racial profiling harms individuals subjected
19 to it because they experience fear, anxiety, humilia-
20 tion, anger, resentment, and cynicism when they are
21 unjustifiably treated as criminal suspects. By dis-
22 couraging individuals from traveling freely, racial
23 profiling impairs both interstate and intrastate com-
24 merce.

1 (9) Racial profiling damages law enforcement
2 and the criminal justice system as a whole by under-
3 mining public confidence and trust in the police, the
4 courts, and the criminal law.
5 (10) Racial profiling violates the Equal Protec-
6 tion Clause of the Constitution. Using race, eth-
7 nicity, or national origin as a proxy for criminal sus-
8 picion violates the constitutional requirement that
9 police and other government officials accord to all
10 citizens the equal protection of the law. Arlington
11 Heights v. Metropolitan Housing Development Cor-
12 poration, 429 U.S. 252 (1977).
13 (11) Racial profiling is not adequately ad-
14 dressed through suppression motions in criminal
15 cases for two reasons. First, the Supreme Court
16 held, in Whren v. United States, 517 U.S. 806
17 (1996), that the racially discriminatory motive of a
18 police officer in making an otherwise valid traffic
19 stop does not warrant the suppression of evidence.
20 Second, since most stops do not result in the dis-
21 covery of contraband, there is no criminal prosecu-
22 tion and no evidence to suppress.
23 (12) Current efforts by State and local govern-
24 ments to eradicate racial profiling and redress the
25 harms it causes, while laudable, have been limited in

1 scope and insufficient to address this national prob-
2 lem.
3 (b) PURPOSES.—The independent purposes of this
4 Act are—
5 (1) to enforce the constitutional right to equal
6 protection of the laws, pursuant to the Fifth Amend-
7 ment and section 5 of the 14th Amendment to the
8 Constitution of the United States;
9 (2) to enforce the constitutional right to protec-
10 tion against unreasonable searches and seizures,
11 pursuant to the Fourth Amendment to the Constitu-
12 tion of the United States;
13 (3) to enforce the constitutional right to inter-
14 state travel, pursuant to section 2 of article IV of
15 the Constitution of the United States; and
16 (4) to regulate interstate commerce, pursuant
17 to clause 3 of section 8 of article I of the Constitu-
18 tion of the United States.

19 TITLE I—PROHIBITION OF
20 RACIAL PROFILING

21 **SEC. 101. PROHIBITION.**
22 No law enforcement agent or law enforcement agency
23 shall engage in racial profiling.

1 **SEC. 102. ENFORCEMENT.**

2 (a) REMEDY.—The United States, or an individual
3 injured by racial profiling, may enforce this title in a civil
4 action for declaratory or injunctive relief, filed either in
5 a State court of general jurisdiction or in a District Court
6 of the United States.

7 (b) PARTIES.—In any action brought pursuant to
8 this title, relief may be obtained against: any governmental
9 unit that employed any law enforcement agent who en-
10 gaged in racial profiling; any agent of such unit who en-
11 gaged in racial profiling; and any person with supervisory
12 authority over such agent.

13 (c) NATURE OF PROOF.—Proof that the routine in-
14 vestigatory activities of law enforcement agents in a juris-
15 diction have had a disparate impact on racial or ethnic
16 minorities shall constitute prima facie evidence of a viola-
17 tion of this title.

18 (d) ATTORNEYS' FEES.—In any action or proceeding
19 to enforce this title against any governmental unit, the
20 court may allow a prevailing plaintiff, other than the
21 United States, reasonable attorneys' fees as part of the
22 costs, and may include expert fees as part of the attorney's
23 fee.

TITLE II—PROGRAMS TO ELIMINATE RACIAL PROFILING BY FEDERAL LAW ENFORCEMENT AGENCIES

SEC. 201. POLICIES TO ELIMINATE RACIAL PROFILING.

(a) IN GENERAL.—Federal law enforcement agencies shall—

(1) maintain adequate policies and procedures designed to eliminate racial profiling; and

(2) cease existing practices that encourage racial profiling.

(b) POLICIES.—The policies and procedures described in subsection (a)(1) shall include the following:

(1) A prohibition on racial profiling.

(2) The collection of data on routine investigatory activities sufficient to determine if law enforcement agents are engaged in racial profiling and submission of that data to the Attorney General.

(3) Independent procedures for receiving, investigating, and responding meaningfully to complaints alleging racial profiling by law enforcement agents of the agency.

(4) Procedures to discipline law enforcement agents who engage in racial profiling.

1 (5) Such other policies or procedures that the
2 Attorney General deems necessary to eliminate racial
3 profiling.

4 TITLE III—PROGRAMS TO ELIMI-
5 NATE RACIAL PROFILING BY
6 STATE AND LOCAL LAW EN-
7 FORCEMENT AGENCIES

8 **SEC. 301. POLICIES REQUIRED FOR GRANTS.**

9 (a) IN GENERAL.—An application by a State or gov-
10 ernmental unit for funding under a covered program shall
11 include a certification that such unit and any agency to
12 which it is redistributing program funds—
13 (1) maintains adequate policies and procedures
14 designed to eliminate racial profiling; and
15 (2) has ceased existing practices that encourage
16 racial profiling.
17 (b) POLICIES.—The policies and procedures de-
18 scribed in subsection (a) shall include the following:
19 (1) A prohibition on racial profiling.
20 (2) The collection of data on routine investiga-
21 tory activities sufficient to determine if law enforce-
22 ment agents are engaged in racial profiling and sub-
23 mission of that data to the Attorney General.

1 (3) Independent procedures for receiving, inves-
2 tigating, and responding meaningfully to complaints
3 alleging racial profiling by law enforcement agents.
4 (4) Procedures to discipline law enforcement
5 agents who engage in racial profiling.
6 (5) Such other policies or procedures that the
7 Attorney General deems necessary to eliminate racial
8 profiling.
9 (c) NONCOMPLIANCE.—If the Attorney General de-
10 termines that a grantee is not in compliance with condi-
11 tions established pursuant to this title, the Attorney Gen-
12 eral shall withhold the grant, in whole or in part, until
13 the grantee establishes compliance. The Attorney General
14 shall provide notice regarding State grants and opportuni-
15 ties for private parties to present evidence to the Attorney
16 General that a grantee is not in compliance with condi-
17 tions established pursuant to this title.

18 **SEC. 302. BEST PRACTICES DEVELOPMENT GRANTS.**

19 (a) GRANT AUTHORIZATION.—The Attorney General
20 may make grants to States, law enforcement agencies and
21 other governmental units, Indian tribal governments, or
22 other public and private entities to develop and implement
23 best practice devices and systems to ensure the racially
24 neutral administration of justice.

1 (b) USES.—The funds provided pursuant to sub-
2 section (a) may be used to support the following activities:
3 (1) Development and implementation of train-
4 ing to prevent racial profiling and to encourage more
5 respectful interaction with the public.
6 (2) Acquisition and use of technology to facili-
7 tate the collection of data regarding routine inves-
8 tigatory activities in order to determine if law en-
9 forcement agents are engaged in racial profiling.
10 (3) Acquisition and use of technology to verify
11 the accuracy of data collection, including in-car video
12 cameras and portable computer systems.
13 (4) Development and acquisition of early warn-
14 ing systems and other feedback systems that help
15 identify officers or units of officers engaged in or at
16 risk of racial profiling or other misconduct, including
17 the technology to support such systems.
18 (5) Establishment or improvement of systems
19 and procedures for receiving, investigating, and re-
20 sponding meaningfully to complaints alleging racial
21 or ethnic bias by law enforcement agents.
22 (6) Establishment or improvement of manage-
23 ment systems to ensure that supervisors are held ac-
24 countable for the conduct of their subordinates.

1 (c) EQUITABLE DISTRIBUTION.—The Attorney Gen-
2 eral shall ensure that grants under this section are award-
3 ed in a manner that reserves an equitable share of funding
4 for small and rural law enforcement agencies.
5 (d) AUTHORIZATION OF APPROPRIATIONS.—The At-
6 torney General shall make available such sums as are nec-
7 essary to carry out this section from amounts appro-
8 priated for programs administered by the Attorney Gen-
9 eral.

10 TITLE IV—DEPARTMENT OF JUS-
11 TICE REPORTS ON RACIAL
12 PROFILING IN THE UNITED
13 STATES

14 SEC. 401. ATTORNEY GENERAL TO ISSUE REPORTS ON RA-
15 CIAL PROFILING IN THE UNITED STATES.

16 (a) REPORTS.—
17 (1) IN GENERAL.—Not later than two years
18 after the enactment of this Act, and each year there-
19 after, the Attorney General shall submit to Congress
20 a report on racial profiling by Federal, State, and
21 local law enforcement agencies in the United States.
22 (2) SCOPE.—The reports issued pursuant to
23 paragraph (1) shall include—
24 (A) a summary of data collected pursuant
25 to sections 201(b)(2) and 301(b)(2) and any

1 other reliable source of information regarding
2 racial profiling in the United States;
3 (B) the status of the adoption and imple-
4 mentation of policies and procedures by Federal
5 law enforcement agencies pursuant to section
6 201;
7 (C) the status of the adoption and imple-
8 mentation of policies and procedures by State
9 and local law enforcement agencies pursuant to
10 sections 301 and 302; and
11 (D) a description of any other policies and
12 procedures that the Attorney General believes
13 would facilitate the elimination of racial
14 profiling.
15 (b) DATA COLLECTION.—Not later than six months
16 after the enactment of this Act, the Attorney General shall
17 by regulation establish standards for the collection of data
18 pursuant to sections 201(b)(2) and 301(b)(2), including
19 standards for setting benchmarks against which collected
20 data shall be measured. Such standards shall result in the
21 collection of data, including data with respect to stops,
22 searches, seizures, and arrests, that is sufficiently detailed
23 to determine whether law enforcement agencies are en-
24 gaged in racial profiling and to monitor the effectiveness

1 of policies and procedures designed to eliminate racial
2 profiling.
3 (c) PUBLIC ACCESS.—Data collected pursuant to sec-
4 tion 201(b)(2) and 301(b)(2) shall be available to the pub-
5 lic.

6 **SEC. 402. LIMITATION ON USE OF DATA.**

7 Information released pursuant to section 401 shall
8 not reveal the identity of any individual who is detained
9 or any law enforcement officer involved in a detention.

10 TITLE V—DEFINITIONS AND 11 MISCELLANEOUS PROVISIONS

12 **SEC. 501. DEFINITIONS.**

13 In this Act:
14 (1) COVERED PROGRAM.—The term "covered
15 program" means any program or activity funded in
16 whole or in part with funds made available under
17 any of the following:
18 (A) The Edward Byrne Memorial State
19 and Local Law Enforcement Assistance Pro-
20 grams (part E of title I of the Omnibus Crime
21 Control and Safe Streets Act of 1968 (42
22 U.S.C. 3750 et seq.)).
23 (B) The "Cops on the Beat" program
24 under part Q of title I of the Omnibus Crime
25 Control and Safe Streets Act of 1968 (42

1 U.S.C. 3796dd et seq.), but not including any
2 program, project, or other activity specified in
3 section 1701(d)(8) of that Act (42 U.S.C.
4 3796dd(d)(8)).
5 (C) The Local Law Enforcement Block
6 Grant program of the Department of Justice,
7 as described in appropriations Acts.
8 (2) GOVERNMENTAL UNIT.—The term "govern-
9 mental unit" means any department, agency, special
10 purpose district, or other instrumentality of Federal,
11 State, local, or Indian tribal government.
12 (3) LAW ENFORCEMENT AGENCY.—The term
13 "law enforcement agency" means a Federal, State,
14 local, or Indian tribal public agency engaged in the
15 prevention, detection, or investigation of violations of
16 criminal, immigration, or customs laws.
17 (4) LAW ENFORCEMENT AGENT.—The term
18 "law enforcement agent" means any Federal, State,
19 local, or Indian tribal official responsible for enforc-
20 ing criminal, immigration, or customs laws, includ-
21 ing police officers and other agents of Federal,
22 State, and local law enforcement agencies.
23 (5) RACIAL PROFILING.—The term "racial
24 profiling" means the practice of a law enforcement
25 agent relying, to any degree, on race, ethnicity, or

1 national origin in selecting which individuals to sub-
2 ject to routine investigatory activities, or in deciding
3 upon the scope and substance of law enforcement ac-
4 tivity following the initial routine investigatory activ-
5 ity, except that racial profiling does not include reli-
6 ance on such criteria in combination with other iden-
7 tifying factors when the law enforcement agent is
8 seeking to apprehend a specific suspect whose race,
9 ethnicity, or national origin is part of the description
10 of the suspect.

11 (6) ROUTINE INVESTIGATORY ACTIVITIES.—The
12 term "routine investigatory activities" includes the
13 following activities by law enforcement agents: traf-
14 fic stops; pedestrian stops; frisks and other types of
15 body searches; consensual or nonconsensual searches
16 of the persons or possessions (including vehicles) of
17 motorists or pedestrians; inspections and interviews
18 of entrants into the United States that are more ex-
19 tensive than those customarily carried out; and im-
20 migration-related workplace investigations.

21 **SEC. 502. SEVERABILITY.**

22 If any provision of this Act, an amendment made by
23 this Act, or the application of such provision or amend-
24 ment to any person or circumstance is held to be unconsti-
25 tutional, the remainder of this Act, the amendments made

1 by this Act, and the application of the provisions of such
2 to any person or circumstance shall not be affected there-
3 by.

4 **SEC. 503. SAVINGS CLAUSE.**

5 Nothing in this Act shall be construed to limit legal
6 or administrative remedies under section 1979 of the Re-
7 vised Statutes of the United States (42 U.S.C. 1983), sec-
8 tion 210401 of the Violent Crime Control and Law En-
9 forcement Act of 1994 (42 U.S.C. 14141), the Omnibus
10 Crime Control and Safe Streets Act of 1968 (42 U.S.C.
11 3701 et seq.), and title VI of the Civil Rights Act of 1964
12 (42 U.S.C. 2000d et seq.).

13 **SEC. 504. EFFECTIVE DATES.**

14 (a) IN GENERAL.—Except as provided in subsection
15 (b), the provisions of this Act shall take effect on the date
16 of the enactment of this Act.

17 (b) CONDITIONS ON FUNDING.—Section 301 shall
18 take effect 1 year after the date of enactment of this Act.

THE END RACIAL PROFILING ACT of 2001

Title I: Prohibition on Racial Profiling

This Title would ban racial profiling, defined generally as the practice of a law enforcement agent relying, to any degree, on race, national origin, or ethnicity in selecting which individuals to subject to routine investigatory activities, or in deciding upon the scope and substance of law enforcement activity following the initial routine investigatory activity. Racial profiling would not include reliance on such criteria in combination with other identifying factors when the law enforcement agent is seeking to apprehend a specific suspect whose race, national origin, or ethnicity is part of the description.

The Department of Justice or individuals would be able to enforce this prohibition by filing a suit for injunctive relief.

Title II: Programs to Eliminate Racial Profiling by Federal Law Enforcement

This Title would require federal law enforcement agencies – such as the DEA, FBI, INS, and Customs Service – to cease practices that encourage racial profiling and adopt policies and procedures to eliminate racial profiling, including the following:

- A prohibition on racial profiling;
- The collection of data on routine investigatory activities;
- Procedures for receiving, investigating, and responding to complaints alleging racial profiling; and
- Procedures to discipline law enforcement agents who engage in racial profiling.

Title III: Programs to Eliminate Racial Profiling by State and Local Law Enforcement Requirements for Continued Receipt of Federal Funds.

This Title would require state and local law enforcement agencies to cease practices that encourage racial profiling and adopt policies and procedures to eliminate racial profiling, including the following:

- A prohibition on racial profiling;
- The collection of data on routine investigatory activities;
- Procedures for receiving, investigating, and responding to complaints alleging racial profiling; and
- Procedures to discipline law enforcement agents who engage in racial profiling.

If the Attorney General determines that a grantee of specified federal funds is not in compliance with these requirements, the Attorney General is to withhold all or part of the grant.

Incentive Grants. This Title also would authorize the Attorney General to provide grants to encourage compliance with this Act. These grants may be used for the development and implementation of best policing practices, such as the following activities:

- × Training to prevent racial profiling and to encourage more respectful interaction with the public;
- × Acquisition and use of technology to facilitate the collection of data;
- × In-car video cameras, portable computer systems and other technology to verify the accuracy of data collection;
- × Early warning systems and other feedback systems that help identify officers or units of officers at risk of racial profiling;
- × Systems and procedures for receiving, investigating, and responding to complaints alleging racial profiling;
- × Management systems to ensure that supervisors are held accountable for the conduct of their subordinates.

Title IV: Department of Justice Reports on Racial Profiling in the United States

Not later than two years after enactment of this Act and each year thereafter, the Attorney General is to submit to Congress a report on racial profiling by federal, state and local law enforcement agencies. This report shall include a summary of the data collected pursuant to Titles II and III.

By WestS.B. No. 1074

A BILL TO BE ENTITLED

AN ACT

relating to the prevention of racial profiling by certain peace officers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.131-2.136 to read as follows:

Art. 2.131. RACIAL PROFILING PROHIBITED. A peace officer may not engage in racial profiling.

Art. 2.132. LAW ENFORCEMENT POLICY ON RACIAL PROFILING. (a) In this article, "law enforcement agency" means an agency of the state, or a county, municipality, or political subdivision of the state that employs peace officers who make traffic stops in the routine performance of the officers' official duties.

(b) Each law enforcement agency in this state shall adopt a detailed written policy on racial profiling. The policy must:

(1) clearly define acts constituting racial profiling;

(2) strictly prohibit peace officers employed by the agency from engaging in racial profiling;

(3) implement a process by which an individual may file a complaint with the agency if the individual believes that a peace officer employed by the agency has engaged in racial profiling with respect to the individual;

(4) provide public education relating to the agency's complaint process;

(5) require appropriate corrective action to be taken against a

peace officer employed by the agency who, after an investigation, is shown to have engaged in racial profiling in violation of the agency's policy adopted under this article;

(6) require collection of information relating to traffic stops in which a citation is issued and to arrests resulting from those traffic stops, including information relating to:

(A) the ethnicity of the individual detained; and

(B) whether a search was conducted and if so, whether the person detained consented to the search;

(7) require quarterly evaluation and analysis of information collected by the agency as required by Subdivision (6); and

(8) require the agency to submit to the governing body of each county or municipality served by the agency an annual report of the information analyzed under Subdivision (7).

(c) On adoption of a policy under Subsection (b), a law enforcement agency shall examine the feasibility of installing video camera and voice activated microphone equipment in each agency law enforcement motor vehicle regularly used to make traffic stops and voice activated microphone equipment in each agency law enforcement motorcycle regularly used to make traffic stops. If a law enforcement agency installs video or audio equipment as provided by this subsection, the policy adopted by the agency under Subsection (b) must include standards for reviewing video and audio documentation.

(d) A report required under Subsection (b)(8) may not include identifying information about a peace officer who makes a traffic stop or about an individual who is stopped or arrested by a peace officer.

Art. 2.133. REPORTS REQUIRED FOR TRAFFIC AND PEDESTRIAN STOPS. A peace officer who stops a motor vehicle for an alleged violation of a law or ordinance regulating traffic or who stops a pedestrian for any suspected offense shall report to the law enforcement agency that employs the officer:

(1) a physical description of each person detained as a result of the stop, including:

(A) the person's gender; and

(B) the person's ethnicity, as stated by the person or, if the person does not state the person's ethnicity, as determined by the officer to the best of the officer's ability;

(2) the traffic law or ordinance alleged to have been violated or the suspected offense;

(3) whether the officer conducted a search as a result of the stop, and if so, whether the person detained consented to the search;

(4) whether any contraband was discovered in the course of the search and the type of contraband discovered;

(5) whether probable cause to search existed and the facts supporting the existence of that probable cause;

(6) whether the officer made an arrest as a result of the stop or the search, including a statement of the offense charged;

(7) the street address or approximate location of the stop; and

(8) whether the officer issued a warning or a citation as a result of the stop, including a description of the warning or a statement of the violation charged.

Art. 2.134. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED. (a) A law enforcement agency shall compile and analyze the information contained in each report received by the agency under Article 2.133 and, not later than March 1 of each year, submit a report containing the information compiled during the previous calendar year to the governing body of each county or municipality served by the agency in a manner approved by the agency.

(b) A report required under Subsection (a) must include:

(1) a comparative analysis of the information compiled under Article 2.133 to:

(A) determine the prevalence of racial profiling by peace officers employed by the agency; and

(B) examine the disposition of traffic and pedestrian stops made by officers employed by the agency, including searches resulting from the stops; and

(2) information relating to each complaint filed with the agency alleging that a peace officer employed by the agency has engaged in racial profiling.

(c) A report required under Subsection (a) may not include identifying information about a peace officer who makes a traffic or pedestrian stop or about an individual who is stopped or arrested by a peace officer.

(d) The Commission on Law Enforcement Officer Standards and Education shall develop guidelines for compiling and reporting information as required by this article.

Art. 2.135. EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. (a) A peace officer is exempt from the reporting requirement under Article 2.133 and a law enforcement agency is exempt from the compilation, analysis, and reporting requirements under Article 2.134 if, during the calendar year preceding the date that a report under Article 2.134 is required to be submitted:

(1) each law enforcement motor vehicle regularly used by an officer employed by the agency to make traffic and pedestrian stops is equipped with video camera and voice activated microphone equipment and each law enforcement motorcycle regularly used to make traffic and pedestrian stops is equipped with voice activated microphone equipment; and

(2) each traffic and pedestrian stop made by an officer employed by the agency is recorded by using the video and audio or audio equipment, as

appropriate.

(b) Except as otherwise provided by this subsection, a law enforcement agency that is exempt from the requirements under Article 2.134 shall retain the video and audio or audio documentation of each traffic and pedestrian stop for at least 90 days after the date of the stop. If a complaint is filed with the law enforcement agency alleging that a peace officer employed by the agency has engaged in racial profiling with respect to a traffic or pedestrian stop, the agency shall retain the video and audio or audio record of the stop until final disposition of the complaint.

Art. 2.136. LIABILITY. A peace officer is not liable for damages arising from an act relating to the collection or reporting of information as required by Article 2.133 or under a policy adopted under Article 2.132.

SECTION 2. Chapter 3, Code of Criminal Procedure, is amended by adding Article 3.05 to read as follows:

Art. 3.05. RACIAL PROFILING. In this code, "racial profiling" means a law enforcement-initiated action based on an individual's race, ethnicity, or national origin rather than on the individual's behavior or on information identifying the individual as having engaged in criminal activity.

SECTION 3. Section 1701.253, Occupations Code, is amended by adding Subsection (e) to read as follows:

(e) As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on racial profiling for officers licensed under this chapter. An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.

SECTION 4. Section 1701.402, Occupations Code, is amended by adding Subsection (d) to read as follows:

(d) As a requirement for an intermediate proficiency certificate, an officer must complete an education and training program on racial profiling established by the commission under Section 1701.253(e).

SECTION 5. Section 543.202, Transportation Code, is amended to read as follows:

Sec. 543.202. FORM OF RECORD. The record must be made on a form or by a data processing method acceptable to the department and must include:

(1) the name, address, physical description, including ethnicity, gender, height, and weight, date of birth, and driver's license number of the person charged;

(2) the registration number of the vehicle involved;

(3) whether the vehicle was a commercial motor vehicle as defined by Chapter 522 or was involved in transporting hazardous materials;

(4) the person's social security number, if the person was operating a commercial motor vehicle or was the holder of a commercial driver's license or commercial driver learner's permit;

(5) the date and nature of the offense, including whether the offense was a serious traffic violation as defined by Chapter 522;

(6) whether a search of the vehicle was conducted and whether consent for the search was obtained;

(7) the plea, the judgment, and whether bail was forfeited;

(8) [~~(7)~~] the date of conviction; and

(9) [~~(8)~~] the amount of the fine or forfeiture.

SECTION 6. Not later than January 1, 2002, a law enforcement agency shall adopt and implement a policy and begin collecting information under the policy as required by Article 2.132, Code of Criminal Procedure, as added by this Act. A law enforcement agency shall first submit information to the governing body of each county or municipality

served by the agency as required by Article 2.132, Code of Criminal Procedure, as added by this Act, on March 1, 2003. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2002, and ending December 31, 2002.

SECTION 7. A law enforcement agency shall first submit information to the governing body of each county or municipality served by the agency as required by Article 2.134, Code of Criminal Procedure, as added by this Act, on March 1, 2004. The first submission of information shall consist of information compiled by the agency during the period beginning January 1, 2003, and ending December 31, 2003.

SECTION 8. The Commission on Law Enforcement Officer Standards and Education shall establish an education and training program on racial profiling as required by Section 1701.253(e), Occupations Code, as added by this Act, not later than January 1, 2002.

SECTION 9. A person who on the effective date of this Act holds an intermediate proficiency certificate issued by the Commission on Law Enforcement Officer Standards and Education or has held a peace officer license issued by the Commission on Law Enforcement Officer Standards and Education for at least two years shall complete an education and training program on racial profiling established under Section 1701.253(e), Occupations Code, as added by this Act, not later than September 1, 2003.

SECTION 10. This Act takes effect September 1, 2001.

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