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S. 989: THE END RACIAL PROFILING ACT OF 2001

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION, FEDERALISM, AND PROPERTY RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

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S. 989: THE END RACIAL PROFILING ACT OF 2001

WEDNESDAY, AUGUST 1, 2001

U.S. SENATE,
SUBCOMMITTEE ON THE CONSTITUTION,
FEDERALISM, AND PROPERTY RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Subcommittee met, pursuant to notice, at 10:03 a.m., in room SD–226, Dirksen Senate Office Building, Hon. Russ Feingold, Chairman of the Subcommittee, Presiding.

Present: Senators Feingold, Schumer, Durbin, Edwards, Thurmond, Hatch, and Sessions.

OPENING STATEMENT OF HON. RUSSELL D. FEINGOLD, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Chairman FEINGOLD. I call the Subcommittee to order. Good morning, all of you, and welcome to the Constitution Subcommittee's hearing on S. 989, the End Racial Profiling Act of 2001.

This is the second hearing on the subject of racial profiling that this Subcommittee has held in the past 2 years. The first, in March 2000, was chaired by then-Senator and now Attorney General John Ashcroft. Attorney General Ashcroft has said that the hearing was instrumental in shaping his view that racial profiling is not only wrong, it is also unconstitutional.

President Bush has also spoken out against racial profiling, first during the campaign and Presidential debates, and then in his first address to the Congress back in February. There, the President said, "Earlier today, I asked John Ashcroft, the Attorney General, to develop specific recommendations to end racial profiling. It's wrong and we will end it in America."

Our first hearing on racial profiling focused on the pain and humiliation that Americans who are victims of racial profiling experience and the damage to the trust between law enforcement and the community caused by this practice. We heard the personal experiences of three citizens who had been victims of racial profiling, and I think their stories are representative of the experiences of thousands of law-abiding Americans.

One of them that we all remember was Master Sergeant Rossano Gerald, a decorated veteran of the Somalia conflict and the Gulf War. Sergeant Gerald related a harrowing tale of harassment by the Oklahoma State Police when he was driving with his son, Gregory, to a family reunion. As part of his testimony, Sergeant Gerald played a short videotape of his son talking about the experience,

and I would like to run that tape now; it is just a couple of minutes long.

[Videotape shown.]

Chairman FEINGOLD. That incident had a powerful impact on all of us who witnessed it. Its effect on children of this practice is obviously one of the things that concerns me the most about racial profiling. Some children like Gregory actually witness incidents of racial profiling and that can't help but have a lasting and devastating effect on them.

But I have also heard from African-American parents that they feel that they have to do something that would not even cross the minds of most white parents, and that is to instruct their children from a very early age about the prospect, and even the likelihood, of being stopped by the police when they haven't done anything wrong. That, to me, is a chilling fact.

Racial profiling leads to our children being taught from an early age as a matter of self-protection that they will not be fairly treated by law enforcement based not on the content of their character, but instead will be seen as suspicious based on the color of their skin.

A recent Gallup poll found that 44 percent of African-Americans believe they have been stopped by the police because of their race or ethnicity at some point during their lifetime. A poll conducted by the Washington Post, Kaiser Family Foundation and Harvard University made similar findings. That poll found that more than half of African-American men and one in five Latino and Asian men believe they have been the victims of racially motivated police stops. Racial profiling is a shame on our society that must be stopped. It is unjust, it is un-American.

When Representative John Conyers and former Senator Lautenberg and I introduced legislation to address this problem last Congress, there were many Americans who were unaware of the practice of racial profiling and others who believed it was lawful or justified. So we introduced a bill that was largely a vehicle to educate the public and our government agencies about the problem. That bill simply called for the Justice Department to carry out a nationwide study of traffic stops.

There is no question that some progress has been made over the past few years. Because so many victims of racial profiling like Sergeant Gerald and his son Gregory have had the courage to step forward and talk about the anger and the frustration and the indignity of being unfairly profiled, we have now moved well beyond where we were a few years ago. With the strong statements of President Bush and Attorney General Ashcroft, there is an emerging consensus in America that racial profiling is wrong and it should be brought to an end.

The legislation that Representative Conyers and I have introduced, with at least 15 cosponsors in the Senate and 61 cosponsors in the House, would do just that. This legislation is needed because Congress has a responsibility to protect the fundamental constitutional rights of all Americans.

The End Racial Profiling Act bans racial profiling and requires Federal, State and local law enforcement to take steps to cease and prevent the practice. The bill would allow the Justice Department

or individuals the ability to enforce the prohibition on racial profiling by filing a suit for injunctive relief.

The bill also requires Federal, State and law enforcement agencies to adopt policies prohibiting racial profiling, to implement effective complaint procedures, to implement disciplinary procedures for officers who engage in the practice, and to collect data on stops. In addition, it provides for data collection to allow Congress to monitor whether the steps it has outlined to eliminate and prevent racial profiling have been effective.

Our bill also conditions certain Federal funds to State and local law enforcement agencies on their compliance with those requirements. But it also authorizes the Attorney General to provide incentive grants to assist agencies with their compliance with this Act. Finally, the bill would require the Attorney General to report to Congress 2 years after enactment of the Act and each year thereafter on racial profiling in the United States.

I am very pleased that some of the lead cosponsors of the Senate and the House bills are here today with us, and we will hear from them shortly.

The vast majority of law enforcement officers put their lives on the line everyday to protect all of us and discharge their duties honorably, but we also now know that there are some law enforcement officers who do not. We must work to change the hearts and minds, and most importantly the behavior of those officers who engage in racial profiling.

I am very pleased that a growing number of State law enforcement officials have begun to take steps to address the problem of racial profiling, including in my own State of Wisconsin. Many of them also understand that this bill will complement their efforts and is necessary if we are truly going to end racial profiling in America.

I understand that the Department of Justice has not yet taken a position on the bill. But given the President's and the Attorney General's strong comments, and the fact that Assistant Attorney General for Civil Rights Ralph Boyd is beginning work this week, Representative Conyers and I, as well as Senator Clinton and Senator Corzine, whom I have worked with closely, look forward to a productive dialog with the Department. We hope ultimately, of course, to gain the administration's support for this bill and to work together to enact it into law during this Congress.

So, again, I want to welcome the witnesses. I look forward to your testimony.

Now, I would like to turn to the distinguished Ranking Member of the Subcommittee, Senator Strom Thurmond, for his opening remarks. I thank the Ranking Member for his cooperation in putting this hearing together.

Senator Thurmond?

STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator THURMOND. Thank you, Mr. Chairman. I appreciate your commitment to the issue of racial profiling. It is clearly unconstitutional for law enforcement to stop or search people solely because of their race, and this cannot be tolerated. However, there is wide-

spread agreement that the vast majority of law enforcement officers are dedicated professionals who act without bias of any kind.

I am concerned that the legislation we are considering today proposes a solution that is based on lawsuits and Federal mandates that would micromanage law enforcement at all levels. While I respect the chairman's intentions, I do not believe that this is the right approach.

Last year, members proposed a Justice Department study of traffic stops to better understand this issue. Attorney General Ashcroft supports such a study and is actively reviewing all Federal law enforcement practices in this area. The Justice Department is also providing grants to law enforcement in many related areas, such as for the installation of video cameras in police cars. I think there is bipartisan support for this type of approach.

I am afraid that this bill would handcuff the vast majority of police on the Federal and State levels who treat all citizens fairly and equally. We should not make the fight against crime harder to win.

I appreciate our witnesses being here today to discuss this important topic.

Thank you, Mr. Chairman.

[The prepared statement of Senator Thurmond follows:]

STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Mr. Chairman:

I appreciate your commitment to the issue of racial profiling. It is clearly unconstitutional for law enforcement to stop or search people solely because of their race, and this cannot be tolerated.

However, there is widespread agreement that the vast majority of law enforcement officers are dedicated professionals who act without bias of any kind. There is no consensus on how common the problem is, and we are still trying to understand how to measure this complex issue and interpret the data that is being collected. We need to learn much more about racial profiling before we develop sweeping solutions that reach across every aspect of law enforcement on the federal and state levels. It is hard to conclude that current efforts across America to address racial profiling are inadequate when we are still learning what they are.

I am concerned that the legislation we are considering today proposes a solution that is based on lawsuits and federal mandates that would micromanage law enforcement at all levels. While I respect the Chairman's intentions, I do not believe that this is the right approach.

Last year, members including the current Chairman proposed a Justice Department study of traffic stops to better understand this issue. Attorney General Ashcroft supports such a study, and is actively reviewing all federal law enforcement practices in this area. The Justice Department is also providing grants to law enforcement in many related areas, such as for the installation of video cameras in police cars to record traffic stops. I think there is bipartisan support for this type of approach, which we could enact without further delay if all of us on the Committee worked together.

The legislation we are considering today is very different from the approach that was promoted just last year. We must keep in mind that the question is whether any person is discriminated against because of his or her race, but the bill goes far beyond this worthy goal. It defines racial profiling so broadly that it will interfere in legitimate law enforcement efforts to locate and apprehend criminal suspects. Also, in its effort to promote lawsuits, it creates legal presumptions that make law enforcement officers prove that they are innocent, making lawsuits much easier. Discrimination should not be assumed simply based on statistics that show a racial disparity in a given population. In any event, lawsuits are already an option today for unconstitutional racial profiling even without this legislation.

I do not believe we should view lawsuits as the favored way to solve problems in America, and this issue should be no exception. More lawsuits will not promote cooperation and the search for common ground; they will discourage it. Moreover,

lawsuits will divert scarce law enforcement resources away from solving crime and into the pockets of lawyers.

Further, the bill would take much-needed federal grants away from states and localities if they do not fall in line with federal mandates. We should help states in their legitimate, innovative efforts to address this issue, but we should not micromanage them from Washington.

I am afraid that this bill would handcuff the vast majority of police on the federal and state levels who treat all citizens fairly and equally. In the past few years, law enforcement has started to turn the tide against violent crime and drugs in America. This is evident in many predominately minority communities, where the citizens have demanded that the police help them take their streets back from the criminal element. We should not act in such a way that we reverse this success, even unintentionally. We should not make the fight against crime harder to win.

I appreciate our witnesses being here today to discuss this important topic.

Chairman FEINGOLD. I thank the Ranking Member.

I have received a statement from one of our cosponsors, Senator Kennedy, who is also a member of the Committee and the Subcommittee who could not be here. I ask unanimous consent that his statement be placed in the record, without objection.

[The prepared statement of Senator Kennedy follows:]

STATEMENT OF EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Mr. Chairman, I agree with the President and the Attorney General that racial profiling is wrong, and we must do all we can to end it. Racial profiling is a gross insult to American ideals and the American dream. No one anywhere in America deserves to be stopped, searched, or harassed because of the color of his or her skin.

The End Racial Profiling Act is a strong and needed response to this problem. The bill prohibits racial profiling, and provides for the collection of data on traffic stops to make sure that the practice is rooted out wherever it occurs. The bill also authorizes incentive grants to help state and local police agencies develop more effective and fairer policing practices.

This bill will strengthen law enforcement. As Commissioner Kelly will testify, the practice of racial profiling threatens the "very compact of trust and fairness" between government and the people. Police officers are indispensable public officials whose dedication and courage deserve our highest respect. By eliminating the practice of racial profiling, this bill will enhance the stature of police officers across the country and their ability to serve and protect the public.

I commend Senators Feingold, Corzine, and Clinton, and Representatives Conyers and Shays, for their leadership on this issue. All of us are encouraged by the strong statements by President Bush and Attorney General Ashcroft against racial profiling in recent months. This important legislation deserves to be enacted into law as soon as possible.

I appreciate your commitment to the issue of racial profiling. It is clearly unconstitutional for law enforcement to stop or search people solely because of their race, and this cannot be tolerated.

However, there is widespread agreement that the vast majority of law enforcement officers are dedicated professionals who act without bias of any kind. There is no consensus on how common the problem is, and we are still trying to understand how to measure this complex issue and interpret the data that is being collected. We need to learn much more about racial profiling before we develop sweeping solutions that reach across every aspect of law enforcement on the federal and state levels. It is hard to conclude that current efforts across America to address racial profiling are inadequate when we are still learning what they are.

Chairman FEINGOLD. I now turn to another member of our Subcommittee and one of the coauthors of the bill, Senator Schumer, of New York.

STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator SCHUMER. Well, thank you, Mr. Chairman, and I want to start by thanking you not only for holding this hearing but for

making this the strong cause that you have made it, not even in this session of the Senate but those that go much further back. I am proud to cosponsor S. 689.

I also want to really commend my fellow Senator from New York, Senator Clinton, who has been a leader on this issue from the first day she got here. She campaigned on the issue and rolled up her sleeves and got to work by working with you on this issue. Her energy has been terrific and really helped drive the debate on this extremely important subject.

The same is true of Senator Corzine, who also talked about this issue in his campaign—we get New Jersey television in New York, so I saw that—and has again proceeded with the same diligence. So I think it is a great team to be here, and I am proud to be a cosponsor of the bill.

Mr. Chairman, our Constitution, our laws, our oldest traditions and our highest ideals dictate that, in America, justice is blind. Yet, irrefutable evidence has accumulated over the years that law enforcement officers, the gateway to our justice system, have all too often made decisions about who to look for, who to stop, who to search, and who to arrest on the basis of what people look like instead of what they are doing.

I have always been a big supporter of the men and women in blue who do the critical and dangerous work of keeping us safe, and I do not believe that there are disproportionate numbers of racists or bigots in the ranks of our police. I don't think anyone here is suggesting that.

The problem of racial profiling is a problem of systematic law enforcement procedures that use race as a proxy for probable cause. They use as a proxy for probable cause, and when you think about it, that is a horrible thing. In some ways, the problem is even more difficult to address because it runs a lot deeper than just a handful of bad-apple officers in the sense that it is endemic in our society. Still, we have no choice but to tackle it.

Those of us who have been fortunate enough to have never experienced this phenomenon can only imagine what it is like, and the tape that you showed, Mr. Chairman, brings it to life much better than in any way I could characterize. I have talked to people about this, young men, young women, who are trying extra hard to be model citizens.

I will never forget my law professor at Harvard University told us a story—and this was, I hate to say it, 27 years ago—of how he was stopped in the suburbs of Lexington, Massachusetts, regularly and searched because there were so few black people living in that suburb. So the feelings of rage, of helplessness, of total marginalization you would have if you had been pulled over, even though you had nothing to arouse legitimate suspicion, are enormous.

Four of out ten African-Americans report they have experienced exactly those emotions, because that is the number who say they have been unfairly stopped by the police for no other reason that skin color. And the problem isn't limited to so-called "driving while black." Latino Americans face a double whammy, first, of being profiled as law-breakers and, if that doesn't hold up, as illegal immigrants.

Most amazing of all, we now know that racial profiling, in addition to being both immoral and unconstitutional, doesn't even work on its own terms. The data that has come from Maryland, New Jersey and other States that have been collecting data show that the profile turns out to be wrong. Stopping greater numbers of minorities doesn't lead to greater apprehension of criminals.

Mr. Chairman, your bill recognizes this. It bans racial profiling without handcuffing police, it provides for greater collection of data on searches and detentions, and it authorizes grant funding for better training on cross-racial encounters, new technology, and better verification procedures. Its theme is to work with law enforcement, not against it, to solve this problem, and that is a key.

In the final analysis, our system of justice has no more sacred obligation than ensuring equal justice under the law. We are taking another step toward fulfilling that duty today, Mr. Chairman, and I want to commend you and Senators Clinton and Corzine for your work and accomplishment.

Chairman FEINGOLD. I thank the Senator from New York.

I now turn to the Ranking Member of the full Committee, Senator Hatch, for an opening statement.

STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

Senator HATCH. Well, thank you, Mr. Chairman, for allowing me to make some opening remarks upon the convening of this important hearing.

Racial profiling is an issue that has generated widespread public concern. Fortunately, unlike many of the issues we confront here in Washington, there has emerged a consensus concerning the fundamental point of the debate. Racial profiling, also known has bias-based policing, is wrong, it is unconstitutional, and it must not be practiced or tolerated. Mr. Chairman, you and I, the President, the Attorney General, and indeed every Member of Congress would agree that law enforcement activity must never be undertaken because of one's race.

Many have strong and diverging views, however, concerning how best to address this problem at this time. Today, we will hear some of those views from our witnesses and we should listen to them. Given this lack of consensus, political and community leaders must act prudently and responsibly in addressing this issue, for the stakes are quite high.

Under no circumstance should we allow this to become a political issue mired in partisan politics. The policy decisions we make in this area could well have a profound effect on policing in America. And as many of us know, the resulting costs to public safety are all too often felt in those communities that can least afford the carnage.

Witness, for example, what happened in Cincinnati, Ohio, over the last few months as the police have retreated from minority neighborhoods in the face of accusations of racism: 59 shooting incidents in the city, with 77 gunshot victims, compared with 9 shootings and 11 victims in the comparable 3 months last year. All but one of the victims has been African-American.

In my view, S. 989, the End Racial Profiling Act of 2001, though well-intentioned, is the wrong approach at this time. The provisions of the legislation suffer three flaws, as I view it: they are unnecessarily controversial, they are unjustifiably punitive to State and local authorities, and, above all, I believe they are premature.

First, the legislation plunges into the hornet's nest of controversy with, among other things, its definition of "racial profiling." As will become abundantly clear when our second panel begins testifying, there is no widely accepted definition of this term, and police organizations, community leaders and academics disagree even among themselves about what is or is not permissible police activity. Before stamping a label on certain police activity, we ought to at least identify the activity in question.

Compounding the problem concerning the definition of racial profiling, the legislation provides for lawsuits by persons who believe that they have been profiled. To bring such a lawsuit, such a plaintiff need only show "proof that the routine investigatory activities of law enforcement agents in a jurisdiction have had a disparate impact on racial or ethnic minorities." Thus, mere evidence of disparate impact is evidence of a violation of this Act. Yet, there is no definition of what is or is not a disparate impact. Is 51 percent to 49 percent sufficiently disparate, or must it be something more substantial? Does it mean that any policy that happens to impact adversely must be eliminated?

While the bill allows a plaintiff to sue only for declaratory or injunctive relief, not damages, entire police departments could be tied up in litigation even when there is no proof of intentional discrimination. Creating a litigation nightmare for law enforcement will unfairly drain community resources, divert manpower, and further foster an "us versus them" mentality. Instead, we should focus on encouraging positive relationships between law enforcement and the communities they serve.

Finally, supporters of the legislation fail to justify the need for these types of measures. Indeed, just last year we were exploring ways to encourage the Federal, State and local authorities to gather and study data to determine the prevalence of racial profiling. Yet, here we are today, a little more than 1 year later, considering legislation that, in effect, assumes that racial profiling has infected every police agency in this country.

Out of fairness to our Nation's police officers, and out of concern for our citizens' safety, we should be cautious about proceeding in this manner. Let me suggest, then, that at this point in the debate we focus on identifying the scope of the problem. Let us follow the lead of the Attorney General, who has committed the Department of Justice to gathering and analyzing data, and his civil rights chief, Ralph Boyd, Jr., who has publicly pledged to examine that data, train and monitor local police, and bring lawsuits whenever appropriate.

For our part here in the Congress, let us also suggest a return to the legislation that you, Mr. Chairman, cosponsored last Congress, the Traffic Stops Statistics Study Act. That, in the view of many, including the American Bar Association, constitutes the appropriate point of departure in this debate. And as Professor Harris, one of today's witnesses, testified before this Subcommittee last

year, "data collection...is surely the first step on [the] long road" to addressing this issue.

That approach has the added virtue of having been endorsed by Attorney General Ashcroft. He has on several occasions indicated his strong support for the Traffic Stops Statistics Study Act. He did that on the Committee, when he was a member of this Committee, and he is doing it as Attorney General. He has informed us that he is prepared to move forward in gathering and studying such data.

You may recall that in February of this year, the Attorney General wrote me and urged the Judiciary Committee to promptly consider moving legislation along the lines of the Statistics Study Act. I would hope that as we continue to debate the necessity of S. 989, we at least move forward on legislation that will assist the Attorney General's efforts. I believe that legislation would go through both Houses of Congress quite fast, and it should.

Thus, Mr. Chairman, while I cannot support the legislation that is the subject of today's hearing, I pledge to work with you. You do a great job. You are very sincere and you are a very knowledgeable member of this Committee. I pledge to work with you to ensure that the Department of Justice obtains the data we need for a thorough, fair-minded examination of police practices in this country. In the meantime, let us be careful not to impugn the men and women who daily put their lives on the line for all of us. We must never forget that the vast majority of them serve their communities with distinction and with honor.

I want to thank you, Mr. Chairman. I look forward to learning from our witnesses today and I appreciate you allowing me to make this statement.

Chairman FEINGOLD. I thank you, Senator Hatch, and I do appreciate the offer to work together on this. I will say just in reference to one of your remarks that there is absolutely nothing in our bill or in our intent or in our actions that suggests that we assume that racial profiling exists in all police departments. We don't believe that, it isn't true, and that isn't our position.

Senator HATCH. That is good.

Chairman FEINGOLD. But other than that, I do look forward to addressing each of those points. Thank you, Senator Hatch.

Now, I would like to turn to Senator Durbin, who not only is a strong cosponsor of this bill, but has also initiated other efforts on this general issue of racial profiling.

Senator Durbin?

STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DURBIN. Thank you, Mr. Chairman, and thanks for this hearing on the End Racial Profiling Act. I am proud to be an original cosponsor of this legislation.

From the earliest days of our Nation, we have struggled with the issue of race. Despite all of our progress, there is grim evidence that justice in America is far from color-blind.

Racial profiling is a serious problem that appears to be particularly salient in the enforcement of our Nation's drug laws. Consider these numbers: African-Americans represent 12 percent of the

American population, 13 percent of its drug users, but 35 percent of those arrested for drug possession and 55 percent of those convicted of drug possession and over 60 percent of those incarcerated for these crimes. This the reality of racial disparity in America's criminal justice system, despite the fact that five times as many whites use drugs as African-Americans.

In my home State of Illinois, the situation sadly is even worse. Ninety percent of drug offenders admitted to Illinois prisons are African-Americans, the highest percentage in the country. And consider this statistic: for every 100,000 white male adults in Illinois, 20 were sent to prison for violating drug laws. For every 100,000 African-American adult males in Illinois, 1,146 were sent to prison, a rate 57 times higher.

According to the Sentencing Commission, which tracks and analyzes criminal justice statistics, approximately 32 percent of black men aged 20 to 29 are incarcerated, on probation, or on parole. Compare this to 1 in 15 of white men in the same age range. These disparities do not reflect who uses or sells drugs, but who is stopped and searched. Racial profiling played a role in producing these statistics, and as a result it has helped to erode the credibility of law enforcement that the majority of our men and women in blue bring to this noble profession.

The U.S. Customs Service has the difficult task of enforcing drug laws at our borders. A few years ago, I learned that women of color were being inappropriately and disproportionately targeted for strip searches and x-ray searches by the U.S. Customs Service officials in Chicago. I ordered a GAO study and found that there was literally no connection between the women who faced this humiliating experience in Chicago's airport and the effort to stop drugs coming into America. With that data, I introduced legislation, the Reasonable Search Standards Act, S. 799.

Commissioner Ray Kelly is here today and he is going to testify. Before he left the U.S. Customs Service, he did an extraordinary thing. He didn't argue about our findings, he didn't demand more evidence, he didn't ask that we sue him. He made a difference, he changed the policy. He prohibited searches based on race. He requested and demanded the documentation of reasons for a search, and he trained the personnel at the Customs Service about search procedures.

Customs data shows that these changes that Commissioner Kelly on his own initiative put in place resulted in a significant decrease in the number of minorities searched and a dramatic increase in the number of positive searches yielding drugs. Body searches were slashed by 80 percent. There was an increase in drug seizures of 38 percent. This is strong evidence that good police work can spare people of color the indignity of criminal suspicion.

I am glad you are here, Commissioner Kelly, and I am looking forward to your testimony. I am sorry you are no longer at the Customs Service, but I hope that we can implement legislation that made your forward-looking rule changes permanent law in this country.

Each of us will join in some resolution at some point to condemn racial profiling. I guess the ultimate responsibility we face is

whether or not we are prepared to make those changes in the law that will end racial profiling.

Senator Feingold, your bill is a good step in that direction. Thank you for this hearing.

Chairman FEINGOLD. Thank you so much, Senator Durbin, for your words and your actions in this area.

Now, I am very pleased that we can call our first panel of witnesses. Let me first thank you for your patience. As you know, it is rare to have this number of opening statements at a Subcommittee, but it is a good sign that there is tremendous interest on this Judiciary Committee on this issue and the Senate is going to take it very seriously.

I am very pleased to have distinguished members of both the Senate and the House on hand to testify today. The development of the End Racial Profiling Act has been a bicameral effort from the start, and that is reflected in our first panel.

The customary protocol for such panels is for Senators to testify before House members, but with the indulgence of my colleagues from the Senate, I would like to first call on Representative John Conyers, of Michigan, who has been the leader in the fight on this issue long before most Americans had even heard the term "racial profiling." Of course, he is the Ranking Member of the House Judiciary Committee and the second-longest-serving member of the House of Representatives. Then we will hear from Senator Corzine and Senator Clinton and, after them, from Representative Shays.

It has been, Representative Conyers, a great honor and a privilege to work with you on this issue during the last two-and-a-half years. I am grateful to you for taking the time to join us today and you may proceed with your testimony.

STATEMENT OF HON. JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Representative CONYERS. Thank you, Chairman Feingold and members of the Subcommittee and my friend, the former chairman of the full Committee, Orrin Hatch. I am delighted to be here.

I was instructed to come over here and not break protocol, no matter what I did. This is a case of the last shall be first, and I am flattered, grateful and happy to be here with this very distinguished panel.

Then you put on my Mayor of the city of Detroit. I am now coming before him on top of it. Thanks a lot, Chairman Feingold, you really know how to fix me up at home and on the other side of the Hill.

I am in great spirits today because several Congresses ago we started this discussion of racial profiling, and I must tell you that there are very few subjects that have caught on, taken on a life of their own and come into the public screen to such an extent that we are all brought here today.

We are here because the President of the United States has asked us to get a bill together and bring to him because he wants to end racial profiling. I am not sure how many definitions are floating around out there, but I can tell you one thing: racial profiling violates the equal protection clause. You cannot stop, detain or arrest people because of the color of their skin, ethnicity or

national origin. It is as simple as that. That is a good starting point for any legal analysis.

Number 2, I just want to be put on the record as stating that there are so few African-American men who have not experienced racial profiling or know someone who has that you could put them all inside the space between this dais and where you are. It has happened to everybody, and so I will set the record straight so nobody has to ask me, has it happened to me. Yes, it has happened to me. It happened to me, though, before I became a Congressman.

Actually, in all due respect to all of our police, I think I get the benefit of the doubt. But when I was a lawyer, Mayor Archer may remember, that there was a Detroit policeman they called Texas Slim, and I always ended up in criminal court. On night he was following me down Linwood. What would he be doing on Linwood, in Detroit, in the evening? I got a ticket because the light that illuminates my back plate was not working. That is what he ticketed, and he did it with a straight face and it was strictly business. I was not offended. I did not ask him any questions or make any protests.

But for most other people, this is an incredibly searing experience. What if you lived in Detroit right at the border of Dearborn. In Detroit—most of you know where that is—you have to go through Dearborn to get to your house at night and you get stopped on an average of once every 2 weeks? I mean, you know the police officers and they know you at this point.

This is one of these little issues that has been eating away at people, and in the finest sense of being constructive legislatively we have put together this very modest proposal. I can tell you our staffs will begin meeting with the Attorney General's staff this week or next week. The cooperation has already begun, I am happy to say.

I want to just put to rest that this legislation does not allow individual suits for money damages. First of all, anybody that has a beef against any kind of law enforcement or municipality, county, State or Federal, can sue individually right now and 42 U.S.C. 1983. However, there are a lot of immunity problems they have to get over, but this legislation, does not authorize one single suit at all for money damages. This is a bill that asks the Federal, the State, the county and the city law enforcement agencies to begin to keep records about racial profiling, and that we will support them if there are any problems about how we should go about it. We would be very happy to help fund data collection and other policies that help end the practice.

Most police chiefs have told me already that 99 percent of any information is already on a traffic ticket, but suppose a person is stopped and there is no ticket. Then we have to make sure we keep track of it. So we are following this in, I think, a very excellent way.

Senator Feingold, I have to single you out as one who has really moved in a very reasonable way, and the leadership you have shown here is really commendable. So I am happy to join with you in this discussion.

Let me point out it was when Senator Ashcroft was chairing one of these Committees that we had the first hearings on racial

profiling in the U.S. Senate. He is the one who has called me to say I want to work with you; get us some legislation, let's get going with it. The President of the United States has also said that. I think we could not be off to a smoother and better start.

Now that we have admitted Laura Murphy, of the ACLU, into the hearing room, I can sleep more comfortably tonight, and so can you, Chairman Feingold. Reverend Wendell Anthony, the chairman of the Detroit Chapter of the NAACP, sends his congratulations to you.

Thank you for allowing me to begin this testimony.

[The prepared statement of Representative Conyers follows:]

STATEMENT OF HON. JOHN CONYERS, JR., A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

I want to start this morning by thanking Senator Feingold for making the issue of Racial Profiling a priority in the Senate Judiciary Committee. He is certainly no stranger to this issue and has walked with me every step of the way in pursuing legislation that will bring the practice of racial profiling to an end. I am glad to see strong bipartisan support of racial profiling legislation around the nation and firmly believe that the time is ripe for the passage of federal legislation.

Since I first introduced racial profiling legislation in the 105' Congress, the pervasive nature of racial profiling has gone from anecdote and theory to well-documented fact. Data collected from numerous states show beyond a shadow of a doubt that African-Americans and Latinos are being stopped for routine traffic violations far in excess of their share of the population or even the rate at which such populations are accused of criminal conduct.

Most fundamentally, racial profiling has not proven an effective tactic for fighting crime. A recent Justice Department report found that although African-Americans and Hispanics are more likely to be stopped and searched by law enforcement, they are much less likely to be found in possession of contraband. This pattern of over-inclusive stops and detentions lies at the heart of the breakdown of trust between police and communities.

Although the vast majority of law enforcement agents nationwide discharge their duties professionally and without bias, we as a nation should not tolerate discrimination by a small minority of police officials. Racial profiling is a double-barreled assault on our social fabric. Nearly every young African-American and Hispanic male has been subjected to racial profiling or has a family member or close friend who has been a victim of this injustice.

Racial profiling sends the message to young African-Americans, Hispanics and other minorities that the criminal justice system, and therefore the system at large, belittles their worth. More broadly, it causes a breakdown of the trust on which community policing depends. Unless that trust is built and nurtured, the police can't do an effective job of protecting our communities and it makes an already difficult job more dangerous.

The End Racial Profiling Act reflects changes in the legal and political climates that have occurred since traffic stop data collection legislation was offered during the 106' Congress. Since that time, statistical evidence from around the country has indicated data collection alone is not enough to arrest the racial and ethnic disparities in stops and detentions. In Maryland, for example, even after litigation and data collection, the pattern of disparities in traffic stops has persisted. This is why our bill includes a ban on racial profiling.

No American should walk through any city, drive down any road or travel through any airport, looking over their shoulder and waiting for the inevitable police stop. While this legislation may not stop racial profiling tomorrow, it will send the message that the federal government is committed to the equal protection of civil rights and begin a comprehensive process of rooting-out bias in law enforcement.

Chairman FEINGOLD. Thank you. We are so fortunate to have you as our leader on this issue, and thank you for coming over.

Now, I am awfully happy to turn to two Senators who came here this year to the Senate and immediately indicated that they wanted to work on this, and work on it everyday, and that is exactly what they have done.

First, we will turn to Senator Jon Corzine, of New Jersey. Senator Corzine brought up the issue of racial profiling in our very first meeting when he came to the Senate. He told me that ending racial profiling was one of his highest priorities, and has consistently pressed for the toughest, most comprehensive bill we can pass.

Senator Corzine, thank you for all your work. The floor is yours.

STATEMENT OF HON. JON S. CORZINE, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator CORZINE. Mr. Chairman, I am truly pleased to be here to speak on this issue that is so important to both my State and the Nation. I also want to thank you for your very thoughtful and strong leadership on this issue. I want to thank Senator Clinton, who from the very first day, as you suggested, has talked about this with you, myself and others, making this a top priority.

I also am extraordinarily grateful for the leadership in the House of Representatives. Congressman Conyers has been a hero on this for as long as this has been an issue. We look to him for guidance and he has been terrific. Congressman Shays and others have also stood up for what is right. Particularly, I want to note two New Jersey Republicans who have stood up on this issue, Congressmen Frelinghuysen and Ferguson, who are cosponsors. This is truly something that people recognize as a bipartisan initiative.

The practice of racial profiling, Mr. Chairman, is the antithesis of America's belief in fairness and equal protection under the law. Stopping people on our highways, on our streets and at our borders because of the color of their skin really tears at the fabric of what we are about as a Nation. Our nation is built on the premise that we are all created equal. Racial profiling undermines that principle. It is morally and constitutionally wrong.

But not only is it wrong, it is an ineffective law enforcement tool. As Senator Schumer noted, there is no evidence that stopping people of color adds up to catching bad guys. In fact, statistics show that singling out black or Hispanic motorists for stops and searches does not lead to a higher percentage of arrests.

Mr. Chairman, racial profiling has been a longstanding, serious concern in New Jersey. Yet, it took a tragedy on the New Jersey Turnpike to really focus our attention on the problem and motivate action. In 1998, four young African-American men were driving on the turnpike on their way to North Carolina, hoping to get a college basketball scholarship. Two State troopers pulled them off the road and the frightened driver lost control of the van. Dozens of shots were fired. Three out of the four kids were shot. Fortunately, all survived.

After an extensive investigation, one State trooper was charged with aggravated assault and another with attempted murder. The two officers' records of previous investigatory stops had shown a pattern of race-based interventions.

Unfortunately, the shooting of these young people was just the tip of the iceberg. In 1999, the State attorney general found that for years State troopers had practiced racial profiling on the New Jersey Turnpike, stopping individuals for routine investigatory activities based on their race.

Around the same time, the Justice Department came to New Jersey to investigate the allegations and established a consent decree with the State requiring the State to institute a number of important reforms, including new training programs, strong oversight procedures, hiring of additional minority officers, and collection of statistics to monitor progress. Then-Governor Christine Todd Whitman concurred with the decree and its remedies.

Fortunately, despite our historic failures on the subject, New Jersey responded in a thoughtful, bipartisan manner. The Governor and newly appointed attorney general worked diligently to implement the consent decree. The Black and Latino Caucus held public inquiry into racial profiling, documenting its history and prevalence. The Senate Judiciary Committee, chaired by a Republican, probed how top officials handled racial profiling by the State police and proposed a series of added safeguards, including banning so-called consent searches.

Racial profiling is an important issue in New Jersey, but it is also a national problem. This hearing will make that clear, and I think Senator Durbin's statistics are very telling. In fact, I hope that New Jersey can be a model on how to respond, if not when to respond.

In my home county, Union County, New Jersey, county prosecutor Tom Manahan, again a Republican, worked closely with the chiefs of police in our county to develop a set of policies that will foster greater accountability among police officers and deter them from using race as a reason to stop civilians. They also established a whole series of monitoring and data collection procedures that will be tremendous indicators.

Unfortunately, despite the growing recognition that racial profiling exists and is wrong, we still have a lot of work to do. In New Jersey, our statistics haven't changed even though there has been this very visible discussion of the problem, and anxious actions taken to remedy it.

A recent survey of police officials across the Nation found nearly 60 percent of police officials say racial profiling is not a problem in their community. Fewer than 20 percent have adopted policies to outlaw the practice. Clearly, it is hard to solve a problem if you don't see it as a problem. We need to move on this. I think this legislation is a major step, a next step in America's continuing struggle to provide civil rights for all Americans.

I am not going to go through the legislation because you have outlined it, but it is important to deal with the definition, to require statistical records, and then to provide real carrots and sticks to encourage law enforcement and to support them in doing the right thing.

This bill is not about blaming law enforcement. It is not designed to prevent law enforcement from doing its job. In fact, it tries to help make that happen. Law enforcement is most effective when there is confidence in society about its fair and balanced treatment of everyone in front of the law. That is what this bill is about. I am proud to be a supporter. I want to do everything we can to make sure that we bring about prompt passage of the End Racial Profiling Act.

Chairman FEINGOLD. Senator Corzine, thank you for your tremendous devotion to this issue.

Our next witness needs no introduction. Senator Hillary Clinton, from the State of New York, has impressed everyone, of course, with her passion and hard work both before coming to the Senate and in the Senate. But I can tell you on this one it is very, very real. She has worked with us everyday on this issue and she has made a valuable contribution to the legislation. I am so glad we have her so deeply involved in this bill.

Senator Clinton, I apologize for how long it has taken. You may proceed.

STATEMENT OF HON. HILLARY RODHAM CLINTON, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator CLINTON. Thank you, Mr. Chairman. I appreciate very much the opportunity to testify here with not only my distinguished colleagues and other elected officials, but also members of the law enforcement community and other experts who have worked diligently to try to identify a problem, define a problem, and then to come up with some ways of addressing that problem.

I particularly want to thank those members of the law enforcement community who have worked with us over the past months to help shape this bill. A number of them will be addressing you.

I particularly appreciate Senator Durbin's identifying Ray Kelly, who did a superb job as the Commissioner of the U.S. Customs Service, and before that the Commissioner of the New York City Police Department. Under his leadership, as he will tell you specifically, the Customs Service made unprecedented strides both in preventing racial profiling and in seizing contraband. That is the kind of strategy that we are hoping to really highlight and further because of this bill.

I am a very strong supporter, as I think every one of us both on the Committee and those of us testifying, of law enforcement. Where would be without those men and women who are on the front lines? The people I speak with really want the kind of community support that makes for good law enforcement.

Time and time again, officers have told me how they really try to do the best job they can, often under incredibly stressful and difficult circumstances, and they need the support of the communities they police. They need to be able to count on the respect of those whose streets they walk and whose homes they protect.

We believe, those of us who have worked on this legislation, that we are taking a step toward improving law enforcement and supporting our men and women in uniform, while sending a clear signal that an unconstitutional practice that is deplored uniformly across our country has to cease, both because it is wrong and because it undermines law enforcement instead of promotes the safety of our communities.

I want to thank, certainly, Chairman Feingold for his leadership on this important issue, and my friend and colleague, Senator Corzine, who came to the Senate with this issue on the forefront of his agenda. And I want to thank Congressman Conyers. I couldn't believe it when you were introduced as the second-longest-serving member of the House. You started at a very, very young

age, John, I know. No one believes that. I mean, that is hard to accept. And thanks also to Congressman Shays for his leadership.

As has been reported, we held the press conference announcing this legislation on the House side under Congressman Conyers' leadership and had strong bipartisan support, including from Congressman Asa Hutchinson, who is about to, I assume, be confirmed as the head of DEA. I was very pleased to see Congressman Hutchinson there supporting this bill because when he assumes the responsibility for the agency that is attempting to keep drugs out of our country and off our streets, he has already committed to ending racial profiling in part because he understands it is not an efficient law enforcement tool for doing what we need to do to stop drug abuse.

Now, we are here because we know that this is a problem, and I want to commend the President and the Attorney General for their public support and their private efforts to try to come to some bill that can have the kind of bipartisan, bicameral support that we have attempted to muster behind this bill.

I am hopeful with the President's strong support and his statement in the address to Congress that we will see a bill on his desk before the end of this year. I think it is entirely possible. The Attorney General has put it on the top of his agenda, and as Congressman Conyers has said, discussions have already begun to try to work that out.

One point I just want to underline is the issue of effective criminal justice. We started some years ago, under the leadership of people like Ray Kelly, community policing and data collection to try to take our information that was available and combine it with the streets smarts that our law enforcement personnel brought and really focus in on where crime was occurring.

We have had great results in decreasing crime. We hope that we are going to keep driving the crime rate down because by and large it does impact most drastically on those communities that are most vulnerable. What we want to do in this bill, if one reads the description of the findings and the policies that are proposed, is really to support law enforcement with grants, with training, with the kinds of attitudes that will enable the vast majority of law-abiding people to feel very comfortable that the highest professionalism is at work in their police departments.

We know that in New York City there has been strong support for legislation passed unanimously by the New York City Council, supported both by Mayor Giuliani and Police Commissioner Kerik, to begin publicly releasing data concerning the operations of the 40,000-member New York City police force, the largest police force in the world. We know that collecting this data and making it public will enable our police departments to do an even better job.

So there is much to be gained from the kind of positive approach that this legislation takes, which really is intended to be both a prohibition of racial profiling and a real statement of support for positive, effective law enforcement.

I thank the Committee for this hearing and for the attention and concern that you are going to give to this issue, and look forward to working with not only you, but the administration in coming up

with a bill that can be passed and signed by the President this year.

Chairman FEINGOLD. Senator Clinton, you speak eloquently for all of us especially when you emphasize that all of us who support this bill are interested in maintaining and improving the excellent relationships we have with law enforcement in our States. That is what the bill is intended to do and if you look at the bill closely, that is exactly what it does. We want to work closely with all law enforcement to make sure that is the end result as well.

Thank you, Senator Clinton.

[The prepared statement of Senator Clinton follows:]

STATEMENT OF HON. HILLARY RODHAM CLINTON, A U.S. SENATOR FROM THE STATE OF NEW YORK

Chairman Feingold and members of the subcommittee, thank you for giving me the opportunity to testify today here with my distinguished colleagues, other elected officials, members of the of the law enforcement community, and other experts who understand the tremendous harm that racial profiling causes and why we must work together to bring this conduct to an end.

I also want to express my gratitude to my esteemed colleagues, Chairman Feingold for your leadership and Senator Corzine for his tremendous efforts in helping craft the End Racial Profiling Act of 2001. I believe this bill is thoughtful, balanced and is designed to bring people together, not to divide.

In addition to my colleagues here in the Senate, I also want to acknowledge the efforts of Representative Conyers, the Ranking Member of the House Judiciary Committee, and a leader on this issue. Representative Conyers has worked to obtain the support of both Democrats and Republicans alike, including Republican Representatives Asa Hutchinson, Chris Shays, Tim Johnson, Constance Morella, and Jim Greenwood. I thank them all of them for their support and hope we will be able to build upon this strong bipartisan support in the Senate.

Finally, I want to say Mr. Chairman that I am so very proud that testifying before the Committee today is Ray Kelly, former Commissioner of the New York City Police Department and more recently, the former Commissioner of the U.S. Customs Service, a capacity in which he served from August 1998 through January 2001. Under his leadership, the Customs Service made unprecedented strides in preventing racial profiling and improving its relations with the community it serves.

* * *

We are all here today, Democrats and Republicans alike, law enforcement and those of us who are protected every day by law enforcement, because racial profiling is simply wrong. It is unjust. It relegates honest, law-abiding citizens to second-class status when they suffer the embarrassment—the humiliation—the indignity—of being stopped or searched—and in some cases even physically harmed—simply because of their race, ethnicity or national origin.

In addition to being unjust, however, racial profiling is also an ineffective law enforcement tool. The experts at John Jay College of Criminal Justice and elsewhere will tell you that the evidence is unquestionably clear, for example, that the vast majority of Blacks and Hispanics who are stopped or searched have committed no crime. Indeed, rather than serving as an effective law enforcement tool, racial profiling achieves one thing and one thing only—increasing the level of mistrust between law enforcement and the communities it is charged with the heavy burden to protect.

That result serves no one.

It fails to serve law enforcement because a critical component of truly effective law enforcement is strong community-police relations, partnerships in which law enforcement and our communities are working together to reduce crime and to make our communities as safe as they can be.

Racial profiling fails to serve prosecutors, because law-abiding people who lose their faith in the promise of equal protection also sit on juries and are called upon to assess the credibility of police officers, who often play a key role in getting convictions for criminals.

Most important, however, racial profiling fails to serve our community and instead strikes at the very foundation of our democracy.

That is why it must end and end now.

What does this bill do and what doesn't it do?

It is my hope, Mr. Chairman, that as our colleagues consider this legislation, they understand that this bill is not about blaming law enforcement or saying that law enforcement is bad or doesn't do a good job. We know that this is simply not true.

Those who uphold our nation's laws on the streets where we live are men and women of courage. They go to work each day without the same degree of certainty that most of us have that they will return home safely, because they never know when the next traffic stop, the next domestic dispute, the next arrest will explode in their face. There is a memorial here in Washington with the names of more than 14,000 American heroes, police officers, who gave their lives to make ours a safer country.

What this bill does do is make very clear that racial profiling is wrong and that law enforcement agencies that haven't done so already should adopt policies and procedures to eliminate and prevent racial profiling.

Some might ask, how can adopting policies and procedures help stop racial profiling? Well, the experts at John Jay College will tell you that in the 1960's and early 1970's, most police departments in this country left it up to the individual officer to decide when to shoot to kill. During that time, the racial disparity among persons shot and killed by police was as high as eight African-Americans for every white person, and very much higher among victims who were neither armed nor in the process of assaulting a police officer.

During the 1970's and early 1980's, police departments enforced strict standards, decreeing that deadly force could be exercised only in defense of the life of the officer or another person. In the large police departments in this country, these changes were accompanied by reductions of as much as 51% in the number of civilians killed by police. It also resulted in the significant reduction in the number of officers killed in the line of duty. This is just one example of how good policies and procedures can actually save lives without reducing the effectiveness of law enforcement.

Recognizing the importance of policies and procedures to eliminate and prevent racial profiling, this bill provides incentives for law enforcement by giving grants to state and local law enforcement agencies to use in ways they believe will be most effective for their communities—whether to purchase equipment and other resources to assist in data collection or to provide training to officers to improve community relations and build trust.

Chief Bruce Chamberlin, a distinguished member of the law enforcement community and the Chief of the Cheektowaga, New York Police Department, has spoken to me and a number of my colleagues about the importance of training and building relationships between law enforcement and communities. His actions, however, have spoken even louder than his words. He has taken the lead in Western New York in forming the Law Enforcement and Diversity Team or "LEAD" program, which exists to enhance communication and understanding between suburban law enforcement agencies and the diverse citizenry of Western New York. The LEAD team, sponsored by the National Conference for Community and Justice and the Erie County Chiefs of Police, developed one of the nation's leading programs—"*Building Bridges*"—to start a dialogue between police officers and people of diverse cultural and racial backgrounds.

The U.S. Department of Transportation has used excerpts from the LEAD Team's "*What to do When Stopped by Police*" brochure for the department's national publication. The program has been adopted by the Buffalo and Cheektowaga school systems in the curriculum for high schools students. And it helps develop good relations between police and the community by eliminating some level of fear, distrust, and skepticism.

Other New Yorkers have also worked to improve the relationship between communities and law enforcement. New York's Attorney General, Elliot Spitzer, has instituted training programs in an effort to try and prevent racial profiling. In fact, just this past February through April, the Attorney General's office conducted in-service training of all members of the New Rochelle, New York Police Department at the request of that department.

Just last week, New York City Mayor Rudy Guiliani and Police Commissioner Bernard Kerik announced their support for legislation passed unanimously by the New York City Council that would require the public release of data concerning the operations of the 40,000 member New York City police force, the largest police force in the world. We know that collecting and publicly releasing data will assist the New York City Police Department in doing all that it can to prevent racial profiling and build better community relations.

Academia can also play a role in promoting trust between law enforcement and the community. For example, the John Jay College of Criminal Justice has begun to conduct a six-week free course for members of the New York City Police Department on the racial and cultural diversity of New York City. More than 600 police

officers from across New York City have enrolled in a course entitled: "Police Supervision in a Multiracial and Multicultural City."

With this bill, efforts like those currently lead by Chief Chamberlain, Attorney General Spitzer, John Jay College, and the City of New York will be expanded throughout the country.

Mr. Chairman, more than a year ago when I spoke about these issues at the Riverside Church in New York City, I said "we must all be on the same side." I am so proud that today—we are all here together—on the same side, Republicans and Democrats alike, citizens, officers of the law—to say that racial profiling is wrong and must end.

We are here to say that in fighting racial profiling, we can at the same time forge even better relations between police and the neighborhoods they patrol, as we wage a common effort to reduce crime and make our communities safe.

Chairman FEINGOLD. If anybody needs to leave at this point, we will understand.

Perhaps one of the most foolish things I have done in a long time is make Representative Shays go last. He is brilliantly gathering signatures in the House on an issue I care about, and the notion that I made him sit here for this amount of time while he is moving the campaign finance bill along makes me wonder.

Representative SHAYS. Is that the Feingold-McCain Act?

Chairman FEINGOLD. It is McCain-Feingold, Shays-Meehan.

Representative Shays, we have worked closely together on that issue for many years. We are good friends, and I am very pleased that we have a chance to work together on a bipartisan basis on this issue. Representative Shays is one of eight Republicans who have cosponsored the House version of the End Racial Profiling Act.

I thank you for your patience and for joining us today, Representative Shays.

STATEMENT OF HON. CHRISTOPHER SHAYS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Representative SHAYS. No patience required, Mr. Chairman. Thank you, Chairman Feingold and Senator Thurmond, for convening this hearing on the End Racial Profiling Act. I am grateful to join with Senators Hillary Clinton and Jon Corzine, and Representative John Conyers, Dean of the House, minus one, in this bipartisan and bicameral initiative which addresses a critical issue in need of greater public debate and action. This hearing will surely help raise the public profile of this issue, but it needs to result in concrete action.

Decades ago, with the passage of 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 bastian 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 prime facie criterion for questioning or arrest violates this commitment and flies in the face of progress we have made toward racial equality.

With my colleague, Mr. Conyers, of Michigan, I am a cosponsor of H.R. 2074, the companion bill to S. 989, to require law enforcement agencies 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. In taking these steps, the legislation reaffirms a com-

mitment to judging individuals by their actions, not by their skin color.

This bill will protect citizens from the indignity and stigma of profiling. It will also help law enforcement officers perform their sworn duty of impartiality. On July 19, the Government Reform Committee held a hearing on the benefits of audio-visual technology in addressing racial profiling. 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.

I don't walk in an African-American, Latino, or other minority's shoes, but I do hear their cries for help, and so have many other Americans. A large majority of Americans believe racial profiling is widespread, and they want their fellow American brothers and sisters to be protected by the law, not to be victims of the law. These concerns are echoed in the House and Senate with the introduction of this bipartisan bill. I am truly encouraged by today's hearing, and I pray this important legislation will be enacted into law.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Shays follows:]

STATEMENT OF HON. CHRISTOPHER SHAYS, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF CONNECTICUT

Thank you Chairman Feingold and Senator Thurmond for convening this hearing on The End Racial Profiling Act. This bipartisan initiative addresses a critical issue in need of greater public debate and this hearing will surely help raise the public profile of this issue.

Decades ago, with the passage of sweeping civil rights legislation, the 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 this commitment, and flies in the face of progress we have made toward racial equality.

With my colleague Mr. Conyers of Michigan, I am a sponsor of H.R. 2074, the companion bill to S. 989, to require 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. In taking these steps, the legislation reaffirms a commitment to judging individuals by their actions; not by their skin. This bill would protect citizens from the indignity and stigma of profiling. It would also help law enforcement officers perform their sworn duties of impartiality.

On July 19 the Government Reform Committee held a hearing on "The Benefits of Audio-Visual Technology in Addressing Racial Profiling." 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.

According to a 1999 Gallup Poll a majority of Americans believe racial profiling is widespread. These concerns are echoed in the House and Senate with the introduction of this bipartisan bill. I am encouraged by today's hearing that this important legislation will be enacted.

Again, thank you for focusing the subcommittee's attention on this issue.

Chairman FEINGOLD. Thanks so much, Chris. Now, go and get the other signatures, please, in the House.

Thanks to all the members of the panel.

We are going to have a vote at 11, but before that we will first turn to Senator Edwards for his remarks, briefly to Senator Thurmond, and then there will be just a very brief recess. I will run right over and vote, come back, and we will start with the second panel.

Senator Edwards?

STATEMENT OF HON. JOHN EDWARDS, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Senator EDWARDS. Thank you, Mr. Chairman. Mr. Chairman, thank you for your leadership. We have all depended on your knowledge and expertise on this issue and we will continue to do so.

Before he leaves, I want to thank our witness, Congressman Conyers, for your leadership on this and on similar issues for such a long time. You are one of the great leaders in this country and we thank you for what you have done for us.

Senators Clinton and Corzine—Senator Clinton has left, but we thank you very much for your work on this.

Congressman Shays, not only on this issue, but also on campaign finance, we are very appreciative of all the work that you have done.

Others have said it, but all of us recognize that the brave men and women who serve as law enforcement officers play a critical role in this country protecting and preserving the safety of our communities. We all should never understate our appreciation for those efforts.

Unfortunately—and that is what this hearing is about—we have also heard the stories about people being stopped in this country solely because of their ethnicity and because of their race. These stories are deplorable. They send a message of bigotry and intolerance, and we have to send a clear message that Congress will not tolerate this kind of behavior. That is what this hearing is about and that is what this legislation is about.

Let me just take a minute, if I can, and talk about what has been going on in my State of North Carolina. About 2 years ago, we became the first State in the country to pass law requiring that data be collected in order to determine if racial profiling is, in fact, taking place. An important aspect of that law is that it only applies to State law enforcement, so only the North Carolina State Highway Patrol is required to collect this data on traffic stops. However, I should mention that the legislation that is pending in the North Carolina General Assembly now expands the data collection to all law enforcement in the State of North Carolina.

So far, the information we have gotten has told us the following things. First, the good news is that the number African-Americans who were stopped by law enforcement in North Carolina is not significantly greater than those that are not African-American.

However, when it comes to searches, African-American males are disproportionately singled out both as passengers and as drivers. Nearly half of all drivers who were searched in my State of North Carolina were African-Americans. Equally disturbing is the fact that with regard to stops and searches, Latino males were disproportionately singled out.

As surprising as these data are, this data is essential to helping us understand the extent to which profiling is occurring and will help provide us with the facts we need to determine the remedies that are necessary.

For example, under the strong leadership of Colonel Richard Holden, head of the North Carolina State Highway Patrol, all North Carolina Highway Patrol officers are now required to undergo diversity and integrity training. And the Colonel has initiated a program in every county in the State where community leaders, law enforcement and the general public get together to discuss issues regarding police-community relations and perceived problems. Suggestions on how to fix these problems are also discussed. I commend the Colonel for this work and all the other actions that he has taken.

Unfortunately, there are thousands of law enforcement agencies at all levels of government that have not been as proactive on the issue of racial profiling. We must provide an incentive for them to do so. In terms of actual data collection, in some instances local law enforcement agencies such as those in Hendersonville, High Point, and Davidson County, North Carolina, have experimented with data collection, even though the law doesn't require them to do it. I applaud them for doing that, but we have to do more.

Many law enforcement agencies around the country don't collect this data and don't intend to do so. Most of those who do collect the data are not subject to any kind of oversight. Senator Feingold's bill, which I am a cosponsor of and strongly support, provides a solution to these problems and will go a long way toward ending the practice of racial profiling.

What will happen if the Federal Government does not act to stop racial profiling? What kind of message are we sending to our minority communities if we fail to act?

Mr. Chairman, I thank you and I thank the witnesses very much for their work in this area.

Chairman FEINGOLD. Senator Edwards, we are just delighted to have you on the Committee, and I am especially delighted to have you as a cosponsor and a partner on this effort.

We will now turn briefly to Senator Thurmond, who is not able to return for the second panel and who I believe would like to make a brief remark.

Senator Thurmond?

Senator THURMOND. Thank you, Mr. Chairman. I would like to place into the record letters from the National Troopers Coalition, the National Association of Police Organizations, and the International Association of Chiefs of Police.

I would also like to place into the record the remarks of Police Chief Reuben Greenberg made before the Cato Institute earlier this year. Chief Greenberg is one of our witnesses today. He does an outstanding job as the police chief for Charleston, South Carolina, and I appreciate him taking the time to be here today.

Thank you very much.

Chairman FEINGOLD. Thank you, and, without objection, those items will be placed in the record.

At this point, the Subcommittee will briefly recess, and I will assure the witnesses I will be right back and we will start with the second panel.

[The Subcommittee stood in recess from 11:06 a.m. to 11:24 a.m.]

Chairman FEINGOLD. The Subcommittee will come back to order. I thank everyone for your patience in the delay.

Now, I would like to bring up our second panel of distinguished guests. We will start on my left with Mayor Dennis Archer, of Detroit. Mayor Archer currently serves as the president of the National League of Cities, on whose behalf he is testifying today, and is a member of the American Bar Association Board of Governors. He was instrumental in the American Bar Association passing a resolution in 1999 against racial profiling.

Mayor Archer, let me ask you and all of our witnesses, if possible, to limit your remarks to 5 minutes. We have a large panel here and I want to make sure that members of the Committee have at least some chance to ask questions. Your entire written statements will appear in the record of this hearing.

Mayor Archer, I would like you to please proceed.

STATEMENT OF HON. DENNIS W. ARCHER, MAYOR, CITY OF DETROIT, MICHIGAN, AND PRESIDENT, THE NATIONAL LEAGUE OF CITIES, DETROIT, MICHIGAN; ACCOMPANIED BY OLDEN HENSON, CITY COUNCIL MEMBER, HAYWARD, CALIFORNIA

Mayor ARCHER. Mr. Chairman and the absent members of the Subcommittee, the National League of Cities is pleased to have this opportunity to share its views on the End Racial Profiling Act of 2001.

I am Dennis Archer, Mayor of Detroit, Michigan, and President of the National League of Cities. With me today is Council Member Olden Henson, of Hayward, California, who is past chairman of the National League of Cities Public Safety and Crime Prevention Committee. Council Member Henson has not only taken a strong stand against racial profiling in his community, but he has also helped develop our organization's national policy against racial profiling as well.

The National League of Cities is the Nation's oldest national association representing municipal interests in Washington. The NLC's membership includes more than 18,000 cities, towns and villages across the country, with over 135,000 mayors and local elected officials.

As an aside, I will be submitting written testimony for the record on behalf of the American Bar Association and our position on this issue within 1 week.

On behalf of the National League of Cities, I would like to express my gratitude to you, Mr. Chairman, for introducing S. 989, the End Racial Profiling Act of 2001. Your leadership on this issue, along with that of Representative John Conyers, of Michigan, clearly shows your commitment to addressing this widespread practice of racial discrimination by Federal, State and local law enforcement agencies.

The National League of Cities adopted a resolution against racially based profiling in December 2000 which strongly supports

enactment of Federal legislation to provide financial assistance to State and local law enforcement agencies. Such assistance should help pay for training programs, equipment, data collection and research as measures to prevent further incidents and allegations of biased profiling.

Moreover, NLC's national municipal policy calls for a constant commitment from all levels of government to ensure that justice is dispensed equally and not based on race, gender, education or economic status. In this regard, Mr. Chairman, I convey the National League of Cities' strong support for S. 989.

In March, the National League of Cities Board of Directors reinforced our commitment to end racial profiling by adopting a legislative action agenda which urges Congress and the administration to enact legislation prohibiting racial profiling. Additionally, NLC organized a broad coalition of 29 organizations on investing in communities, which includes youth advocates, organized labor, homebuilders and other public interest groups that have endorsed the same agenda to promote racial justice.

I am sure that many of us here today have heard complaints from citizens who have been stopped, searched, and even harassed as a result of incidents where law enforcement officers have detained them simply because of their race or ethnicity rather than for appropriate law enforcement reasons.

As an elected official, I have fielded many concerns from motorists who were victims of racial profiling because they were allegedly in the wrong neighborhood or driving the wrong car. Furthermore, there is no doubt that such discriminatory practices undermine the sacred trust and respect between law enforcement and the community, and erode the basic foundations of effective community policing.

While it is the duty of local governments and law enforcement to serve and protect all citizens, we must ensure that this responsibility assiduously avoids racism and bigotry. Although many cities have already implemented measures to eradicate racial profiling within their police departments, more efforts are needed to improve the credibility of law enforcement in all communities.

This concern has been reiterated by the International Association of Chiefs of Police, which has stated that the highly publicized incidents of use of force, racial profiling, corruption and instances of unethical behavior of police officers and executives have laid the groundwork for many of our citizens to believe that the problems are widespread and deeply rooted.

The IACP also stated that the concerns of our citizens encompass not only law enforcement, but all participants in the criminal justice system, to the courts, to prosecutors, and to corrections and probation officials. For all of these elements to perform in an effective manner that ensures justice and leads to orderly and peaceful communities, there must exist a trusting and confident relationship with all of our citizens in every part of our country.

As both proactive and corrective measures to ban racial profiling, cities have held community forums and field hearings on the problem, formed task forces with local stakeholders, implemented sensitivity training for police, revised policies on traffic stops and enforcement procedures, developed their own data collection systems

on profiling, and helped the United States Department of Justice gather data and best practices on addressing the problem.

To cite one example, Council Member Henson led the city of Hayward's efforts to implement a data collection system on traffic stops last year, along with a policy that strictly prohibits racial profiling and outlines criteria that must be met prior to officers stopping and searching a vehicle.

To address this problem nationally, however, the National League of Cities supports the provisions included in your legislation, along with sufficient funding to support local law enforcement efforts for data collection, training and other remedial measures needed to redress discriminatory law enforcement practices.

Through existing grants such as the Local Law Enforcement Block Grant and Community-Oriented Policing Services Program, this new legislation will help augment the efforts of local law enforcement agencies to collect the proper data on traffic stops conducted, continue effective training for police officers, and engage in interagency partnerships to address racial profiling.

Mr. Chairman, while today's hearing focuses on remedial actions for law enforcement, I want to add my voice to the fact that a vast majority of law enforcement officers conduct themselves in a professional manner and without bias. Such exemplary work has helped reduce the national crime rate to an all-time low.

To continue this success, however, all levels of government must work together to ensure that the basic constitutional rights of Americans are not compromised because of a perception by some that race is an appropriate factor in the decision to stop or search individuals.

Once again, the National League of Cities supports S. 989 as another opportunity for the Federal Government to continue its longstanding partnership with State and local governments for public safety. Through the work of legislators like yourself, Mr. Chairman, Senators Hatch, Biden, and former Representative Bill McCollum of Florida, local governments have enacted numerous successful crime prevention programs through block grants and community policing grants. We will continue to utilize such funding to help improve community crime prevention, while taking a strong stand against racism.

Finally, Mr. Chairman, I greatly appreciate your leadership on this issue and look forward to working with you as this crucial piece of legislation moves forward toward final passage.

I would be happy to answer questions that you or the Subcommittee may have. Thank you.

[The prepared statements of Mayor Archer follow:]

STATEMENT OF HON. DENNIS W. ARCHER, MAYOR OF DETROIT, MICHIGAN ON BEHALF OF THE NATIONAL LEAGUE OF CITIES, WASHINGTON, D.C.

Chairman Feingold and Members of the Subcommittee, the National League of Cities (NLC) is pleased to have this opportunity to share its views on the "End Racial Profiling Act of 2001." I am Dennis Archer, Mayor of Detroit, Michigan, and President of the National League of Cities. I would also like to acknowledge Council member Olden Henson of Hayward, California, who is a past Chairman of NLC's Public Safety and Crime Prevention Committee.

The National League of Cities is the nation's oldest national association representing municipal interests in Washington. NLC's membership includes more than 18,000 cities, towns, and villages across the country, with over 135,000 mayors

and local elected officials, from our nation's largest cities—New York and Los Angeles—to its smallest member, Black Hawk, Colorado, with a population of 150. I ask that my written testimony be submitted for the record along with this statement from the American Bar Association.

On behalf of NLC, I would like to express my gratitude to you, Mr. Chairman, for introducing S. 989, the "End Racial Profiling Act of 2001." Your leadership on this issue, along with that of Representative John Conyers of Michigan, clearly shows your commitment to addressing this widespread practice of racial discrimination by federal, state, and local law enforcement agencies.

The National League of Cities adopted a resolution against racially-based profiling in December 2000, which strongly supports enactment of federal legislation to provide financial assistance to state and local law enforcement agencies. Such assistance should help pay for training programs, equipment, data collection and research as measures to prevent further incidents and allegations of biased profiling. Moreover, NLC's National Municipal Policy calls for a constant commitment from all levels of government to ensure that justice is dispensed equally, and not based on race, gender, education, or economic status. In this regard, Mr. Chairman, I convey NLC's strong support for S. 989.

In March, NLC's Board of Directors reinforced our commitment to end racial profiling by adopting a legislative action agenda, which urges Congress and the Administration to enact legislation prohibiting racial profiling. The call for such legislation is a strong acknowledgement that all levels of government must work diligently to end discriminatory policies and to ensure true equal opportunity. Additionally, NLC organized a broad coalition of 28 organizations on "Investing In Communities," which includes youth advocates, organized labor, homebuilders, and other public interest groups, that have endorsed the same agenda to promote racial justice.

I am sure that many of us here today have heard complaints from citizens who have been stopped, searched, and even harassed as a result of incidents, where law enforcement officers have detained them simply because of their race or ethnicity, rather than for appropriate law enforcement reasons. As an elected official, I have fielded many concerns from motorists who were victims of racial profiling because they were allegedly "in the wrong neighborhood," or "driving the wrong car." There are thousands of personal stories across the nation that have been widely publicized. Furthermore, there is no doubt that such discriminatory practices undermine the sacred trust and respect between law enforcement and the community and erode the basic foundations of effective community policing. While it is the duty of local governments and law enforcement to serve and protect all citizens, we must ensure that this responsibility assiduously avoids racism and bigotry.

Although many cities have already implemented measures to eradicate racial profiling within their police departments, more efforts are needed to improve the credibility of law enforcement in all communities. This concern has been reiterated by the International Association of Chiefs of Police (IACP), which stated that the "highly publicized incidents of use of force, racial profiling, corruption, and instances of unethical behavior of police officers and executives have laid the groundwork for many of our citizens to believe that the problems are widespread and deeply rooted. The concerns of our citizens encompass not only law enforcement but all the participants in the criminal justice system—to the courts, to prosecutors, corrections, and probation officials. For all of these elements to perform in an effective manner that ensures justice and leads to orderly and peaceful communities, there must exist a trusting and confident relationship with all of our citizens in every part of the country."

As both proactive and corrective measures to ban racial profiling, cities have held community forums and field hearings on the problem; formed task forces with local stakeholders; implemented sensitivity training for police; revised policies on traffic stops and enforcement procedures; developed their own data collection systems on profiling; and helped the U.S. Department of Justice gather data and best practices on addressing the problem. To cite one example, the City of Hayward, California, instituted a data collection system on traffic stops last year along with a policy that strictly prohibits racial profiling and outlines criteria that must be met prior to officers stopping and searching a vehicle.

To address this problem nationally, however, NLC supports the provisions included in your legislation along with sufficient funding to support local law enforcement efforts for data collection, training, and other remedial measures needed to redress discriminatory law enforcement practices. Through existing grants, such as the Local Law Enforcement Block Grant and Community Oriented Policing Services Program (COPS), this new legislation would help augment efforts of local law enforcement agencies to collect the proper data on traffic stops conducted, continue ef-

fective training for police officers, and engage in interagency partnerships to address racial profiling.

NLC is also interested in the results of Attorney General John Ashcroft's review of racial profiling within federal law enforcement agencies. Similarly, we are encouraged by Congressman Asa Hutchinson's commitment to ban racial profiling, as he has stated as nominee for Director of the U.S. Drug Enforcement Administration.

Mr. Chairman, while today's hearing focuses on remedial actions for law enforcement, I would be remiss if I did not acknowledge the fact that a majority of law enforcement officers conduct themselves in a professional manner, without bias. Such exemplary work has helped reduce the national crime rate to an all-time low. To continue this success, however, all levels of government must work together to ensure that the basic constitutional rights of Americans are not compromised because of perceptions by some that race is an appropriate factor in the decision to stop or search individuals.

Once again, NLC supports S. 989 as another opportunity for the federal government to continue its longstanding partnership with states and local governments for public safety. Through the work of legislators like yourself, Mr. Chairman, Senators Hatch and Biden, and former Representative Bill McCollum of Florida, local governments have enacted numerous successful crime prevention programs through block grants and community policing grants. We will continue to utilize such funding to help improve community crime prevention while taking a strong stand against racism.

Mr. Chairman and Members of the Subcommittee, I greatly appreciate your leadership on this issue, and look forward to working with you as this crucial piece of legislation moves forward toward final passage. I would be happy to answer any questions that the Subcommittee may have.

Thank you.

ADDITIONAL STATEMENT OF HON. DENNIS W. ARCHER, MAYOR OF DETROIT, MICHIGAN ON BEHALF OF THE AMERICAN BAR ASSOCIATION, WASHINGTON, D.C.

Mr. Chairman and Members of the Subcommittee, I am Dennis Archer, Mayor of the City of the Detroit. I provide these remarks on behalf of the American Bar Association, on whose board of Governors I serve.

The ABA, with over 400,000 members, is the largest voluntary professional association in the world. The ABA has as its core mission promoting the improvement of the system of justice and ensuring equality of access to justice. In February 2001 the Board of Governors designated 12 of our adopted policy positions as Legislative and Governmental Priorities for the year. Legal Remedies to Eliminate Discrimination is one of those designated priorities. Data collection on the conduct of traffic stops offers an important legal remedy to address the discriminatory practice of racial profiling by law enforcement.

In *Whren* v. *United States*, 116 S. Ct. 1769 (1996), the Supreme Court upheld a practice that has long been employed by law enforcement officials in conducting traffic stops. The Court held that so long as any violation of a traffic code occurs, no matter how technical or insignificant, the police may stop an automobile and question its driver. This is so even if the minor violation upon which the stop is based is purely a pretext for the stop and the opportunity to conduct further investigation. Moreover, the officer may question the motorist regarding unrelated, and even imagined, criminal activity, and may seek consent to search the vehicle and the occupants.

The large degree of discretion the *Whren* decision conferred upon law enforcement officials was augmented by the recent decision in *Atwater et al.* v. *City of Lago Vista et al.*, No. 99 1408 (Decided April 24, 2001), in which a rule allowing police officers to take individuals into custody for the most minor of offenses was advanced and upheld. In her dissent in Atwater, Justice Sandra Day O'Connor warned, "Indeed, as the recent debate over racial profiling demonstrates all too clearly, a relatively minor traffic infraction may often serve as an excuse for stopping and harassing an individual."

This line of cases challenges elected officials like myself who must provide guidance to their jurisdiction's police departments on good community relations. I know many men and women in law enforcement and I know them well: as friends, as colleagues, as subordinates, and as partners in community service. I know of the challenges they face, by both my observations and their own accounts, and I believe that every power at their disposal is there for the benefit of the community they serve.

However, I also know that it does not take many abuses of power to corrupt a force or to drive a wedge of distrust between the officers and those they have sworn to protect. Without the checks provided by the court system, ferreting out those who abuse the power with which they are entrusted proves difficult.

Data collection provides a useful tool in this regard. Rather than depend upon citizens to bring attention to violations through the court system or through administrative proceedings, data collection in combination with a national study of the data collected and cross-jurisdictional comparisons would be an effective managerial tool to address racial disparities in traffic stops.

On behalf of the ABA I applaud you, Mr. Chairman for your leadership in bringing this important measure to the Senate. I also applaud Ranking Minority Member of the House Judiciary Committee, the Honorable John Conyers for his leadership over many years in pursuing this legislative response to this pressing national problem.

Thank you for the opportunity to submit the views of the ABA to the Subcommittee.

Chairman FEINGOLD. Thank you very, very much, Mayor Archer, for your testimony, for your leadership and for the support of the National League of Cities. I understand that you have to return to Chicago shortly for an important meeting of the ABA, so I would like to just ask you a question. I know that Mr. Henson is willing to sit in if you have to leave.

If other Senators come, perhaps they will ask you a question, but my question is to ask you personally if you would like to tell us of any personal experience you have had with racial profiling that you can share with this Subcommittee.

Mayor ARCHER. Mr. Chairman, the year that I was president of the State Bar of Michigan, I was returning from our State capital in Lansing. Driving back to Detroit, I found myself surrounded by five or six police cars. I was asked to get out of the car. I was put in the back seat of a police car while they went through the inside of my car and my briefcase.

Upon discovering that I was president of the State Bar of Michigan, they came back with a very strong apology, indicating that I had somehow fit the profile of a drug-runner or somebody who might be driving drugs down the freeway. That was back during 1984–85.

More recently, a couple of years ago, my son, who is a lawyer but does not practice, was out with a date who is now his fiancee who happens to be an assistant prosecuting attorney for Oakland County, in Michigan. They were driving through a suburban community and they were pulled over to the side, guns drawn.

They asked my son to get out of the car and back up with hands up, frisked him, did not bother to ask for any identification, and asked her to get out of the car. I believe she was ultimately handcuffed. They did not ask her for any identification or anything. They searched the car, and then once they got his driver's license they looked at his name and asked, because his name is Dennis Archer, Jr., if he was related to Dennis Archer, the Mayor of Detroit. He said, yes, that is my dad.

There was an incident that had occurred that involved another different-colored Jeep Cherokee. There had been a robbery in the area. There had been no report of any woman in the car. They never bothered to stop and ask any questions about who they were. It was widely reported in the paper. The mayor of the suburban community, whom I happened to know, called and shared his concern about it and remarked that his dad was a former police officer

in the city of Detroit and he understood how I felt and how my son must have felt.

As Congressman Conyers has indicated, I don't know too many people of color who do not know somehow who has been stopped because either they have been in the wrong neighborhood, at the wrong place, as far as the officer might have been concerned, at the wrong time.

As I said in my opening remarks, let me just say that overwhelmingly the vast majority of the police officers I have met and know do a fine job. But what this does when it occurs is it undermines, as it did with that youngster that was so graphically shown at the beginning of this hearing—you saw what it did with that youngster. That youngster had tears in his eyes. I mean, that was something that will have a profound effect on him for the rest of his life.

That is the kind of thing that will occur unless it is stopped. That is the reason why your bill, Mr. Senator, is so important that it pass the Senate this year as quickly as possible.

Chairman FEINGOLD. Thanks so much, Mayor Archer. I also want to reiterate that I again make it very clear that I do not think that most individual policemen engage in this kind of activity, nor do most departments. But the number of incidents like the ones you just shared here relayed by prominent Americans in the last year is frankly just startling to me. I appreciate your willingness to share those experiences.

Thank you very much, Mayor Archer.

Mayor ARCHER. Thank you, Senator.

Chairman FEINGOLD. Our next witness will be Steve Young. Mr. Young is currently the Vice President of the Fraternal Order of Police, a position he has held since 1997. Before that, he served as the President of the Ohio Chapter of the FOP and was with the Marion City Police Department for 25 years.

I thank you for being here and you may proceed.

STATEMENT OF STEVE YOUNG, NATIONAL VICE PRESIDENT, FRATERNAL ORDER OF POLICE, WASHINGTON, D.C.

Mr. YOUNG. Thank you, Mr. Chairman, and good morning. I am representing the Fraternal Order of Police. I am currently the National Vice President. Our organization is the largest law enforcement labor organization, representing more than 299,000 rank-and-file law enforcement officers in every region of the country. I am here this morning to discuss our strong opposition to S. 989, the End Racial Profiling Act, introduced by Senators Feingold, Clinton and Corzine.

I want to begin by saying very clearly that racism is wrong. It is wrong to think a person a criminal because of the color of that person's skin. But it is equally wrong to think a person a racist because of the color of the uniform. We can and must restore the bonds of trust between law enforcement and minorities. To do so requires substantial effort to find real solutions. The solution this bill provides is to identify the problem as racist police officers.

Mr. Chairman, I was struck by Senator Durbin's remarks this morning because they demonstrate what effective police managers

do if they learn of a potential problem with their policing practices. They change it and implement new strategies.

In his example, Commissioner Kelly did not wait for Washington to act or for Congress to drop a bill or launch an investigation. The problem that Commissioner Kelly perceived was with the agency he commanded and he resolved. If police management today were as effective as Commissioner Kelly, I wouldn't be here today, this hearing wouldn't be necessary, and this legislation would never have been written.

The so-called practice of racial profiling is being hyped by activists, the media and others with political agenda who presuppose that a man or a woman in a police officer's uniform is inclined to be racially biased. This is just not so.

There is a mistaken perception on the part of some, perhaps including the authors of this bill, that the ugliness of racism is part of the culture of law enforcement. I am here today not only to challenge this perception, but refute it entirely.

To begin with, the legislation's definition of racial profiling is far too broad. The bill prohibits the use of race to any degree in selecting individuals to be subject to even the most routine investigatory action. This means that absent an eyewitness or other description of a specific suspect's race or ethnicity, law enforcement officers can never use race as a factor, even if it would help them to identify a suspect, prevent a crime or lead to an arrest.

What does this mean to the officer on the beat? No minority will be stopped, searched or questioned, no matter how suspicious the activity, without a specific eyewitness account. Measures like this can only lead to situations like we now have in Cincinnati. Eighty-five people have been wounded or killed in 73 separate shooting incidents since the riots in April. Last year, during the same timeframe, there were 9 shootings and 11 victims. None of the shootings since April have received media attention, like the death of Timothy Thomas, or even that of Ricky Moore, who ambushed and attempted to kill Officer Thomas Haas just last week. Why? Do we as a Nation not care about black-on-black violence? The Over-the-Rhine community does, and that includes the police officers who live and work there.

I also want to question this legislation's proposal to use statistical data against law enforcement officers and agencies in legal action against them. This is a terrible precedent to set. This bill assumes that racial profiling has occurred solely on the basis of a statistical disparity.

Section 102(c) of the bill provides that demonstrating that law enforcement activities disparately impact racial or ethnic minorities constitutes prima facie evidence of illegal activity. The effect of this presumption is not expressly spelled out in the legislation, but it is very clear to law enforcement.

The resulting litigation burden on law enforcement agencies will be dramatic. After all, once a disparate impact is demonstrated, it will be up to the law enforcement agency to somehow prove itself innocent of engaging in the unlawful use of race in its procedures and practices. More significantly, each officer's individual enforcement action will be faced with the same burden.

No one ought to be stopped solely on the basis of their race. This practice is wrong and does not serve the law enforcement mission. But to contend that the successful practice of profiling, which does not exclusively consider race, be abandoned when it has proved to be a successful tool to prevent crime and catch criminals, is not the answer. If this practice is misused or misunderstood, then it must be corrected. Racism is never a legitimate law enforcement tool.

Mandatory data collection is also not sound policy from a public safety perspective because it would require law enforcement officers to engage in the collection of sociological data. When you add to the list of things that police officers have to do, you are necessarily subtracting from the law enforcement mission. Police officers are supposed to prevent crime and catch the crooks, not collect data for Federal agencies.

How can we achieve a color-blind society if policies at the Federal level require the detailed recording of race when it comes to something as common as a traffic stop? What next? Will the passengers' race need to be recorded? Some traffic stops result in the arrest of the passengers.

What about the officer's race? Should that be recorded so that officers can be assigned to beats based on their ethnic background? And what if the officer is unable to determine the driver's race? Will police officers now be required to ask for driver's license, registration, and proof of ethnicity, please?

Legislation like S. 989 emphasizes racial differences. It will, in fact, make police officers much more aware of race, when our objective should be to deemphasize the race of the suspect. Racial tensions increase, not decrease, if this bill's measures are given the force of law.

I do not know if, let alone how, we as a Nation can solve the problems of racism, but I do know what will and will not work in the profession of law enforcement. There is a mistaken perception that the ugliness of racism is part of the culture of law enforcement. It is incumbent on all of us to correct that perception. This will was written with this mistaken perception in mind and it reinforces it.

This legislation is not good public safety policy and will not result in good policing. It will not help to rebuild the trust between law enforcement and the minority community. For these reasons, the Fraternal Order of Police strongly opposes the bill and I urge this Subcommittee to reject it.

Mr. Chairman, I thank you for the opportunity to appear before the Subcommittee today.

[The prepared statement of Mr. Young follows:]

STATEMENT OF STEVE YOUNG, NATIONAL VICE PRESIDENT, FRATERNAL ORDER OF POLICE

Good afternoon, Mr. Chairman and distinguished members of the Senate Subcommittee on the Constitution, Federalism and Property Rights. My name is Steve Young, I am a twenty-five year veteran of the Marion, Ohio City Police Department. I am the National Vice President of the Fraternal Order of Police. The F.O.P. is the nation's largest law enforcement labor organization, representing more than 297,000 rank-and-file law enforcement officers in every region of the country. I am here this morning to discuss our strong opposition to S. 989, the "End Racial Profiling Act," introduced by Senators Feingold, Clinton and Corzine.

I want to begin by saying very clearly that racism is wrong. It is wrong to think a person a criminal because of the color of his or her skin. But it is equally wrong to think a person a racist because of the color of his or her uniform. This bill is a "solution" bill, but it unfortunately identifies the "problem" as racist police officers. The so-called practice of "racial profiling," hyped by activists, the media and others with political agendas, is one of the greatest sources of stress between law enforcement and the minority community in our nation today. But the solution cannot, as this bill does, presuppose that a man or woman in a police officer's uniform is inclined to be racially biased. This is just not so.

The so-called practice of "racial profiling" is, in fact, only part of the larger issue. That larger issue is a mistaken perception on the part of some that the ugliness of racism is part of the culture of law enforcement. I am here today not only to challenge this perception, but refute it entirely.

We can and must restore the bonds of trust between law enforcement and minorities; to do so requires substantial effort to find real solutions. It requires that we resist our inclination to engage in meaningless "feel good" measures that fail to address the substance of our problem. It requires that we resist using hyperbole and rhetorical excess to place blame. This legislation does both of these things and we strongly oppose it. Open and honest communication builds trust—snappy sound bites and bills with the premise that law enforcement officers are racist do not.

I do not believe that S. 989, the "End Racial Profiling Act" will help to repair the bonds of trust and mutual respect between law enforcement and minority communities. Quite the opposite—I believe it will widen them because it is written with the presumption that racist tactics are common tools of our nation's police departments. This is wrong and is a great disservice to the brave men and women who put themselves in harm's way every day and night to keep our streets safe.

Let me explain by addressing some of the bill's specifics.

First of all, we believe that the legislation unnecessarily defines and bans "racial profiling." "Racial profiling" is not a legitimate police practice employed by any law enforcement agency in the United States. The United States Supreme Court has already made it very clear that "the Constitution prohibits selective enforcement of the law based on considerations such as race," and that "the constitutional basis for objecting to intentionally discriminatory application of the laws is the Equal Protection Clause." *Whren* v. *United States*, 517 U.S. 806, 813 (1996). Further, as one Court of Appeals has explained, "citizens are entitled to equal protection of the laws at all times. If law enforcement adopts a policy, employs a practice, or in a given situation, takes steps to initiate an investigation of a citizen based solely upon that citizen's race, without more, then a violation of the Equal Protection Clause has occurred." *United States* v. *Avery*, 137 F.3d 343, 355 (6th Circuit 1997).

The United States Constitution itself prohibits "racial profiling," making Federal legislation defining or prohibiting such activity unnecessary. I am sure that there is no one on this Subcommittee or in the United States Senate who would disagree that our Constitution prohibits the practice of "racial profiling."

Further, the F.O.P. contends that the legislation's definition of "racial profiling" is far too broad. The bill prohibits the use of race "to any degree" in selecting individuals to be subject to even the most routine investigatory action, excepting only those situations in which race is used "in combination with other identifying factors when the law enforcement agent is seeking to apprehend a specific suspect whose race, ethnicity or national origin is part of the description of the suspect."

This means we might as well disband the F.B.I.'s Behavioral Science Unit, whose work includes conducting high-impact research and presenting a variety of cutting edge courses on topics such as Applied Criminal Psychology, Clinical Forensic Psychology, Crime Analysis, Death Investigation, and Gangs and Gang Behavior. The unit's personnel are primarily Supervisory Special Agents and experienced veteran police officers with advanced degrees in the behavioral science disciplines who focus on developing new and innovative investigative approaches and techniques to the solution of crime by studying the offender, and his/her behavior and motivation. Sometimes, their profile of a suspect contains racial information, because race can and does have an impact on our psychology. In some cases, it may be the only physical description law enforcement has to go on. The profile provided by this unit in its work on the Unabomber case, for example, suggested that the suspect was a white male. Generally speaking, serial killers are much more likely to be white males than any other race or gender.

Under this legislation, we would be unable to use information of this kind absent an eyewitness or other description of a specific suspect's race or ethnicity. This bill is very specific on this point: law enforcement officers can never use race as a factor—even if it would help them to pursue an investigation, identify a suspect, prevent a crime or lead to an arrest. The proposed legislation would therefor ban a

whole range of activities beyond the already unconstitutional, purely race-based activity. The legislation would also apply to Customs and immigration-related enforcement activities, as well as criminal law enforcement efforts.

What does this mean to the officer on the beat? That no minority will be stopped, searched or questioned no matter how suspicious the activity without a specific eyewitness account? Measures like this can only lead to situations like we have now in Cincinnati. Eighty-five (85) people have been wounded or killed in seventy-three (73) separate shooting incidents since the riots in April. Last year during the same time frame, there were nine (9) shootings and eleven (11) victims. None of the seventy-three (73) shootings since April have received media attention like the death of Timothy Thomas. Or even that of Ricky Moore, who ambushed and attempted to kill Officer Thomas Haas. Why? Do we as a nation not care about black-on-black violence? The Over-the-Rhine community does, and that includes the police officers who live and work there. Hamilton County Prosecutor Mike Allen said of the neighborhood, "It's like the killing fields, it's like the Wild West down here. There is still the same lawlessness that went on during the riots. And the criminals know that the police are now reluctant to take action."

Lieutenant Ray Ruberg of the Cincinnati Police Department said, "Our discretion has been limited. . .The racial profiling forms policy also went into effect in May, and a lot of officers now feel they have to articulate for every stop and that, in turn, will limit stops."

Keith Fangman, the president of the local Fraternal Order of Police, said "The city has never seen this level of violence. This is an epidemic of crime."

The numbers bear all three of these observations out. Last year there were nine (9) shootings between April and July—this year there were seventy-three (73). Arrests have dropped fifty percent (50%) since April and traffic stops have dropped by sixty percent (60%).

Every cop on the beat in Cincinnati knows that if something goes wrong, even the slightest mistake when made in that split second, their jobs, lives and families could be at risk. Good policing, pro-active policing that deters and prevents crime, cannot occur in these conditions.

This bill would elevate that problem to a national level. Criminals in our communities will know that the police have their hands tied and can no longer be effective.

This same pattern is being repeated throughout the nation. When the mayor of Minneapolis accused his police force of "racial profiling," traffic stops dropped sixty-three percent (63%).

"Solutions" are being presented by politicians to a dubious problem that they cannot define. The result is a deleterious effect on public safety and the maligning of our country's police officers.

I also want to question this legislation's proposal to use statistical data against law enforcement officers and agencies in court. This is a terrible precedent to set. This bill assumes that "racial profiling" has occurred solely on the basis of a statistical disparity. Section 102(c) of the bill provides that demonstrating that law enforcement activities disparately impact racial or ethnic minorities constitutes prima facie evidence of illegal activity. The effect of this presumption is not expressly spelled out in the legislation, but it is very clear to law enforcement. The resulting litigation burden on law enforcement agencies will be dramatic—after all, once a "disparate impact" is demonstrated, it will be up to the law enforcement agency to somehow prove itself innocent of engaging in the unlawful use of race in its procedures and practices.

The legislation thus presumes illegal activity solely from evidence of a statistical disparity, notwithstanding the bill's finding that "[t]he vast majority of law enforcement agents nationwide discharge their duties professionally, without bias, and protect the safety of their communities." If the "vast majority" of police officers are conducting themselves professionally and without bias, why does a statistical disparity change that?

There is no study or other hard data that can withstand even cursory scrutiny which can substantiate claims that police systematically practice selective enforcement against minorities. None. Even the finding of former New Jersey Attorney General Peter Verniero that found fifty-three percent (53%) of consent searches—searches that the driver consents to—between 1994-98 were minorities is meaningless. It is meaningless because Attorney General Verniero did not include racial information on searches that were denied. He mixes stops, searches and arrests from different time periods. But the most important reason that this statistic is invalid is because there is nothing to compare it to—why is it "too many?" Statistics from other government sources in New Jersey demonstrate that minorities are vastly overrepresented in the drug trade. Over sixty percent (60%) of drug and weapons

arrests in New Jersey are black, even though they make up less than fourteen percent (14%) of the population. Given this, State police search rates are proportionate.

Statistically, minorities have a greater chance of being crime victims because crimes occur more frequently in areas with a large minority population. Good policing means going after criminals and patrolling areas where crimes are committed. This is good police work—not racism.

Consider the case of the Arlington County Virginia Police Department, which responded to demands from the black community to step up enforcement against drug dealers in minority neighborhoods. The police instituted aggressive motor-vehicle checks, revived the use of "jump out" squads and cracked down on quality-of-life offenses in an effort to make dealers uncomfortable in the neighborhood. By the end of last summer, it was clear the new enforcement strategy had worked, earning the police deserved praise from the community as a whole. But the new policing strategy, which was devised in response to the disproportionate victimization of minorities by minorities, generated a lot of data showing "disproportionate" minority arrests. If this bill were adopted, any of the minority criminals arrested and prosecuted could bring legal action against the County of Arlington, the department or the arresting officer. The criminal would be able to point to the "disparate impact" on the minority community and have evidence—*prima facie* evidence, mind you—in support of any action brought pursuant to Title I of S. 989.

To use statistical data without an adequately sophisticated benchmark for analysis is bad policy. The law cannot consider individual enforcement incidents as racially motivated by using flawed data and reckless analyses establishing a "disparity."

I also want to say a word about the police practice of criminal profiling. This is a legitimate and effective law enforcement tool which I believe is being unfairly maligned in the media and here on Capitol Hill because it is now associated with race. Race can be a factor in a criminal profile, but it is never the only factor, nor is it the most significant factor. It is simply one of many.

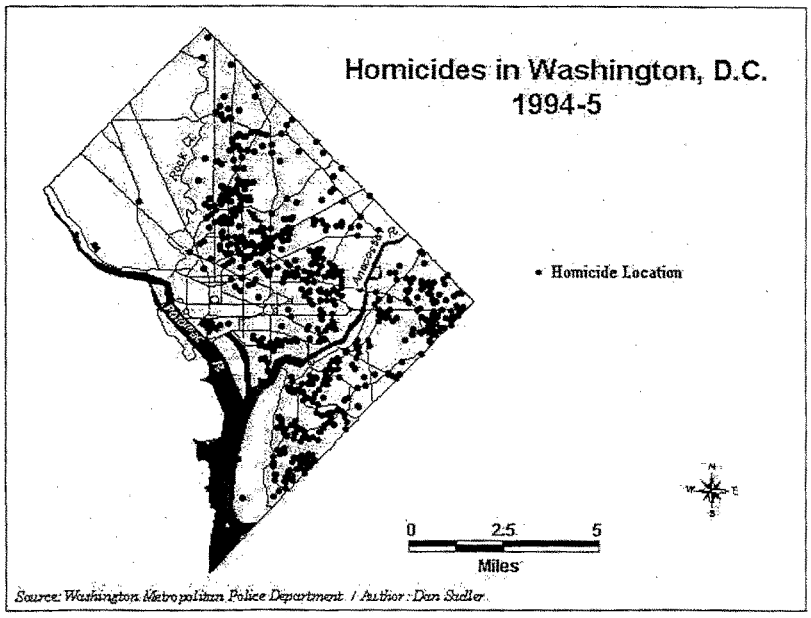
No one ought to be stopped solely on the basis of their race; this practice is wrong and does not serve the law enforcement mission. But to contend that the successful practice of profiling—which does not consider race exclusively—be abandoned when it has proved to be a successful tool to prevent crime and catch criminals is not the answer. If this practice is misused or misunderstood, then it must be corrected. Racism is never a legitimate law enforcement tool.

When any employer is considering applicants, they have an idea of not only the skills and abilities that the job requires, but also what kind of person would make the best fit—a "profile," if you will. Character matters, which is why law enforcement managers conduct—or ought to conduct—extensive background checks to ensure that the person who will carry the badge is of the highest caliber.

I ask the Subcommittee to also consider the practice of crime-mapping, which, for all intents and purposes can also be referred to as geographic profiling. This, too, is proving to be an extremely useful crime-fighting and crime-prevention tool. It has evolved far beyond push pins on a wall map to become sophisticated computer models that allow law enforcement to "predict" crimes and establish more effective patrols to enhance public safety.

Crime mapping data can and does use such demographic factors such as population density, race and poverty levels. I have attached to my testimony a simplified "crime map" of homicides committed in Washington, D.C. from 1994-95. In the time frame examined, seven hundred and sixty-five (765) homicides were committed—twenty (20) of which were west of the 16th Street "line" and only one (1) which was committed west of Rock Creek.

Crime is human activity and therefore has spatial relationships and characteristics that can be geographically plotted. The same profiling is also useful in crime prevention and crime fighting when applied to crime victims. Racial data is important here, too. The crime map provided shows the overwhelming preponderance of homicides in Washington, D.C. in 1994-95 were committed in predominately black areas. Is this racial profiling?



Nationally, according to the Bureau of Justice Statistics, there were 5.1 homicide victims per 100,000 non-Hispanic white males in 1995—the rate for blacks that same year was 57.6, more than 10 times the white rate. Most violent crime is intraracial—more than 80 percent of homicides where we know the race of the killer are either white-on-white or black-on-black crimes. Given this data, how can we adopt a measure that would prevent its use in solving homicides if we cannot consider the race of the suspect unless there is an eyewitness description?

What is also offensive to me as an American is that the legislation focuses on protecting racial and ethnic minorities, rather than protecting all individuals from discrimination on the basis of race and ethnicity. Unlike all other Federal antidiscrimination statutes, which generally protect all individuals from discrimination on the basis of race, portions of this legislation are geared to protecting only racial and ethnic minorities. For example, the "disparate impact" provisions found in section 102(c) of the bill are available only to racial and ethnic minorities. Any legislation that specifically targets only members of certain races, while excluding members of other races, presents very real equal protection problems.

Again, to use Washington, D.C. as an example, the unfairness of the bill is plainly demonstrated. According to the most recent census, 30.8% of this city's population is white and sixty percent (60%) is black. If this bill were to become law, if thirty-two percent (32%) of all persons arrested in Washington were white, this "disparity" would not be evidence under Title I of the bill. However, if sixty-one percent (61%) of all persons arrested were black, this would be a "disparate impact" and could be used in any legal action taken against the Metropolitan Police Department. How does this help ease racial tensions in this city or across the country?

The bill also misstates current law by reading the U.S. Supreme Court's decision in *Whren* v. *United States* (1996) to hold that "the racially discriminatory motive of a police officer in making an otherwise valid traffic stop does not warrant the suppression of evidence." To the contrary, according to the unanimous decision in *Whren*, "the Constitution prohibits selective enforcement of the law based on considerations such as race," and that "the constitutional basis for objecting to intentionally discriminatory application of the laws is the Equal Protection Clause." 517 U.S. at 813.

The legislation also states that "[r]acial profiling is not adequately addressed through suppression motions in criminal cases," implying that suppression motions are currently the sole legal remedy available against the so-called practice of "racial profiling." However, numerous remedies do exist under current law to redress constitutional equal protections violations, including actions for money damages as well

as prospective relief under 42 U.S.C. Section 1983, 42 U.S.C. Section 2000(d) et. seq., and 42 U.S.C. Section 14141.

The legislation also imposes a number of mandates on State and local governments in violation of the principles of Federalism. The bill mandates that all State and local governments collect data, pursuant to Federally established standards, to determine whether "racial profiling" is taking place as a condition of receiving Federal monies—even if there is no evidence or complaint that a particular agency has engaged in such activity. Noncompliance with this mandate is punishable by the withholding of Federal funds. These provisions may even violate the constitutional limits of the ability of Congress to regulate State and local governments as a condition of Federal funding. On a number of occasions, the Supreme Court has expressed a narrow view with respect to Federal power to regulate State and local governments pursuant to Section 5 of the Fourteenth Amendment, absent substantial evidence that constitutional rights are being violated.

Mandatory data collection is also not sound policy from a public safety perspective, because it would require law enforcement officers to engage in the collection of sociological data. When you add to the list of things that police officers have to do, you are necessarily subtracting from the law enforcement mission. Police officers are supposed to prevent crime and catch crooks, not collect data for Federal studies.

How can we achieve a color-blind society if policies at the Federal level require the detailed recording of race when it comes to something as common as a traffic stop? Should the passenger's race be recorded? Why not? Some traffic stops do result in the arrest of the passenger. What about the officer's race? Should that be recorded so that officers can be assigned to beats based on their ethnic background? And what if the officer is unable to determine the driver's race? Will police officers now be required to ask for "Driver's license, registration and proof of ethnicity, please?"

I submit to this Subcommittee that we do have a problem in our nation today—the lack of trust and respect for our police officers. Police officers also have a problem in that they have lost the trust, respect and cooperation of the minority community. This is tragic because it is minorities in our country that are most hurt by crime and violence. This bill, however, is not the solution. It will make matters worse, not better.

Let me give you another example of a bad idea. Prior to the media's misuse of the term "racial profiling," Jack Levin of Northeastern University suggested a way to end racially-charged confrontations between police and minority communities. He said, "White police officers should never knowingly confront black suspects" (USA Today, 28 October 1996). This suggestion is ludicrous. Its very premise is that individuals of different racial and ethnic backgrounds are simply unable to interact with one another without violence.

I reject that premise, Mr. Chairman. All of us should. And I submit that the premise of S. 989 is similarly flawed.

Racial tensions here in Washington, D.C. are not atypical of any other urban area. The Washington D.C. Metropolitan Police Department is sixty-seven percent (67%) black in a city where the black population is only sixty percent (60%). Does this mean that sixty-seven percent (67%) of the Metropolitan police officers should never confront white, Hispanic or Asian suspects? How does this make our streets safer? How is this good police work?

Legislation like S. 989 emphasizes racial differences. It will, in fact, make police officers much more aware of race when our objective should be to de-emphasize the race of the suspect. Consider this scenario: A police officer stops four drivers, all of whom are black. How is that officer to respond to allegations by the fifth driver—who may be white, Asian or Latino—that they were only stopped to inoculate the officer against charges of racism. Can a case be made that the officer's decision is racially motivated? This is the exact opposite of our intent.

This bill will actually increase the unfounded allegations of racism when drivers and officers are of a different race. Racial tensions will increase, not decrease, if this bill's measures are given the force of law. Supreme Court Justice Antonin Scalia eloquently reminded us, "To pursue the concept of racial entitlement—even for the most admirable and benign of purposes—is to reinforce and preserve for future mischief the way of thinking that produced race slavery, race privilege and race hatred. In the eyes of government, we are just one race here. It is American." Instead of officers looking at someone as a human being, this bill would require them to make racial and cultural distinctions between the communities they serve because they know their choices will be scrutinized from that perspective by political leaders, police managers, and the Federal government.

A police officer who makes a stop or an arrest—no matter what that officer's racial background—must balance the constitutional rights of the suspect with their

duty to guard the public safety and preserve the peace. No one, however, seems to consider that the officer is as much a citizen entitled to his or her rights as any suspect from any allegation. Unlike most professions, many rank-and-file police officers are not, particularly in employment and disciplinary matters, guaranteed their constitutional due process protections in this country. Too often, their rights are discounted. The United States Congress has actively considered legislation similar to S. 989 for the past six years. The last time that legislation protecting the due process rights of police officers was ten years ago in 1991.

I do not know if, let alone how, we as a nation can solve the problems of racism. But I do know what will and will not work in the profession of law enforcement. There is a mistaken perception that the ugliness of racism is part of the culture of law enforcement. It is incumbent on all of us to correct that perception. This bill was written with this mistaken perception in mind—and it reinforces it. This legislation is not good public safety policy and will not result in good policing. It will not help to rebuild the trust between law enforcement and the minority community.

For these reasons, the Fraternal Order of Police strongly opposes the bill and I urge this Subcommittee to reject it.

Mr. Chairman, I want to thank you for the opportunity to appear before the Subcommittee today.

Chairman FEINGOLD. Thank you, Mr. Young, for your willingness to testify before the Subcommittee.

Our next witness is Mr. Raymond Kelly. Mr. Kelly is the former Commissioner of the U.S. Customs Service, and also the former Commissioner of the New York City Police Department. Under this direction, as we have heard today, the Customs Service has made great progress in addressing racial profiling.

Welcome. Thank you for being here and you may proceed.

STATEMENT OF RAYMOND W. KELLY, FORMER COMMISSIONER, UNITED STATES CUSTOMS SERVICE, AND FORMER COMMISSIONER, NEW YORK CITY POLICE DEPARTMENT, NEW YORK, NEW YORK

Mr. KELLY. Thank you, Mr. Chairman. I want to thank Senator Durbin, though he is not here, for those generous remarks that he made.

In my experience, there is no greater threat to the credibility of law enforcement than racial profiling. Any agency that ignores this threat or delays in taking precautions against it risks not only its reputation, but the compact of trust between government and the rest of society.

Today, I would like to talk to you about one agency's approach to dealing with this issue, the United States Customs Service. Before the beginning of my tenure there, Customs began to receive allegations that its inspectors were using race in deciding which passengers to search. These allegations were very disturbing, to say the least. It was certainly not the agency's policy, and in no way were we prepared to accept it as our practice.

As you know, one of Customs' chief responsibilities is to keep dangerous contraband from crossing U.S. borders. The fact is most travelers entering our country are law-abiding, but there exists a small percentage that are not. One of the responsibilities of the Customs Service is to stop them from smuggling narcotics and other dangerous contraband into the country.

Customs searches an extremely small percentage of travelers, about 1 every 9 among the approximately 80 million commercial air passengers entering the U.S. each year. To accomplish its mission, Customs has 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, specific factors that may lead those officers to believe someone would be carrying drugs or other contraband.

Under no circumstances do these factors ever include a person's race. So when complaints of racial profiling surfaced, we moved quickly to review all aspects of our personal search policy. Our preliminary review showed no specific incident of bias, but we did find lapses in management and supervision that contributed to incidents 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 policies. Commission members were given unfettered access to Customs data, 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 reviewed 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 search training for all our inspectors, about 8,000 people. We also rewrote our personal search policies, eliminating any phrase that could remotely be construed as bias, and compiled them into 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 detentions. In the past, Customs could hold someone indefinitely, without permitting contact with family or friends. New notification rules allow 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 the national passenger data analysis unit at headquarters to examine that data. I received updates every morning on the searches that were conducted.

We made major investments in new, non-intrusive technology and x-ray equipment. We undertook a major information campaign with the traveling public, and we enhanced the role and visibility of Customs passenger service representatives. We developed a passenger rights brochure that explained the rights of travelers and their obligations under U.S. law. We also created a new customer satisfaction unit at headquarters to handle complaints and other issues, and a national comment card program through 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.

While changes like these require time to take hold, we were very encouraged by the results. Nationally, Customs was searching far fewer people than it ever did before, while increasing its overall level of seizures. Customs cut the number of personal searches significantly, from just over 43,000 searches in 1998 to just over 9,000 in the year 2000. Yet, the number of positive searches yielding drugs actually increased dramatically. Those numbers showed us that we could identify narcotics traffickers without trampling on the rights of the law-abiding public.

In June 2000, the personal search commission issued its report. They acknowledged, in their words, the series of "bold reforms" Customs had taken. While the report did not find specific evidence of bias, they did offer 20 recommendations to further safeguard the rights of travelers, and those recommendations are being implemented.

Having been involved in this issue for a long time, I know one thing for certain. This is not a problem from which law enforcement can simply walk away and declare victory. Policies must be monitored constantly to ensure that changes become embedded in the culture of the organization.

It is my hope that enforcement agencies will voluntarily adopt policies that require the recording of stops and searches of all citizens. Emerging technologies will make this process less time-consuming and easier for management to monitor. It is my view that such practices will not adversely impact on effective law enforcement in any way. It is also my hope that respected national law enforcement organizations, such as PERF, will support such policies and publish documents outlining best practices regarding the carrying out of stop and frisk procedures.

However, if Federal and State agencies lag in the adoption of these policies, then legislation will be required. There is simply no place for racial profiling in American law enforcement, not in the Customs Service or anywhere else.

Thank you.

[The prepared statement of Mr. Kelly follows:]

STATEMENT OF RAYMOND W. KELLY, FORMER COMMISSIONER, UNITED STATES CUSTOMS SERVICE, AND FORMER COMMISSIONER, NEW YORK CITY POLICE DEPARTMENT, NEW YORK, NEW YORK

Senator Feingold, members of the sub-committee, 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. Any agency that 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.

To accomplish this difficult aspect of its mission, Customs has been granted very broad search authorities 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 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.

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. 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 on site.

We bolstered training for our employees. We mandated new cultural interaction and personal search training for all our inspectors. . .that's about eight thousand people. We also rewrote our personal search policies, eliminating any phrase that could remotely be construed as bias, and compiled them in a single handbook. We increased legal oversight of the process. We made Customs lawyers available twenty-four 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 detentions. In the past, Customs could hold someone indefinitely without permitting contact with friends or family. New notification rules allow anyone detained to inform someone of his or her delay within two hours.

Record keeping, 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, non-intrusive technology and x-ray equipment. These included the purchase of body scan machines and mobile x-ray equipment that minimize the need for physical contact and 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 the consultant's findings, we implemented a series of changes including better signage. Enhancing the role and visibility of Customs' passenger service representatives. And designing new declaration forms to eliminate confusion for travelers. We also put out new brochures that explain why Customs performs inspections and searches. These include a document entitled "Why Did This Happen to Me?" which explains the personal search porcess 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, through 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.

While changes like these require time to take hold, we were very encouraged by the early results. Nationally, Customs was searching far fewer people than it ever did before, while maintaining its overall level of seizures.

Customs cut the number of personal searches significantly-from just over 43, 000 thousand searches in 1998 to just over nine thousand in the year 2000. Yet, the number of positive searches yielding drugs actually increased dramatically. 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.

In June 2000, the personal search commission and the independent advisor issued their reports. They acknowledged, in their words, the series of "bold reforms" Customs had taken. While neither report found specific evidence of bias they did state that more precautions could be taken, and offered twenty recommendations to further safeguard the rights of travelers. We 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 law enforcement can simply walk away and declare victory. Policies must be monitored constantly to ensure that changes become embedded in the culture of the organization.

It is my hope that enforcement agencies will voluntarily adopt policies that require the recording of stops and searches of all citizens. Emerging technologies will make this process less time consuming and easier for management to monitor. It is my view that such practices will not adversely impact on the effective law enforcement in any way. It is also my hope that respected national law enforcement organizations, such as PERF, will support such policies and publish documents outlining best practices regarding the carrying out of stop and frisk procedures. However, if federal and state agencies lag in the adoption of these policies, then legislation will be required. There is simply no place for racial profiling in American law enforcement. Not in the Customs Service or anywhere else.

Thank you again, Mr. Chairman, for this opportunity to testify.

Chairman FEINGOLD. Thank you, Mr. Kelly, for your testimony and for your longstanding dedication to solving this problem.

Now, I would like to welcome Chief Reuben Greenberg, the Chief of Police of Charleston, South Carolina. He has been the Chief in Charleston since 1982. Chief Greenberg has extensive law enforcement experience, having served in law enforcement agencies in Florida, Georgia, Alabama and California.

Chief, it is an honor to have you appear before this Subcommittee. Thank you for coming and you may proceed.

STATEMENT OF REUBEN M. GREENBERG, CHIEF OF POLICE, CHARLESTON POLICE DEPARTMENT, CHARLESTON, SOUTH CAROLINA

Mr. GREENBERG. Thank you, sir, and thank you for providing me with the opportunity to make a presentation this morning.

I am certainly confident that if the average law enforcement officer in this country had the opportunity to be here this morning and hear some of the comments that have been made regarding racial profiling, the vast majority, almost all of them, would agree with you that racial profiling is wrong. You don't have to be a lawyer to know that it is probably unconstitutional, it is unjust, it is un-American, and it violates the Equal Protection Clause of our Constitution. They could easily, as I do, agree with you on that.

The difficulty is that racial profiling, while it is a demonstrated problem in 1 or 2 or 3 or 4 or 5 or 10 or 50 law enforcement agencies in our country, it is a very, very small problem. We have almost 18,000 different law enforcement agencies in the United States, and to demonstrate that 3 or 4 or 10 or 50, as I say, of those agencies are outside the line does not mean that law enforcement is a profession that harbors persons who have racist views.

I would like to congratulate, as people have here this morning, Commissioner Kelly on the many initiatives that he has made regarding this issue, but this is not the only issue which he has developed successful resolutions for. He has served in other positions, as has been noted, and he has developed various types of techniques to resolve other law enforcement-related problems as well.

But there are a great many Commissioner Kellys out there; he is not the only one. The National Organization of Black Law Enforcement Executives is just one agency in which many such persons exist. The International Association of Chiefs of Police, the Police Executive Research Forum—all of these agencies are made up of members who have the same types of orientations and the same types of abilities that Commissioner Kelly has.

The difficulty that we see with a Federal approach to this particular alleged problem of racial profiling is that under the Federal initiatives, it generally has the same thing for all; that is, the same fix for all problems, both great and small, all across the country. We do not all need to have the same remedy.

As Commissioner Kelly was able to act very affirmatively without being demanded to do so or required to do so by law, but simply because it was right to do so, he came up with some very interesting and practical and self-initiated procedures in order to reduce what may have been a serious problem in his particular former agency.

It is interesting that the topic of racial profiling is debated and discussed as much as it is, when we are unable to define it or measure it or even to recognize where it is or where it is not. The racial profiling debate is really, in the main, a special debate regarding the enforcement of laws against narcotics. Those persons who are in favor of legalizing or decriminalizing narcotics or other prohibited drugs have directed their opposition to enforcement of these laws by attempting to argue that the enforcement amounts to a declaration of war against certain minorities.

The prize that they truly seek in many cases is not relief for some alleged form of unconstitutional police action against minorities, but more directly they seek to inculcate a procedure so cumbersome and unwieldy that there cannot exist any meaningful and practical enforcement of laws against drug trafficking, distribution and possession. The fact that some drug trafficking and distribution is engaged in by some members of certain racial or ethnic groups is being utilized to blunt or even discourage drug enforcement in general.

We have a number of problems in law enforcement, but I don't believe that racial profiling is one of them. As indicated earlier, it is a very, very small problem in a few places that exists. It is not something that permeates all of law enforcement.

I believe that the people who argue that a disproportionate number of persons from various ethnic groups are convicted of various crimes and sentenced to jail derive from alleged unconstitutional contact that law enforcement personnel have with these groups—I don't believe that is the case. They prefer to ignore the factual data that indicate that these groups have a disproportionate contact with perpetrators of certain crimes also because these groups are also greatly disproportionate numbers of crime victims as well.

For example, while many diagnosticians of racial profiling are anxious to tell you the various percentages of racial minorities who travel a given stretch of highway, they are oblivious to the astronomically high rates of victimization endured by certain racial minorities. For example, as has been pointed out here, African-Americans are 12 percent of the national population, nonetheless 54 percent of annual homicide victims and 44 percent of sexual assault victims. These things need to be addressed as well, and I truly wish that there was some Federal legislation that could be oriented toward reducing the incidence of victimization that African-Americans and other minorities suffer in our country.

Thank you very much.

[The prepared statement of Mr. Greenberg follows:]

STATEMENT OF REUBEN M. GREENBERG, CHIEF, POLICE DEPARTMENT, CHARLESTON, SOUTH CAROLINA

RACIAL PROFILING

It is interesting that the topic of racial profiling is debated and discussed as much as it is when we are unable to define it or measure it or even to recognize where it is or is not. The racial profiling debate is really in the main a special debate regarding the enforcement of the laws against narcotics. Those persons who are in favor of legalizing or decriminalizing narcotics and other prohibited drugs have directed their opposition to enforcement of these laws by attempting to argue that the enforcement amounts to a declaration of war against certain minorities. The prize they truly seek is not relief of some alleged form of unconstitutional police action against minorities but more directly they seek to inculcate a procedure so cumbersome and unwieldy that there can not exist any meaningful and practical enforcement of laws against drug trafficking distribution and possession.

The fact that some drug trafficking and distribution is engaged in-by some members of certain racial and ethnic groups is being utilized to blunt or discourage drug enforcement in general.

Some persons even argue that the disproportionate number of persons from these ethnic groups that are convicted of various crimes and sentenced to jail derive from the alleged unconstitutional contact the law enforcement personnel have with these groups. They prefer to ignore the factual data that indicates that these groups have a disproportionate contact as perpetrators of certain crime is because these groups are also greatly disproportionate numbers of crime victims. For example, while many diagnosticians of racial profiling are anxious to tell you the various percentages of racial minorities who travel a given stretch of highway, they are oblivious to the astronomically high rates of victimization endured by certain racial minorities. African Americans 12% of the national population—54% of annual homicide victims—44% sexual assault victim, etc.

It seems to me that there will or should rightfully be a disproportionate number of minorities being contacted by the police as long as a disproportionate number of minorities suffer as victims of general crime. Most police contact is initiated by a complaint or a request for police action made by a concerned citizen or victim. Police officers are not driving around looking for minorities to stop or investigate for the sake of harassment. They do attempt to enforce the law or deter crime and provide for community safety by taking reasonable and responsible actions to do so. To thwart this law enforcement effort in the interests of promoting some selfish, unnecessary, unhealthy, hedonistic and dangerous goal is unwarranted and wrong. These persons cannot be permitted to use such unethical means to reverse legitimate court decisions and their outcomes.

Chairman FEINGOLD. Thank you, Chief, for your testimony.

Our next witness is Ronald L. Davis, a captain in the Oakland Police Department and the Region VI Vice President of the National Organization of Black Law Enforcement Executives, known as NOBLE. He is the primary author of NOBLE's report entitled "A NOBLE Perspective: Racial Profiling: A Symptom of Bias-Based Policing."

Captain Davis, we appreciate your being here.

STATEMENT OF RONALD L. DAVIS, CAPTAIN, OAKLAND POLICE DEPARTMENT, AND REGION VICE PRESIDENT, NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES, OAKLAND, CALIFORNIA

Mr. DAVIS. Thank you, sir. Chairman Feingold and distinguished Committee members, let me begin with a brief history of NOBLE. NOBLE was formed in 1976 and we are currently celebrating our 25th anniversary here in the Nation's Capital, so you all are invited to join us tonight for our celebration.

NOBLE has grown from 60 founding members to an organization that now represents over 9,000 law enforcement executives, commanders and criminal justice professionals in over 50 chapters across the country. Like most things that are noble, they have started from humble beginnings.

The basic mission of NOBLE is to ensure equity in the administration of justice and serve as the conscience of law enforcement. NOBLE has issued its report on racial profiling which outlines our position and makes recommendations to local, State and Federal legislators and the United States Attorney General. Copies of the report have been provided.

NOBLE has also developed what is considered by many as the most effective racial profiling training in the country. From the onset, NOBLE has been active in addressing the issue of racial profiling and bias-based policing. There is no other organization in this country that has such a unique perspective.

First, as African-American persons, we have been victims of racial profiling. Second, as police practitioners, we have been guilty of racial profiling. And, third, as police executives we are responsible to end racial profiling.

In 1999, NOBLE adopted a resolution supporting the Traffic Stop Statistics Act, introduced by Congressman Conyers. In 2001, at the first day of our national conference, NOBLE adopted a joint resolution with the Alliance of National Minority Law Enforcement Organizations supporting the End Racial Profiling Act of 2001. The Alliance represents every major minority law enforcement organization in this country. It is NOBLE, it is the National Black Police Association, the Hispanic American Police Command Association, the National Latino Police Officers' Association, the Asian American Command Officer Association, the Asian Police Officers' Association, and the Native American Police Officers' Association. As you can see, the Alliance does represent minority law enforcement.

Our position is very simple. Racial profiling does, in fact, occur. We must first accept that racial profiling is not the sole problem or the root cause of the problem; it is a symptom of a much larger problem, which is bias. It is bias in our criminal justice system, it

is bias in our society, and it is bias in policing, or as we call it, bias-based policing.

It took data collection to convince America that racial profiling exists. I say America because make no mistake, as we see today, not all Americans agree that it does exist. A recent survey from my esteemed colleagues at the Police Executive Research Forum revealed that many police chiefs, minorities and non-minorities, believe racial profiling does not exist, and if it does, it is aberrant behavior or limited to a few bad apples.

This survey explains why we need effective racial profiling legislation. Police administrators will not fix the problem if they cannot recognize there is a problem or have the tools to identify to what extent a problem is that exists. Many chiefs and police organizations believe the decision to collect stop data should be that of the local chief or his or her community.

I have a question for that theory. What if it is one of the chiefs who answered the survey that it doesn't exist? I think we can probably answer whether or not he or she will collect the data. How does a chief decide whether or not the community wants data collection? Is it by majority vote, majority of the minority, or majority of a select group? What does this process look like? The idea sounds great in theory. However, in practicality, it will result in minority voices being silenced by the majority will.

For our highways to be truly freeways, we must ensure racial profiling ends in every city and by every officer in this country. It is the basis purpose of the Federal Government to protect and defend the Constitution of the United States.

It was offered this morning that it is the job of the police to prevent crime and arrest bad guys. It is not. The basic oath of office is to protect and defend the Constitution of the United States. We will never compromise civil liberties for safe streets.

Racial profiling legislation is needed to ensure that there is meaning or definition to racial profiling. We have to standardize the definition; it must mean the same thing, whether you are driving on a Maryland interstate or a California highway. A police officer must understand the impact and effect of bias-based policing to his or her community, whether in Oakland or Washington, D.C.

Racial profiling legislation is needed to ensure police agencies operate within the guidelines of the Constitution, never sacrificing civil liberties for safe streets. It was also mentioned that if every police management operated as our esteemed colleague, Commissioner Kelly, we would not be here today. I must agree, but unfortunately we do not all operate the same way as Commissioner Kelly and the American people should not suffer for it.

Racial profiling legislation is needed to hold law enforcement organizations and officers accountable. As a law enforcement manager, I cannot manage what I do not measure. Data collection is not the sole answer. We are not offering it as that. Data collection in most cases probably will not determine whether racial profiling exists in an agency. It will, however, identify the levels of bias in police operations.

Moreover, it is critical in determining the effectiveness of programs and policies. If we make the reform that is necessary, how do we measure our successes? In management, one of the key fac-

tors of any program that we try is to measure our effectiveness. We know this from the statistics.

Racial profiling is not effective. Of the majority of stops in this country, about 3 to 6 percent lead to arrests, and the majority of those arrests are traffic-related offenses. So as we take a look at our murder rate and as we take a look at our crime rate, we are not catching the suspects or the perpetrators through car stops or through the stops that we are doing. Our success rates show that focusing on race or using race to any degree to determine stops, other than suspect description, is ineffective.

As a law enforcement manager, I cannot establish an organizational tone or culture of accountability without sound policies and relentless enforcement of those policies. But those policies must be at the local, State and Federal level. It took legislation in this country to permit racial profiling discrimination to exist. It will take legislation to make it end.

In closing, NOBLE has recommended to the Attorney General to form a national task force on racial profiling to ensure proper enforcement and enactment of the legislation. The task force would assist the Attorney General in identifying what data should be collected, help establish benchmarks, and develop comprehensive training programs and mediation services.

It is truly an honor for me here today to provide you my testimony and I am very grateful.

Thank you, sir.

[The prepared statement of Mr. Davis follows:]

STATEMENT OF RONALD L. DAVIS, CAPTAIN, OAKLAND POLICE DEPARTMENT, AND REGION VI VICE PRESIDENT, NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES, OAKLAND, CALIFORNIA

INTRODUCTION

Good Morning: Chairman Feingold and distinguished committee members. I am Captain Ronald Davis of the Oakland Police Department and Region Vice President of the National Organization of Black Law Enforcement Executives (NOBLE).

HISTORY OF NOBLE

Let me begin with a brief history of NOBLE. NOBLE was formed in 1976, and we are currently celebrating our 25th anniversary in the nation's capitol. If you get a chance, please stop by our 25th anniversary celebration tonight at the Mariott Wardman Park Hotel. Your presence will truly make it a memorable event.

NOBLE has grown from 60 founding members to an organization that now represents approximately 9,000 law enforcement executives, commanders and criminal justice professionals in over 50 chapters across the country. Like most things that are NOBLE, they start from humble beginnings.

The basic mission of NOBLE is to ensure equity in the administration of justice and serve as the conscience of law enforcement by addressing critical issues germane to improving both the law enforcement profession and its service to our communities.

NOBLE is a member of the Community Policing Consortium and provides human diversity and community partnership training to law enforcement officers and community members across the nation.

NOBLE has issued its report on racial profiling which outlines our position, and makes recommendations to local, state and federal legislators and the Attorney General. NOBLE has also developed what is considered by many as the most effective racial profiling training in the country.

From the onset, NOBLE has been active in addressing the issues of racial profiling and bias-based policing. There is no other organization with such a unique perspective.

1. As African-Americans we have been victims of racial profiling;

2. As police officers (practitioners) we have been guilty of racial profiling;
3. As executives we are responsible to lead the fight to end racial profiling.

In 1999, NOBLE adopted a resolution supporting the Traffic Stop Statistic Act introduced by Congressman John Conyers. In 2001, NOBLE adopted a joint resolution with the Alliance of National Minority Law Enforcement Organizations supporting the "End Racial Profiling Act of 2001."

The Alliance represents the following organizations: The National Organization of Black Law Enforcement Executives (NOBLE), National Black Police Association (NBPA), the Hispanic American Police Command Association (HAPCOA), the National Latino Police Officers' Association (NLPOA), the Asian American Command Officer Association (AACOA), the Asian Police Officers' Association (APOA) and the Native American Police Officers' Association (NAPOA).

As you can see, the Alliance represents minority law enforcement in this country. Our position is simple. Racial profiling does in fact occur. We must first accept that racial profiling is not the sole problem or root cause of the problem - it is a symptom of a much larger problem which is bias. Bias in the criminal justice system, bias in our society and bias in policing or as we call it bias-based policing.

NOBLE's definition of bias-based policing is:

> The act (intentional or unintentional) of applying or incorporating personal, societal or organizational biases and/or stereotypes as the basis or factors considered, in decision-making, police actions, or the administration of justice.

The debate is over - racial profiling exists and as President Bush has stated, "...we must end it." This national acknowledgement came about as a result of data-collection. This was not always the case. Two years ago, many people and organizations believed racial profiling was only a perception in the minority community. Today, their perceptions have changed.

Many of the same people and organizations now believe racial profiling legislation is not necessary because - "we know we have a problem." I'm sure in two years this view will too change.

It took data collection to convince America that racial profiling exists. I say America, but make no mistake this does not mean all Americans. There are still many that believe racial profiling does not exist.

A recent survey by the Police Executive Research Forum (PERF) revealed that many police chiefs (minorities and non-minorities) believe racial profiling does not exist, or is aberrant behavior limited to a few "bad apples."

NOBLE recognizes that there are a few bad apples in every profession. We also recognize, and want our great nation to recognize, that our law enforcement officers are "NOBLE" men and women who want to provide service to our communities.

Focusing solely on a "few" bad apples is not only a disservice to these fine men and women in blue, it is a disservice to the communities they serve. This is a sy9temic problem - it is the root of the tree that is bad.

This explains why we need effective racial profiling legislation. Police administrators will not fix the problem, if they cannot recognize there is a problem or have the tools to identify to what extent a problem is that exists. Many chiefs and police organizations believe the decision to collect stopdata should be that of the local chief and his or her community.

Question: What if it is a chief who answered the survey that racial profiling didn't exist? We can probably guess whether he or she will collect data. How does a chief decide whether the local community wants data collection? Is it by majority vote, majority of the minority, majority of a select group? What does this process look like? This idea sounds great in theory, however, in practicality it will result in the minority voice being silenced by the majority will.

Even if a community (minority and non-minority) agrees data collection is not necessary, we must remember there are no cities with restricted access. I must have the ability to drive through any city in this country, not just those who recognize the problem.

For our highways to be truly "freeways" we must ensure racial profiling ends in every city and by every officer in this country. It is the basic purpose of the federal government to protect and defend the constitution of the United States. This responsibility cannot and must not be relegated to local law enforcement or the will of local communities.

Racial profiling legislation is needed to ensure the meaning or definition of racial profiling is standardized - it must mean the same; whether you are driving on the Maryland Interstate or the California highway. A police officer must understand the effect of bias-based policing to his or her community, whether in Oakland, California or Washington, DC.

Racial profiling legislation is needed to ensure police agencies operate within the guidelines of the constitution, never sacrificing civil liberties for safe streets. We can and must do both.

Racial profiling legislation is needed to hold law enforcement organizations and officers accountable. This is not federalism; this is your responsibility.

As a law enforcement manager "I can not manage what I do not measure." Data collection is not the sole answer or panacea. Data collection in most cases will not determine whether an agency is engaging in widespread racial profiling.

Data collection, however, is necessary to identify levels of bias in police operations. Moreover, it is critical in determining the effectiveness of programs and policies. We must establish benchmarks to measure the effectiveness of our reform efforts.

As a law enforcement manager, I can not establish an organizational tone or culture of accountability without sound policies and relentless enforcement at local and federal levels - of those policies. It took legislation to permit racial profiling and discrimination - it will take legislation to end it.

In closing, NOBLE recommends the Attorney General form a National Task Force on Racial Profiling to ensure proper enforcement of the legislation.

The task force would assist the Attorney General in identifying what data should be collected, establish credible benchmarks, develop comprehensive training programs and create mediation and facilitation programs for a "cities in crisis" with racial tension. Mediation services on the front-end prevent investigations on the back-end.

It is truly an honor for me and NOBLE to provide our input. We are grateful that this committee's action is consistent with the NOBLE motto:

"JUSTICE BY ACTION"

I have provided each member of this committee a copy of the NOBLE Report on Racial Profiling and a copy of the Alliance joint resolution.

Chairman FEINGOLD. Thank you, Captain, for your testimony, for your support and the support of your organization.

Next to testify will be Dr. Lorie Fridell. Dr. Fridell is the Director of Research at the Police Executive Research Forum, a consortium of progressive police organizations. Prior to joining PERF in 1999, she was an associate professor of criminology and criminal justice at Florida State University. PERF is a highly respected organization.

Dr. Fridell, we are pleased that you could come today. Please go ahead.

STATEMENT OF LORIE FRIDELL, RESEARCH DIRECTOR, POLICE EXECUTIVE RESEARCH FORUM, WASHINGTON, D.C.

Ms. FRIDELL. Thank you, Mr. Chairman, and thank you, Senator Sessions. I appreciate the opportunity to appear before you today.

As you said, I am representing the Police Executive Research Forum, which is a non-partisan national membership organization of police executives who serve over half of our Nation's population. A major aspect of PERF's service to the profession is social science research and I am the Director of Research.

We believe that the vast majority of police in this country are dedicated men and women who are committed to treating all citizens fairly and with dignity. Just 2 weeks ago, PERF released a 160-page report to provide guidance to these men and women and the citizens they serve on how they can respond to racially biased policing and the perceptions of racially biased policing.

This guidance is based on surveys returned by more than 1,000 police executives, materials sent to us by more than 250 agencies, existing reports and literature, focus groups with citizens and police from around the Nation, input from subject matter experts, and input from an advisory board, including a representative from NOBLE, as well as representatives from minority advocacy groups and civil rights groups and academia. So much of what we gained during the course of that report has helped us to understand what Senate bill 989 would mean for both police and citizens.

I am going to highlight several major points from my written testimony. First, I will discuss our support for the best practices grants and how that is, in fact, the appropriate role of the Federal Government to address this important problem.

Second, I will share our concerns regarding the provision that allows the results of data collection to serve as prima facie evidence in court of racially biased policing on the part of agencies. My concerns relate to what appear to be overly high expectations regarding the ability of these data to identify racial profiling.

Third, I will share our concerns about the provision that jeopardizes funding for communities in need by linking those funds to new eligibility requirements.

First of all, Title III, Section 302, provides for the best practices development grants. These are going to support agencies in their efforts to respond to racially biased policing. The PERF report advocates that executives sit down with their citizens and discuss the problem and decide what are the appropriate remedies tailored for the jurisdiction.

In our report, we provide over 50 recommendations for these police-citizen partnerships to implement. We strongly support Section 302, which would provide communities with the resources to implement these, so long as it doesn't drain other important current law enforcement funding. We are also pleased to see that many of the activities listed in that provision reflect the recommendations in the PERF report. Again, this provision does represent an appropriate role of the Federal Government.

We are very concerned, however, with Title I, Section 102, regarding the enforcement of the racial profiling prohibition. Specifically, we are very concerned that this provision provides that department data that show law enforcement activities "have had a disparate impact on racial or ethnic minorities shall constitute prima facie evidence of a violation of this title."

We are concerned because we believe this indicates expectations for law enforcement data that exceeds their capabilities. Indeed, during the course of our 18-month project, we witnessed overly high expectations for what this law enforcement data can tell us. In fact, it appears that policymakers, citizens, and even executives came to think that if they cared at all about racially biased policing that they had to collect special data. Other important response areas were not given equal emphasis; these other areas include, for instance, academy and in-service training, restrictive policies on the use of race and ethnicity to make law enforcement decisions, recruitment of diverse personnel, first-line supervision, and outreach to minority communities.

While data collection can, in fact, be one viable response by agencies to the problem of racially biased policing, policymakers need to understand, first of all, the limitations of those data—what they can and cannot tell us. And, second of all, they need to understand how to use those data responsibly in light of their limitations.

First, with regard to the limitations of the data, social science is not capable of providing us with an answer for every question that we pose. Thus, while all of us would very much like to have data collection systems that can tell us what is going on in the heads of our officers every time they make a stop or initiate a search, we cannot do this.

The problem is that while we can collect data and, with the help of some benchmarks show the disparity, we cannot to a reasonable degree of certainty explain that disparity. That is, while an agency can produce reasonably valid data to answer the question, "what percent of the people we stop for traffic violations are Hispanic," the question we can't answer well is, "what percentage proves racial profiling?"

Agencies are using benchmarks: census, driver's license, UCR and observational data to try to figure out what these percentages should be. But all of these have great limitations because, in effect, what we are trying to do with this benchmarking and this data is prove a causal linkage between race and police behavior, when we cannot possibly account for all of the variables besides race that could have impacted on that behavior. These variables would include, but are certainly not limited to, amount of driving, driving violations, vehicle condition, and enforcement activity.

Again, there is nothing wrong with data collection so long as the people collecting it understand what the data can and cannot do, and that the results are used responsibly. What does it mean to use them responsibly? Using them responsibly means realizing that these are not proof of wrongdoing on the part of either officers or agencies.

In the legal system, we link the seriousness of our response to the level of proof or the confidence that we have in our evidence. For example, we would not arrest someone solely on the basis of hearsay evidence alone. Similarly, we shouldn't bring an agency into court based on data collection efforts that show disparity alone. The consequence is too great vis-a-vis the confidence that we can have in this evidence.

This bill would allow agencies to be pulled into court based on a low level of proof and then require the agency to prove a negative—prove that they are not engaging in racially biased policing, thus using resources for the legal defense that should be used to protect and serve our communities.

Very briefly, Title III, Section 301, restricts eligibility for specified grant programs. We do not support Section 301 because it jeopardizes existing funds that provide important resources to communities in need. For instance, LLEBG funds are being spent to enhance domestic violence efforts, reduce gang crime, enhance security in and around schools, and provide recreational activities and job training for at-risk youth. The harm of this provision will be to the citizens of those high-risk neighborhoods.

In closing, I appreciate the opportunity to speak with you. As indicated by our recently released report, PERF takes racially biased policing very seriously and we are working to help agencies respond effectively. We support the bill's sponsors in wanting to address racially biased policing and hope that we can work with Members and staff on this and other important law enforcement issues.

Thank you.

[The prepared statement of Ms. Fridell follows:]

STATEMENT OF LORIE FRIDELL, PH.D., RESEARCH DIRECTOR, POLICE EXECUTIVE RESEARCH FORUM, WASHINGTON, D.C.

Mr. Chairman and Members of the Committee, I thank you for the opportunity to appear before you today. I am representing the Police Executive Research Forum (PERF), which is a nonpartisan, national membership organization of police executives who serve more than half the nation's population. A major aspect of PERF's service to the profession is the social science research that we conduct on various law enforcement topics. I am the director of research at PERF and have worked closely with our members and others engaged in addressing racial profiling.

PERF's members are dedicated to addressing racially biased policing in all of its forms and they join the vast majority of police officers in this country who are dedicated, principled men and women committed to treating all citizens fairly and with dignity as we work to prevent, identify and eradicate racially biased policing.

PERF recently released a 160-page report on racially biased policing. (This report is available in its entirety on our website at www.policeforum.org.) It provides nearly 50 recommendations that are based on information culled from surveys returned by more than 1,000 law enforcement executives, materials from more than 250 police agencies, focus groups with citizens and police, a literature review, subject matter experts, national conference discussions, and advisory group input. The advisory group for this project was composed of a diverse group of law enforcement practitioners, community activists, civil rights leaders and academics. Much of the information we gained during this study has helped us better understand what S. 989 would mean for police and citizens.

SOME GENERAL PRINCIPLES

To put my remarks in context, I would like to mention a few principles that guide PERF's work in this area. First, we know that racially biased policing must be treated as a human rights issue. It has always been unconstitutional and there are remedies, such as civil litigation under section 1983 and U.S. Civil Rights investigations by the Department of Justice, and these should not be forgotten. We know that racial profiling has had devastating effects on citizens. It is a problem that should be addressed by police working in concert with community leaders, civil rights activists and other stakeholders toward a climate of mutual trust and respect.

Second, we know it is important to address the corrosive impact of both perceived and actual racial bias by police and that the concerns of both law enforcement and citizens go well beyond the standard, very narrow, definition of "racial profiling." We use the term "racially biased policing" rather than "racial profiling" because racial profiling has frequently been defined so restrictively that it does not capture the concerns of both police practitioners and citizens. The most common definition of "racial profiling" refers only to law enforcement activities (particularly vehicle stops) based solely on race. According to the PERF report, "racially biased policing" occurs when law enforcement inappropriately considers race or ethnicity in deciding with whom and how to intervene in an enforcement capacity. Compared with this definition, "racial profiling" targets a much narrower range of activity. These contrasting, but unspoken, definitions lead to confusion when assessing police or citizen perceptions of the problem and need to be clarified in any discussion about the range of activities of concern to police and the public.

The PERF report suggests that executives conceive of "interventions" broadly and consider the following areas in addressing racially biased policing:

1. accountability and supervision;
2. policies prohibiting biased policing;
3. recruitment and hiring;
4. education and training;

5. minority community outreach; and
6. data collection and analysis.

One of our concerns with S. 989 is its overemphasis on data collection as a remedy for this problem-reflecting the overly high expectations nationally for these efforts. We found during the course of our work that there is a widespread misunderstanding on the part of policy makers, agency executives and citizens of what data collection-that is, agencies' collection of race/ethnicity and other data on engagements with citizens-can and cannot do. After characterizing the constraints associated with data collection, I will link those concerns to several specific provisions in the bill.

THE LIMITATIONS OF DATA COLLECTION EFFORTS

In PERF's report, we caution against high expectations regarding the extent to which data can produce valid answers to the serious and legitimate questions an agency seeks to answer. Data collection can be a very positive agency response that can reflect the police executive's commitment to both the community and agency personnel that biased policing will not be tolerated. It can be used as a first step in internal assessments of particular enforcement tactics or individual officer performance when used responsibly. It can be problematic, however, if policy makers, including police executives, look to data collection efforts to provide a reliable and valid assessment of the nature and extent of racial profiling.

Social science is not capable of providing valid answers to every question posed. Indeed, there are many chiefs who sincerely would like to gauge whether or not their departments engage in racially biased policing, but have come to recognize that social science methods are not fully able to produce the information they seek. Specifically, while agencies can have reasonable confidence in the data they collect from their officers regarding whom they stop, there are legitimate questions as to whether there are, at present, cost-effective methods for interpreting those data to reach valid, meaningful conclusions. An agency can produce reasonably valid data to answer the question: "What percent of the people we stop in this jurisdiction for traffic violations are Hispanics?" The question we can't answer is "What percentage proves racial profiling?" That is, an agency might determine that 25 percent of its stops are of Hispanics but be unable (because of the limitations of social science) to draw any reliable conclusions regarding what this means. Some agencies might compare the percentage of Hispanics stopped to census data and yet the people who live in a particular area may be very different from who is traversing the roadways. A department would want to compare the demographics of those stopped with the demographics of those at risk of a stop, taking into consideration numerous factors, including, but not limited to, driving quantity, driving behavior, vehicle condition, and police presence. This information is not readily or easily available.

The key point here is that, in the realm of "racial profiling," some benchmarks can help us show disparity (number of people stopped as compared with representation in the general community population, for example). We don't yet have the social science techniques that can help us to explain that disparity. That is, we cannot rule out all possible explanations for that disparity except race.

In conducting data collection, we are asking social science to determine whether there is a causal main effect between citizen race/ethnicity and police behavior. To show this causal effect we must, among other things, rule out all other possible explanations for that disparity. To draw definitive conclusions regarding stop data that indicate disproportionate engagement of racial/ethnic minorities, we would need to be able to identify and disentangle the impact of race from legitimate factors (such as driving behavior, driving frequency, status of equipment, hot spot enforcement) that might reasonably explain individual and aggregate decisions to stop, search and otherwise engage people. Social science cannot do this well. As stated in a U.S. General Accounting Office report (2000), because of methodological challenges, "we cannot determine whether the rate at which African-Americans or other minorities are stopped is disproportionate to the rate at which they commit violations that put them at risk of being stopped" (p. 18).[1]

In an attempt to rule out alternative factors, agencies strive to develop comparison groups against which to evaluate their vehicle stop data. Specifically, agencies try to develop comparison groups that reflect the demographic makeup of groups at risk of being stopped by police in an unbiased world. We don't have this alternative unbiased world for purposes of comparison and, instead, social science only offers

[1] "Racial Profiling: Limited Data Available on Motorist Stops." Report submitted to the Hon. James E. Clyburn, Chairman, Congressional Black Caucus, March.

agencies alternatives for "benchmarking," which are wanting. (For instance, agencies are using census data, drivers' license data, accident data and so forth to develop standards for comparison.) In effect, the process of data collection is an effort to collect "circumstantial" evidence to tell us what is going on inside the heads of police officers when they make decisions. The methods we have are simply inadequate for the task.

PERF very much wants to increase the value of data collection efforts and, to that end, we are currently engaged in a federally funded project to develop guidance for police agencies in their analysis and interpretation of data. Our hope is to enhance the general understanding of the potential and constraints of these data and promote their responsible use. (We do not, however, advocate mandatory data collection.)

Indeed, let me emphasize that data collection can be one viable response to the issue of racially biased policing so long as the policy makers, including chiefs, understand what the data can and cannot do. The key is to examine the objectives one wants to achieve and have a full understanding of whether or not data collection can achieve those objectives. It can be a good starting point for assessing overall performance and be part of a comprehensive partnership effort with citizens in addressing the problem. The downside of data collection is misusing the findings because of a lack of understanding of its limitations. This can cause harm to agencies, to individual officers and to communities. This leads me to my specific comments regarding the bill.

PROHIBITIONS AGAINST RACIAL PROFILING AND ENFORCEMENT

Because of social science limitations, the PERF project team was disturbed during the course of the study to see policies that linked "racial profiling" results directly to officer discipline. This clearly demonstrated a misunderstanding of where these types of data might fall in terms of level of proof. It would be the equivalent of punishing someone based on hearsay evidence alone. The results of data collection efforts-whether at the individual or agency level-are not "proof" of misconduct. Thus, we were similarly disturbed that Title I, Section 102 provides that "[p]roof that the routine investigatory activities of law enforcement agents in a jurisdiction have had a disparate impact on racial or ethnic minorities shall constitute prima facie evidence of a violation of this title." As noted above, a finding of "disparate impact" is meaningless without proper analysis and interpretation, yet S. 989 uses it to shift the burden to police to prove they are not engaged in racial profiling. Data collection that results in a finding of disparate impact does not necessarily indicate that police are racially biased in their enforcement and investigatory decisions. For instance, if a minority community having a problem with a youth gang composed of mostly minority members asks for police action, there may be a disparate impact when "hot spot" enforcement is used, depending on the comparison group used to determine disparate impact.

There are two related issues. One is that, chiefs may well be able to explain to a sufficient level of proof that they are not engaging in racial profiling, but they would still need to defend their actions in court based on this limited data. Upon passage of this legislation, there could conceivably be large numbers of police agencies in the country called into court to explain why the percentage of ethnic minority people arrested (per their Uniform Crime Report data) exceeds their representation in the population. The second issue is that we will be asking agencies to "prove a negative" with social science tools that are quite limited. Agency information that shows disparate impact can reasonably prompt additional investigation by police, analysts and the community to consider the context and myriad factors that went into the law enforcement decisions made. This is what is happening nationwide. But, this type of information does not warrant consideration as prima facie evidence of racial profiling.

The further harm of this provision is that it may have negative consequences for law enforcement's legitimate crime control and prevention activity in neighborhoods with largely minority residents. Several PERF members-including Chief Edward Flynn across the Potomac River in Arlington County, Virginia-shared recently that they have met with leaders of predominantly minority communities who have agreed that additional officer deployment in their neighborhoods is necessary to address crime and disorder. The chiefs' concern was that these deployments might increase allegations of racial profiling because appropriate benchmarks and safeguards against improper analysis and interpretation do not exist. They are concerned they will need to vest significant resources to explain their actions in court, under a cloud of alleged racial bias, even when their activities are legitimate. And, indeed, this provision in the bill appears to do just that.

Shifting the burden to police agencies to prove they are not engaged in racial profiling will only ensure that police agencies who are called into court to justify legitimate law enforcement activities that resulted in disparate impact, but no racial profiling, will have their budgets drained to pay for legal defense. Exacerbating this burden on police is the provision that law enforcement agencies that cannot prove the "racial profiling negative" may be required to pay "reasonable attorneys' fees as part of the costs, and may include expert fees as part of the attorney's fee." While prevailing plaintiffs may receive attorney's fees, even where police agencies prevail, they seldom, if ever, recover the costs associated with defending a claim.

At a time of stretched police agency budgets, it is the community who will suffer if public safety funds are diverted to pay for increased litigation against agencies based only on a finding of disparate impact. We would not want the bill to divert police focus or resources away from serving troubled communities.

PERF's report proposes that data collection should be considered by citizens and the police who serve them as one of many tools that can be used in a comprehensive approach to address racially biased policing, and its use should be determined by the priorities and resources of that community. There is an important place for data collection in the range of possible police-community responses: It just isn't appropriate to presume that disparate impact derived from data collection sufficiently indicates racial profiling to justify the financial burdens and stigma that is placed on police agencies even if they are able to explain the results as unbiased policing.

Loss of Critical Funding for Crime-Ridden Communities

Another troubling aspect of S. 989 is that police funding under the COPS program, Local Law Enforcement Block Grant Program and Byrne grants could be lost for failure to comply with such vague mandates as "cease existing practices that encourage racial profiling." Even if the proscribed activity is better defined, it seems contrary to the stated objective to take support away from citizens in violent neighborhoods under these federal grant programs because there is a police agency that is believed not to have "adequate policies and procedures designed to eliminate racial profiling" (emphasis added).

The funds from these grant programs are being used across the country to do tremendous things for communities. For instance, Local Law Enforcement Block Grants (LLEBG) funds are being spent to enhance domestic violence efforts, reduce gang crime, enhance security in and around schools, provide recreational activities and job training for "at risk" youths, support juvenile drug courts to name just a few uses. It would be tremendously unfortunate if the "at risk" kids, domestic violence victims, juveniles with drug problems and students lost their programs.

The objective should be to help all police agencies do the best possible job to address racially biased policing. If there are problems, we should work to solve them, not take away critical funding that will further impair police services to areas plagued by crime and disorder. It is important to remember that there are already in place powerful remedies for addressing "pattern and practice" as well as individual officer's misconduct that do not include taking funds that ultimately benefit citizens in areas overrun by criminal activity.

We want to be clear on this point: There is no legitimate purpose served by endangering critical public safety funds by adding requirements that grantees address the specific racial profiling mandates outlined by S. 989. Even those who argue that there are reasons to include such mandates must realize the limitations of the requirements that we discuss below.

Requirements for Grant Funding

Policies

S. 989 requires that agencies must have a policy that states a prohibition of racial profiling. We agree that agencies should have a policy, but do not think this should be linked to federal funding. PERF has developed a recommended policy that is already being considered seriously by police agencies across the nation despite the fact that it was released just two weeks ago. It has already been adopted by the National Oceanic and Atmospheric Administration's (NOAA's) Office for Law Enforcement with some modifications.

While our policy is similar in substance to that contained in S. 989, we believe our policy is clearer and, arguably, more encompassing (covering all law enforcement decisions). (It is not clear, for instance, whether the policy set forth in S. 989 encompasses police decisions to arrest or use deadly force.) The PERF Model Policy has been reviewed by law enforcement lawyers and constitutional scholars and builds upon both the 4th and 14th Amendments of the Constitution. In the 4th

Amendment realm, our policy makes it very clear that race can never be used as the sole factor to establish either reasonable suspicion or probable cause.

DATA COLLECTION

The second requirement for receiving covered grants is "the collection of data on routine investigatory activities. . . to determine if law enforcement agents are engaged in racial profiling." We do not support mandatory data collection because social science does not currently provide us with the benchmarks and other tools necessary to determine if law enforcement agencies are engaged in racial profiling. This position has also been taken by the Major Cities Chiefs for the same reasons.

And, as mentioned earlier, we think the decision whether or not to collect data is best made by citizens and the police who serve them. We think it is reasonable for these partners to decide that the money to be expended to address this critical issue might be more reasonably and effectively spent on other activities, such as academy and in-service training programs designed to reduce racially biased behaviors, adoption of the PERF policy with associated training, enhanced supervision techniques, concerted minority hiring efforts, purchase of in-car videos, and enhanced outreach to minority communities.

The data collection requirement in S. 989 includes all "routine investigatory activities," which include traffic stops, pedestrian stops, frisks and other types of body searches, and consensual or nonconsensual searches. In the PERF report, we discuss balancing the need for information on high-discretion/low visibility stops against considerations of response times, officer safety, community priorities, resources, etc. Another consideration is that the benchmarking challenges increase exponentially with every additional law enforcement activity targeted (e.g., adding pedestrian stops to traffic stops). Reflecting this balance, we propose that agencies choosing to collect data, or mandated by state law, target vehicle stops (that is, traffic and investigatory stops of motorists). Further, we acknowledge that some agencies may choose to institute data collection in stages-adding additional categories of activities as the system is developed. The agencies collecting vehicle stop data or adding activities incrementally to produce a sound system would be ineligible for covered program grant funds.

CITIZEN COMPLAINT AND OFFICER DISCIPLINARY PROCEDURES

S. 989 also requires that grant applicants have adequate citizen complaint and officer disciplinary procedures to address racial profiling. The PERF report supports procedures that will increase the transparency and integrity of the citizen complaint process. We have recommended, "the public complaint management system include a separate category to permit clear and accurate monitoring of complaints of biased policing, with the capacity to identify patterns and practices inimical to equal treatment of citizens." We recommend audits of the complaint system with spot checks to evaluate effectiveness. We have also recommended other means for ensuring that complainants are not intimidated, discouraged or coerced in any way and understand the process, among others. With that said, these recommendations should never be a sanctioned requirement for federal grants listed under covered programs in the bill.

As to oversight requirements for grantees, there is no single model of police oversight that will work in every jurisdiction.[2] The term "independent" used to describe the required complaint procedures is not defined and will lead to myriad interpretations. The independent complaint procedures required by the bill may exclude review boards that effectively use both police and citizen input, if police involvement means the process is no longer independent. The federal government should not dictate to state and local authorities what type of review board they should have, so long as the process is effective, efficient and fair. In fact, the reason that PERF has opposed the federal Police Officer Bill of Rights legislation called the State and Local Law Enforcement Discipline, Accountability and Due Process Act of 2001 (H.R. 1626 and S. 840) is precisely because those federal mandates would undermine the state and local controls and investigatory processes that effectively hold officers accountable for misconduct. The oversight provision is an inappropriate requisite for funding.

[2] See, Walker S. (1995). Citizen Review Resource Manual. Washington, D.C.; Police Executive Research Forum.

ATTORNEY GENERAL'S POLICIES

It is unclear why there is a need for an additional policy requirement that law enforcement agencies must meet "such other policies or procedures that the Attorney General deems necessary to eliminate racial profiling" to retain and gain federal grant funding. We are unaware of why there would be a need to legislate such authority.

SUPPORT FOR A BEST PRACTICES GRANT PROGRAM

PERF agrees that an appropriate federal role in addressing racially biased policing is providing funds to enhance or create local police efforts to address racially biased policing.

It is our understanding from Hill staff that the Section 302 Best Practices Grant Program does not require compliance with the mandates set out in section 301. If this is the case, PERF would support such a grant program and is pleased that the list of supported activities reflects some of the many suggestions in the PERF report about effective responses to racially biased policing. (We should note, however, that some PERF members voiced concern that the grant program appropriations would be made from existing police funding programs such as COPS, Byrne and Local Law Enforcement Block Grants. PERF would not support draining existing law enforcement funds to support the new grant program.)

The grant program is consistent with PERF's objectives to see more work done in training and education, for example. Our report includes recommendations for topics and methods of delivery for both training and education. Police agencies should consider integrating education and training related to racial bias in a wide range of curricula, although a single course of instruction may suit immediate needs. The funds for training outlined in the bill could also be used to train officers in policies-such as the model developed by PERF-that clearly and tightly restrict officers' use of race or ethnicity to make law enforcement decisions. Expansive reforms to training and education would benefit from federal funding support.

PERF believes that support for data collection technology will aid those agencies that choose to collect data or are mandated by state law to do so, but believes that the use of those funds as specified in the bill be expanded further to help underwrite costs associated with changing forms, increased personnel time and other associated budget items.

Many PERF members have also struggled with finding funding for in-car cameras and portable computer systems and would welcome grants to support these efforts.

The best practices grants would include support for early warning systems tailored to the needs of each jurisdiction, which many PERF members have considered adopting in identifying "bad apples" as well as institutional policies and/or procedures that may have the unintended consequence of contributing to racially biased policing.

In terms of accountability and supervision, PERF's report focuses on the need for an assessment of the organizational culture; quality assurance methods for all operations; an integrated approach for encouraging police awareness and appreciation of racial/ethnic diversity and cultural differences; and regular reviews of the complaint reception and management/monitoring processes. Funding in these areas would be an important investment in these critical processes.

According to the PERF report, supervisors should look for evidence of improper practices and patterns and should be responsible for ensuring that citizen complaints of biased policing are given a formal and respectful hearing, and that complaints are documented in accordance with agency policy. The ranking police representative should ensure that complainants are not subjected to any form of discouragement, intimidation or coercion in filing their complaints at the police station or in bringing their complaints to the attention of any officer. They must also provide the complainant with information on how the department deals with complaints, and with the name of the office responsible for handling them. Many of these recommended measures would benefit from financial commitment to citizen complaint systems and community education efforts that many agencies will struggle to find in current budgets. PERF believes additional allowable uses for grant funds might support efforts to increase minority representation on our police forces or support trust-building partnerships between agencies and their minority communities. Proactive efforts to recruit and keep a diverse police force must be realized. PERF also recommends periodic audits of selection processes to ensure that qualifications and standards are valid and fair to all applicants and that neither the sequencing of the testing stages nor the length of the process hinders minority hiring. Once selected, police executives should determine whether minority recruits are disproportionately dismissed from the agency during recruit training, field training and

probationary periods, and if so, determine why and seek ways to reduce that disparate impact.

Finally, there are many innovative minority outreach and partnership efforts being conducted across the nation (and which are described in the PERF report) that can be replicated and tailored to other jurisdictions, which would also benefit from funding support.

SUMMARY

In closing, we can appreciate that the sponsors of S. 989 want to eliminate racially biased policing. PERF members join them in that goal. We support the provisions in the bill that would provide federal grants to support training, education, data collection for those who choose it or are mandated by state law, new technologies such as in-car cameras, and others. We should not, however, be holding back federal grants that benefit citizens in crime-ridden communities if police are unable to meet standards or requirements related to racially biased policing, when other enforcement measures exist.

We hope that we can continue to work with staff and Members on these and other law enforcement issues and that we will find constructive grant programs and other measures that will help the vast majority of police professionals in this country who are eager to prevent and address racially biased policing.

Thank you.

Chairman FEINGOLD. Thank you, Dr. Fridell. Thank you for your testimony and for the kind words about aspects of the bill. This gives me an opportunity to say again what I have said many times, including working with law enforcement in Wisconsin, that we are very eager to work with you on some of the issues you have mentioned. We may be able to come to agreement on some, others we may not, but that was a very specific analysis of some issues that we will be seeking to address.

Finally, our last witness will be Professor David Harris. Professor Harris currently teaches at the University of Toledo College of Law. I can tell you he is one of the most dedicated people in the country on this issue. He is a leading scholar and author of various articles on the subject of racial profiling.

Professor, it is a pleasure to welcome you again to this Committee and you may proceed.

STATEMENT OF DAVID A. HARRIS, BALK PROFESSOR OF LAW AND VALUES, UNIVERSITY OF TOLEDO COLLEGE OF LAW, TOLEDO, OHIO

Mr. HARRIS. Thank you very much, Chairman Feingold, Senator Sessions, members of the Committee. I appreciate the invitation. Thank you for having me here today and giving me the opportunity to speak on this problem.

I want to start by saying that there is no reason that we should think that there is a choice to be made between effective crime-fighting and backing off on racial profiling. There is no such dilemma; it is a false dilemma.

We are sometimes told that there are only two ways to enforce the law, the aggressive way which takes race into account, and a softer way that will be ineffective but respectful. Respectfully, I reject that dichotomy, and I think every member of the Committee should also.

In this country, we can have, and we must have, law enforcement that is both effective and respectful of the rights of its citizens, and especially their right to proceed on the streets or on the

sidewalks, left alone, if that is their wish. We must have that and, in fact, we do have that.

I agree with Chief Greenberg that there are cities in this country where the example of Commissioner Kelly is being followed in many different and very creative ways. Police departments in these cities have found that they can reduce crime, and keep it down in partnership with their communities. They are working with their communities, not against them, not treating members of those communities as potential suspects but as partners. That is the way that we will get around this problem. That is the way we will keep crime down.

Any successful partnership requires at its core that there be trust. The word has already been used this morning and I want to use it again, because the trust of the public is tremendously important, indispensable to any policing effort. Without trust, law enforcement cannot hope to perform its core mission of serving people and protecting the Constitution. Police officers need the public's trust to find out who the bad guys are and they need members of the public to trust them when they serve as jury and any police officers testify. If police don't have the benefit of the doubt in the minds of the public, we have a serious problem. That is where the rubber meets the road on this problem.

When there is a widespread belief in our country, that racial profiling is a common practice, trust is broken down and becomes corroded. And that is something that none of us in this room or anywhere else in this country, and certainly none of us who wear the police officer's uniform can afford. It is simply a cost we should not pay and, in fact, we don't have to pay because we can, as I said, have both effective and respectful enforcement.

Let me just make a couple of very brief points because much has already been said today. It is clear that this is a national problem. There is data from a whole variety of contexts—traffic stops in Maryland and New Jersey, a stop-and-frisk study in New York City, the Customs Service before Commissioner Kelly implemented his reforms, and many others.

What is really striking about this data is that it is consistent across the board. There was only one factor in all of these data that predicted who would be stopped at higher rates, and that was either race or ethnic appearance. At the same time, the other shocking thing in this data, and this lies at the core of my book, is that as other witnesses have said, this is not a law enforcement practice that works. It is inefficient. It does not get the bad guys.

In fact, we get lower rates of return in terms of arrests, seizures of contraband, and so forth, when we focus on race than when we do a good job and just focus on behavior because race is descriptive and it is a good thing when it is used descriptively of a particular suspect. It is not good when it is used predictively, and that is where we get into trouble.

The Federal role in this particular piece of legislation, Mr. Chairman, I think is very, very important. For years, the Federal Government has had the lead role in guaranteeing the Federal civil rights of all citizens, whether we are talking about voting rights, whether we are talking about the right to go to a desegregated school. This is of a piece with that.

More than that, though, the Federal Government also had a hand in creating this problem through a Drug Enforcement Administration program called Operation Pipeline which taught profiling to agencies all over the country in a conscious effort to spread profiling as law enforcement gospel. Though the DEA says race was not a part of that effort, it has come to be used that way. It was implicit in some of the training materials that I have seen, and for that reason alone the Federal Government has a moral obligation to step up on this issue.

I would also like to just take a minute to emphasize that data collection itself is not an end-all and a be-all. It is, as Senator Hatch quoted from earlier testimony, an important step, but it is clearly not the only step, and this bill takes us into the phase of crafting solutions.

But as Captain Davis said, if I have no data, how can I manage? If I have no data, how can I have accountability? Accountability is what this issue really comes down to in so many ways. Without data, we don't know how to hold our agencies accountable and our officers accountable. For that reason alone, this bill is worth considering in the most serious possible way.

Last, it is important to emphasize a point made by Senator Schumer. This is sometimes viewed as a black problem or an African-American problem. Surely, it is that, but Latinos, operate under what he called the double whammy of being criminal suspects and suspected illegal immigrants. And this is happening not just in the border Southwest where we have heard about the INS and the Border Patrol, and so forth, but also in a region of the country like mine, northwest Ohio. We are closer to Canada than Mexico, but have had State police stopping people and confiscating their green cards, and not just any people who might be immigrants, but only those who had an Hispanic appearance.

In closing, let me just say, Mr. Chairman, I appreciate very much the chance to speak to the Subcommittee. I appreciate your leadership on this issue. S. 989 is a huge step forward and I am hopeful that the Committee will give it every consideration.

Thank you for the opportunity.

[The prepared statement of Mr. Harris follows:]

STATEMENT OF DAVID A. HARRIS, BALK PROFESSOR OF LAW AND VALUES, UNIVERSITY OF TOLEDO COLLEGE OF LAW, TOLEDO, OHIO

Chairman Feingold, Ranking Senator Thurmond, and distinguished ladies and gentlemen, thank you for holding this hearing. I am David Harris, Balk Professor of Law and Values at the University of Toledo College of Law in Toledo, Ohio. I have been researching and writing in the field of racial profiling for more than six years. My book, "Profiles In Injustice: Why Racial Profiling Cannot Work," will be published in January of 2002 by The New Press in New York. I thank you for inviting me to address you today.

Few topics have become more important to the general public over the last few years than racial profiling: the use of race or ethnic appearance, along with other factors, to single out individuals for police investigation. When we think of racial profiling, we think of traffic stops. But this type of bias can rear its head in many different types of routine police encounters, such as stops and frisks on city streets. Polling by the Gallup organization shows that a majority of all Americans—not just African Americans, Latinos, or other minorities feel that racial profiling is a widespread phenomenon, and that it must be rooted out. The evidence that we have from the first statistical studies—from New Jersey, Maryland, New York, and other places—confirms this belief.

Before going further, it is important to understand what this problem is really about. For many, the term "racial profiling" translates into police racism and bigotry, pure and simple. Police officers themselves often feel accused of racism, individually and collectively, whenever the topic of racial profiling is raised. I believe that this is an oversimplified and in many ways inaccurate way to view this complex social problem. While there surely are bigots among police officers, this is true of people in every walk of life. The problem is not the bigotry of a few wayward individuals, but a set of biased institutional practices. Most often, this bias is unintentional; police officers by and large are good people who want to do a good job serving the public. Those who use race or ethnic appearance as a possible indicator of criminality almost always do so with the best of intentions: they feel it is the right way to fight crime. But whether we are aware of these biases or not and whatever the intention behind them, racial profiling is doing great harm to policing and the entire criminal justice system. It is high time we examined these practices carefully. And when we do, we find that using racial or ethnic appearance, except those describing particular people, is not good policing at all.

A National Problem

African Americans, Latinos, and others have long complained about being singled out by police on the basis of racial or ethnic appearance; the problem is not new. But for years there was no solid proof that this was a real and widespread phenomenon. As recently as 1994, there were no statistics from anywhere in the country that would have helped to clarify the scope and extent of the problem.

This began to change in the middle and late 1990s. Court cases in New Jersey, Maryland, and elsewhere, and investigations by the press in other states, began to produce reliable statistics for the first time. They came from different places, involved different police agencies, and different law enforcement contexts. Despite these differences, the statistics were remarkably consistent: African Americans, Latinos, and other minorities were, in fact, stopped and investigated by police in numbers far out of proportion to their presence on the roadways, on city sidewalks, and in airports. Driving behavior didn't explain this; presence in high-crime neighborhoods didn't explain this; only race explained it. And, as I argue in my book, the data demonstrate that racial profiling does not catch criminals at any better rate than other methods; in fact, it does a worse job. Thus it is ineffective as well as immoral and personally damaging.

Given the wide variety of localities these numbers come from—New Jersey, Maryland, Florida, New York City, Colorado, California, and others—it is clear that this was a national problem. This does not mean, of course, that profiling happens everywhere, in every police department. But the data reveal a pattern spread among so many different contexts that the issue has become a national concern.

The Federal Role

At this point, the question of racial profiling has become part of the public debate in most states and many cities around the country. Thirteen states have passed some kind of legislation requiring some form of data collection on traffic stops or other routine police encounters by some or all of the police agencies under their jurisdictions. In addition, several hundred police agencies that are not obligated to do so have begun collecting data on traffic stops. The data collected vary, but almost always include the race of the driver, the reason for the stop, and the outcome of the stop. Thus we might ask whether federal legislation such as S. 989, the End Racial Profiling Act of 2001, is necessary.

I believe that the answer to this question is a strong and emphatic yes. We should encourage state and local authorities to take action on racial profiling; S. 989 would do exactly that, without discouraging or supplanting state and local efforts. In addition, there are things the federal government can do that are unique to its role in our country that will move police departments in the right direction. Moreover, we must keep in mind that, despite laws in thirteen states and the several hundred local efforts already under way, the great majority of the thirteen thousand police departments in our country have not changed their policies or practices and are not collecting data. Thus it remains important for the federal government to act, and to act now.

First, our federal government has an historic role as the guarantor of federal civil rights. Whether we think of the right to attend an integrated school, to vote, or to use public facilities without discrimination, it has been the federal government that has often stepped in as the ultimate guardian of what our Constitution secures for all citizens. This has involved all three branches of the federal government at different times and in different contexts, often working together. Racial profiling rep-

resents the same kind of challenge: where this practice goes on, it is a direct violation of the Fourteenth Amendment's guarantee of the equal protection of the laws that all Americans enjoy. Thus, far from being an intrusion on the role of the states, laws like the End Racial Profiling Act allow the federal government to fulfill one of its most important functions: assuring that all citizens everywhere are treated equally by the states and their agents, in accordance with their constitutionally guaranteed civil rights. The Supreme Court of the United States has said, without ambiguity or equivocation, that racially biased law enforcement violates the equal protection of the law promised to all Americans under the Fourteenth Amendment. *Whren* v. *U.S.*, 517 U.S. 806 (1996) (Scalia, J., writing for the majority).

Federal action is also appropriate on racial profiling for a second reason: the U.S. government had a key role in causing the problem. In the late 1980s and early 1990s, the Drug Enforcement Administration launched Operation Pipeline. This was a consciously adopted federal program—not an accident or a "rogue policy," but a carefully devised stategy. The idea was to take the "drug courier profile" that the DEA used in airports and bring it to the roads and highways. The DEA did this by training many thousands of state and local police officers in profiling techniques, who in turn returned to their own departments and trained their fellow officers as well as officers from other departments. The upshot is that by the early 1990s, uncounted numbers of police agencies all over the country were conducting profiling operations—many of them using race and ethnicity. The DEA still denies that its profile training utilized race or ethnic appearance. Nevertheless, implicit suggestions about which racial or ethnic groups were involved in drug trafficking is evident in training materials, and explicit information suggesting racial patterns in drug trafficking were featured prominently in drug intelligence reports supplied by federal agencies to state and local departments across the country. (Incredibly, at the end of 2000, a DEA spokesperson conceded that DEA still used race and ethnic appearance to decide which drivers to search and investigate, but only after the drivers had been legitimately stopped for other reasons.)

Given this federal activity, racial profiling was all but inevitable at every level of enforcement around the country; its appearance and the outcry against it can hardly surprise us at all. Thus it seems only fair that the federal government take the lead role in helping state and local law enforcement come to grips with the problem.

Third, S. 989 uses a balanced approach to the problem that only the federal government can take. The bill uses both the carrot—federal funding for best police practices that can get us beyond profiling and other forms of biased policing—and the stick: a direct prohibition on racial profiling, and the threat of legal action and the loss of federal funds for departments that continue these practices. Combined with collection of data on traffic and pedestrian stops, S. 989 can help police agencies across the nation to make direct and straightforward efforts to address this issue, and move those departments toward the best of what law enforcement can be in the twenty-first century. Our nation can accept no less.

DATA COLLECTION AS AN ACCOUNTABILITY TOOL

Probably no other aspect of the debate on racial profiling has stirred more controversy than mandates to collect race and other data on drivers or pedestrians stopped by the police. Critics say that data collection is an impossible and expensive task that, in the end, will tell us little. And in point of fact, it is true that data collection has at times been oversold as THE SOLUTION to the problem of racial problem, a panacea of sorts, and has sometimes been undertaken that way—data collection for the sake of data collection.

But these critics are both shortsighted and selective in their views of the facts. Yes, collection of traffic or pedestrian stop data is a complex task, and analysis must be sophisticated and must include the appropriate contextual information in order to be useful. And statistical protocols used in these studies must include appropriate benchmarks for comparisons to police activity—not residential census numbers, but accurate counts of the actual racial and ethnic populations on the roads being studied. Contrary to what the critics imply, this work is already being done, now, in many places around the country—not only on highways, but on mixed used, urban/suburban street environments. And collecting this data and analyzing it have proven to be less time consuming and expensive than almost anyone anticipated. It is simply untrue to say that good statistical work on this problem is too difficult or not worthwhile; these conclusions represent biased judgments made on less than complete information. Surely, data collection will not solve the problem itself. But it is a first step—a necessary first step—in our efforts to address this problem. Data brings us out of the realm of anecdote, and into the world of hard facts. And every-

one concerned with racial profiling, from whatever perspective, has much to gain from basing the debate on facts.

But there is another, perhaps even more important principle at stake in the debate over data collection: accountability. Accountability is a bedrock democratic principle; institutions of all kinds must be accountable to the people and their representatives. These institutions includes the armed services, federal agencies, local school boards—and, of course, police departments. Police agencies often have a paramilitary structure, and the jobs they undertake are often difficult and dangerous. Nevertheless, police departments are—they must be—accountable to those they serve, especially given the great powers officers have over citizens' lives and liberty. Data collection is essential for accountability, because accountability requires facts. Holding a public agency or institution accountable requires that both its own managers and the public have the solid information necessary to understand what personnel are doing. Good public policy choices must be based on facts. Strong feelings aren't enough; statements that the public must "trust us" by those inside law enforcement institutions aren't enough. Only facts will do. Without data collection, police agencies are left naked in public struggles that challenge their practices; they simply don't have the information they need to make credible responses. For that reason alone, data collection is an absolute necessity.

IT'S NOT JUST "DRIVING WHILE BLACK"

In the early public discussions of racial profiling, this set of practices was often portrayed as a "black issue." This stemmed from the fact that those who first raised these concerns were African Americans, and from the pithy label they sometimes gave the experience: "driving while black," a bitter twist on the legitimate driving offense of driving while intoxicated. But it is important to understand that racial profiling does not only hurt African Americans. It also has an impact on many other racial and ethnic groups—Latinos, Asians, and Native Americans, for example, depending on the area of the country.

Latinos, in particular, suffer the effects of racial profiling in profound ways. As I discuss in my forthcoming book, Latinos labor under a double burden. First, they are stigmatized as likely crime risks, just as African Americans are. Second, they are looked upon as suspected illegal immigrants. This is especially true in the border states of the American Southwest, but it has become common elsewhere as well. For example, in Northwest Ohio, where I live—an area closer to Canada than to Mexico and the rest of Latin America—a federal court had to enter an injunction to stop state troopers from stopping Latino drivers to question them about their immigration status and routinely seizing their green cards. The Latino drivers were given no explanation and no information on how they might go about getting their cards back, despite the fact that it is a federal crime to be without one. In areas nearer to the Mexican border, American citizens of Mexican descent are routinely stopped, questioned, and made to justify their presence in the country by agents of the Immigration and Naturalization Service, the Border Patrol, and other federal agencies. Every segment of the Latino population has been swept into this net, from laborers to professionals of every stripe—even lawmakers and judges.

This explains why the issue of racial profiling has become an issue of deep concern in the Latino community. Latinos know that as hard as they work, as much as they achieve, they can, at any moment, be stopped and questioned by the authorities—their very right to be in this country attacked. They feel, in short, guilty until they prove themselves innocent. And with Latino populations in the United States burgeoning in virtually every corner of the nation and in every large American city, racial profiling promises to affect more and more innocent, hard working Latinos every year.

CONCLUSION

I respectfully urge this body to give S. 989 favorable consideration, and I look forward to answering any question that any of the members may have.

Chairman FEINGOLD. Thank you, Professor, for your excellent testimony and your leadership on this. I want to thank everybody for doing very well in terms of keeping remarks concise, and I appreciate that so that we do have a chance to ask questions.

In a moment, we will start the 5-minute question period, but first I want to acknowledge the presence and participation of Senator Jeff Sessions, of Alabama.

I would at this point like to ask unanimous consent that the following statements in support of the bill be placed in the record from the Leadership Council on Civil Rights, the National Council of La Raza, the Hispanic American Police Command Officers Association, the American Civil Liberties Union, and the Mexican American Legal Defense and Educational Fund.

Senator SESSIONS. Mr. Chairman?

Chairman FEINGOLD. Senator Sessions?

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. If I could just thank you for your leadership on this issue, I know you held hearings last year or the year before. You discussed it significantly. It was raised during the Ashcroft nomination, who participated with you on the Subcommittee. He made some commitments for leadership.

The President even talked about it in the State of the Union message. It is an issue that is getting heightened attention, and that in itself, I am confident, has improved some of the things that have happened just in the last 2 years as it becomes an issue more discussed. So I salute you for taking the lead on this.

Chairman FEINGOLD. I thank you for your participation and look forward to working with you on the Committee as the legislation moves forward.

I will begin a first 5-minute round, and let me just make a quick comment with regard to Chief Greenberg. I know you have strong feelings on this topic and I respect them and appreciate your being here, but I do want to make one statement for the record with regard to your testimony.

You came somewhat close to suggesting that this racial profiling legislation is being used by its sponsors to conceal their true desire, which I believe you suggested is to legalize drugs or weaken enforcement of this country's drug laws. I can assure you that this Senator has no such hidden agenda. I have seen the devastation caused by drug abuse in our communities. I support enforcement of our Nation's drug laws.

But I have also seen the devastation caused by racial profiling. I believe that effective law enforcement can exist side by side with bias-free law enforcement, as Professor Harris very eloquently suggested. In fact, I think it already does in many brave and honorable public servants, but I don't think you do the cause of law-abiding and color-blind officers a real service by claiming that those of us who see a problem in this country with racial profiling are motivated by a desire to undermine enforcement of the drugs laws. There is simply no way that that is what I am about, and I don't believe anybody else who is involved in this effort is about that, but I do appreciate your being here.

Now, I would like to ask Mr. Young a question. I appreciate all the work that went into your testimony, and you raised some provocative points that I would like to explore.

I did want to comment on one theme of your statement that I find mistaken and somewhat unfortunate, and also unnecessary to most of your critique of the bill, and that is what you say about

what the premise of the bill is that somehow it is about the notion that law enforcement officers are racist.

You say, for example, that this bill "presupposes that a man or woman in a police officer's uniform is inclined to be racially biased." I reject that assertion, both about police officers and about the bill. It is just not true. The vast majority of law enforcement officers are not racially biased and carry out their duties professionally. But we have a problem in this country with racial profiling, or as Dr. Fridell would prefer, racially biased policing.

You say yourself that the investigation of a citizen solely based on race is wrong, but happens and it has to stop. That is what this bill is about. In fact, you say on page 2 of your testimony that this bill may mean that no minority will be stopped, searched or questioned, no matter how suspicious the activity, without a specific eyewitness account. Again, I have to disagree.

Of course, if somebody runs a red light, he or she should be stopped, regardless of race. Of course, if someone is driving a car in a reckless manner, he or she should be stopped. All this bill says is that the driver's race should not be a factor in the decision whether to stop the car. I have a hard time really understanding what is objectionable about that or how that prohibition assumes that police officers are racist.

I would give you a chance to respond.

Mr. YOUNG. Well, I don't know that the bill is specifically limited to traffic stops, and when you eliminate the use of race to any degree, there are times when—I mean, how do you transmit a broadcast without using the race of a person who might be a suspect?

We are certainly not supporting the idea that race alone would be a cause of action for any police action, but the bill prohibits the use of race to any degree, and that is where we have a problem with it. It eliminates it as one of many factors that we might use.

Chairman FEINGOLD. Let me just guarantee you that that is not the case. The bill does not say that. Race can be used, for example, or other description in looking for a particular suspect. If there is any language in there, sir, that leads you to that conclusion, I am happy to take a look at it as we go forward with the legislation. That is not the purpose.

In fact, you are correct. The bill is not limited only to traffic stops. It also does relate to pedestrian situations and others. But, again, it does not prohibit including in the specific description of somebody you are looking for the race or background of a person. That is not the intent. I also don't think that is the language.

My next question is for Mr. Kelly and Captain Davis on the question of data collection. Please comment on the concern that has been raised that data collection interferes with an officer's work and can lead to low morale and poor policing. Do you agree and what has been your experience?

Let's start with Mr. Kelly on that and then Captain Davis.

Mr. KELLY. I think in the Customs Service it was something that was not done consistently, and the number of people who were stopped and questioned was relatively small during any inspector's tour. So I don't think it is particularly burdensome as far as recording this information.

I can also tell you that there is emerging technology that allows information to be taken in hand-held devices very quickly, and there are several law enforcement organizations throughout the country that are, in fact, using these devices. There was a hearing 2 weeks ago that was mentioned about the use of technology in helping to prevent racial profiling. There were several vendors there who have this technology.

So I think in terms of being a burden, increasing workload, that is a minimal problem because of the technology and also because of the volume work. I don't see it at all as being a moral issue. I can tell you in the Customs Service that the reason it was successful was because of the inspectors, the people who man our borders 24 hours a day. They got the message.

I think they were not sufficiently served by management. They weren't given adequate training, they weren't sensitized to the problem, and they responded magnificently, in my view, when, in fact, they became aware of the problem.

So I would say that it has, in my view, bolstered their morale because they are seen as acting in a more professional manner. So I would disagree with the assertion that it impacts adversely on morale and that it is somehow an administrative burden for individual officers.

Chairman FEINGOLD. Thank you very much.

Captain Davis?

Mr. DAVIS. Yes, sir. I would agree with Commissioner Kelly that data collection does not cause low morale. A lack of leadership causes low morale. Racial tension and violence in the community causes low morale. I have not seen agencies that have suffered from low morale because you collect data.

Policing in America is really a data-driven industry. It is kind of interesting that we don't want to collect the statistics to show whether or not there is a problem that exists or identify the levels, and to make the argument we turn around and use those same statistics to show why we shouldn't do it. This is a data-driven profession. I think the officers recognize that. They should be obligated to document the stops they make.

It is probably the most awesome responsibility in this country, and I am not necessarily talking about the ability to take life, but the ability to take freedom without any type of due process. The ability to detain is very serious and it should be documented and it should be tracked. From statistics, you make intelligent inferences. I think officers understand that.

One of the things we are looking at with agencies that are collecting data that I agree with is that they can actually fill out a form 5, 10 seconds after the stop and collect sufficient data to come up with comprehensive analysis. I think when officers understand the purpose of data collection, how increases community trust, how it increases the partnerships that will be necessary to reduce crime, then they enjoy a better relationship with their community and that reduces tension and increases morale.

If you look at some of the cities across this country, and I will use Cincinnati as an example, there is not tension or low morale because we collect data. There is tension and low morale because

there was racial tension, because there were minorities who felt disparate treatment.

I would also say this in closing. I am a police officer, I am a commander. It is my job to serve the public. It is not the public's job to serve me, and if it is a burden, so be it. I accept that as law enforcement. My obligation is to protect and defend the Constitution.

Chairman FEINGOLD. Thank you very much, Captain. I do have more questions, but now we will turn to Senator Sessions for his first round of questions.

Senator SESSIONS. Thank you. It is good to see Chief Greenberg again. I remember when I was United States Attorney in Mobile and we tried to lure him away from Charleston. We had him there for a number of months to run our department, but Charleston lured him back home, I suppose. He is one of the best-known police chiefs in America and has been the subject of "60 Minutes" and other national news shows about his effective and innovative ways of policing.

His focus on community-based policing has now become the norm, hasn't it, Chief, in America?

Mr. GREENBERG. Yes, it has.

Senator SESSIONS. Certainly, the Department of Justice over the last decade or more has emphasized that. It is something you championed early on, and that leads me to a question.

Professor Lawrence Sherman, formerly of the University of Maryland and now, I think, the University of Pennsylvania, was the consultant for the Department of Justice under Attorney General Reno. I came to admire some of his work. One of the things he said was that the best way to fight crime is to look at zip codes, and where you have high crime rates in a certain zip code, if you place your resources there you will get the biggest bang for reducing crime.

Would you agree with that, Mr. Greenberg?

Mr. GREENBERG. Yes, I would agree with that.

Senator SESSIONS. I would tell this story, Mr. Chairman. Around 1990, I took the lead in a program called the Weed and Seed program in Mobile. The Martin Luther King area had declined; crime was rampant. Housing values had plummeted. The good neighborhood that so many fine African-American citizens had grown up in had completed gone down.

We had a town meeting and we put up signs for people to come, and said we want to hear your views for solving the problem in your neighborhood and what we need to do to improve the neighborhood. They came back, and every one of our ten breakout groups of citizens said to do crime was either No. 1 or No. 2 on their list. They asked for more police. They asked for a police precinct to be put in that neighborhood because they were afraid for their lives and their children's lives.

So I guess what I am saying is, are you afraid, Chief Greenberg, that a police chief who is responding to the legitimate concerns of his citizens for public safety might be in a catch–22? If he is more aggressive in a neighborhood where the high crime rate is, which may be a minority neighborhood, he might be criticized statistically

in some way under this. Is that what maybe Dr. Fridell was suggesting, also?

Mr. GREENBERG. Well, I am cognizant of that fear, but I am also more cognizant of the fear of the individual police officer about what is going to happen to him if he takes it upon himself to do in most cases what needs to be done, and that is to aggressively investigate crime.

If you have these kinds of numbers taken, police officers are pretty smart and they are going to figure out a way that they will be on the right side of those numbers. If they know that a certain number of people are African-American or Hispanic or Asian or whatever, his arrests are not going to be too far out of line with that particular expectation. I think that is bad for law enforcement and I think that is bad for our country.

I would not try to convince you that there are no racists in law enforcement, and I hope that none of you would try to convince me that there are no racists in Congress, because I don't think either of us would be successful to convince each other of those things. Nonetheless, that does not mean that because there may be problem individuals in law enforcement that that necessarily permeates the whole law enforcement arena. It does not.

Senator SESSIONS. Well, I guess the point I was raising and what you were suggesting there and Dr. Fridell was suggesting, I think, in her remarks is it could cause an officer to be intimidated from doing the very things necessary to protect the African-American community if we misread the data, if we over-read the data.

Is that what you were saying, Dr. Fridell?

Ms. FRIDELL. Yes. From my written remarks, we talked specifically about we have had some great discussions in some PERF meetings about all aspects of racially biased policing. One of the concerns that was raised several times is the chief said my minority communities come to me and they say we need help with crime and disorder, please provide more deployment and more officers down there.

Of course, the responsible chief is going to respond to that. But the more deployments you have, then the more activity you are going to have and it is going to show disparate impact. So our concern that we were pointing out in our statement is that they need to respond, they will respond, but, in fact, they are setting up the statistics to be drawn into court with all of the resources that that entails to prove the negative.

Senator SESSIONS. You mentioned that if you had disparate statistics, that could establish a prime facie case for a lawsuit of some kind. Would you explain that?

Ms. FRIDELL. Well, yes. I was just commenting on 301 of Senate bill 989. It doesn't indicate whether it is new data, but it is department data that could bring a department into court because the activities of law enforcement show a disparate impact on minority communities. So it definitely relates to what I just said.

hen what I also added in my remarks is that the ability of social science—we can, depending on what benchmarks you use, show that disparity enough to get that department into court. Where we are sorely lacking is our ability to explain it, and we are putting the agency in the position to have to come in and prove the nega-

tive based on disparity. I know there is very little in social science that will be able to help the agency.

Senator SESSIONS. Mr. Young, have you done any analysis on the cost of this essentially unfunded mandate?

Mr. YOUNG. No, sir, but the penalties in the bill, the threat of suspending Federal funds and the expected cost of litigation to both the agency and the agent—we haven't done any math on that, but I would imagine it would be insurmountable for most agencies.

Senator SESSIONS. Well, I would say this. I think it is likely that within every department there are some officers who subtly, if not otherwise, are biased in the way they go about enforcing the law. I think that is just life. We know that to be true.

I think it is a high calling, Mr. Chairman, to try to do something about that, and it is not legitimate that an American citizen feels that they are more likely to be arrested or held to account or stopped and searched than someone else simply because of the color of their skin. So we have got a problem that I think is one that this Nation needs to wrestle with, that law enforcement needs to wrestle with. NOBLE is a fine organization and I respect it.

It is a matter we need to wrestle with, but I don't want to create a circumstance that has our communities maybe subject to more lawsuits than necessary, even causing them to pull back from neighborhoods where the neighborhoods have asked them to come to help reduce crime that is threatening the public safety.

Thank you.

Chairman FEINGOLD. Thank you, Senator Sessions.

Let me begin another round, and before I ask a question I just want to again, in pursuit of the issue I am talking about with Mr. Young, just read the language in the bill because I sincerely want to make sure we are on the same page.

The bill says on page 16 that racial profiling does not include reliance on such criteria in combination with other identifying factors when a law enforcement agent is seeking to apprehend a specific suspect whose race, ethnicity or national origin is part of the description of the suspect. So I hope later on we can talk about whether that adequately responds to your concern.

If you would like to say something about that right now, you can.

Mr. YOUNG. Well, Mr. Chairman, I took my language directly out of that. It is 501(c)(5) of the bill. In the definition of racial profiling it says, "The term 'racial profiling' means the practice of a law enforcement agency relying to any degree on race, ethnicity, or national origin in selecting individuals to subject to routine investigatory procedures." We may have a different perspective on the interpretation of that language, but to us, "to any degree" means not now, not ever.

Chairman FEINGOLD. Let me assure you that the very purpose of the language I read is to limit the language you read, to make sure that it does not affect your ability to identify something with regard to an actual suspect. But we will pursue this more and I think you, in good faith, want to work with me to clarify that.

Mr. YOUNG. Yes, sir.

Chairman FEINGOLD. Let me go to what Senator Sessions had brought up, responding, in effect, to the arguments made both by Dr. Fridell and Mr. Young that a law enforcement agency that re-

sponds to requests for help from a minority community with more policing is risking creating data that will support a claim that the agency is engaged in racial profiling. They cite the example of Arlington, Virginia.

I am wondering if Professor Harris could respond to that.

Mr. HARRIS. I would be glad to, Mr. Chairman. The context of any data collected is always a concern. If you are going to collect data, you have to be sensitive to the context from which it comes. This includes the neighborhood from which it comes. It includes perhaps any special operations or special assignments or special deployments that the department has made.

So the example of Arlington that I saw in the testimony of Dr. Fridell—I understand where Chief Flynn is coming from, but if he collects the data and it shows a bulge in enforcement in that neighborhood, there is a perfectly good explanation for it. He has been asked to come in there and is doing the enforcement that the community wants, and nobody but nobody should take him to task for that as long as that is made clear.

Now, it is true that people sometimes look at data simplistically and misuse it. I don't know that we can help that, but to jump from that to say there is nothing that we could do with data, there is no way to collect it satisfactorily, there is no way that these contexts could be factored in, I just have to disagree with that strongly.

Data with adequate benchmarks is being collected now in communities across the country. This is not only highway-type data, it is data from urban and suburban jurisdictions, mixed-use roadways. It can be done, it is being done. What it takes is our commitment to get it done and for our commitment to exist even when we have problems with crime in any particular neighborhood.

Deployment does not mean that we are necessarily going to have more traffic stops or pedestrian stops. If I am a chief, I could put lots more officers in and order them to do something else. It is important that we have a handle on exactly what is going on so we can manage it, as Captain Davis said, and you can't manage what you don't measure. That is why we have to measure it.

Ms. FRIDELL. May I respond?

Chairman FEINGOLD. Yes, ma'am.

Ms. FRIDELL. One of the parts of Mr. Harris' remarks included having the chief go into court. First of all, the chief is going to have to go into court and explain this and this will take resources away from the community.

David Harris and I have had a lot of discussions on benchmarks. In fact, he is going to be joining PERF, as well as Captain Davis, as a matter of fact, in coming up with guidance for law enforcement agencies so that we can develop what those best benchmarks are. So we have got a project that starts on Monday and Tuesday, bringing the best social scientists together, as well as law enforcement, and looking at how we can make it better. So PERF is certainly not throwing out the baby with the bath water. We want to make it better. But, again, the premise was that this chief has to get called into court.

Chairman FEINGOLD. Doctor, I think we may be able to resolve that at some point, so we will work on that point.

I am going to ask a different question. I think we need to get this on the record. Some have said—and Chief Greenberg's testimony touches on this issue—that blacks and Hispanics carry more drugs and guns than their representation in the overall population would suggest. Therefore, it is rational, they say, for police to stop and search a disproportionate number of blacks and Hispanics.

I would ask Professor Harris and Dr. Fridell if they agree with that and how they respond to that. First, Professor Harris.

Mr. HARRIS. This is the argument that I hear most often in favor of using race as some component of law enforcement, that it is only rational or only makes common sense, given arrest figures or incarceration numbers.

It is true that there is disproportionate African-American, Latino and other minority involvement in many types of crime. That is a sad fact, but it is a fact and I am not here to deny facts. I don't think we get anywhere by doing that.

What I can tell you is that the data show very clearly that using race to focus enforcement resources does not work, that it is inefficient. And the returns that law enforcement gets when it uses enforcement based in part or in whole, either one, on race are not as great as when it focuses on behavior. If it focuses on behavior, we are successful. That is the lesson of Commissioner Kelly and the Customs Service and it is the lesson we should all learn.

When we focus on race, we get off the track, and instead of the higher numbers of African-Americans that that theory would predict, we get lower numbers. So we have to be sure to eliminate race so that we can have effective enforcement.

Chairman FEINGOLD. Thank you.

Dr. Fridell?

Ms. FRIDELL. Yes. PERF has a policy. When we did a survey in our focus groups, we became very aware of the fact that police are not getting guidance in when it is appropriate to use race to make law enforcement decisions.

First and foremost, as our policy says, you do not stop people unless you have reasonable suspicion or probable cause. The policy that we came up with—it took us about 8 months and we conferred with not only law enforcement executives, but constitutional scholars, to come up with both Fourth Amendment and 14th Amendment provisions that talk about when race can be used.

Race is a demographic like height and eye color. It is a descriptor like clothes, and our policy cuts pretty close to what you have in the bill in saying that it is very restrictive and can never be used as the sole factor and can be used similar to other demographics like height, and so forth, to establish reasonable suspicion and probable cause.

Chairman FEINGOLD. Thank you.

Senator Sessions?

Senator SESSIONS. Thank you. The Supreme Court has been pretty firm on this, and I think it is clearly a violation of an individual's constitutional rights to be stopped solely for racial reasons. That can be raised now if you are arrested. You can use it to suppress a search. You can file a Bevins or some other lawsuit against the officers who do that. So we are not without any defense when that occurs.

But I think most people are not going to file a lawsuit if they have been mistreated. They are just going to nurse a grudge and feel like their country hasn't treated them fairly. So that is why we need to deal with it and keep talking about it and see if we can come up with a policy that will work.

I just would offer for the record, Mr. Chairman, a letter from the city of Daleville, which noted that "the threat of being sued because proportions of people being stopped or arrested do not comply with federally prescribed formulas is... dangerous. I fear that lower-income African-American citizens, many of whom are elderly or single-parent families, are most vulnerable to the dangers brought about by a retreat from their neighborhood," that is, by the police officers retreating. "They need our protection most. We cannot give it to them if we are under the threat of being sued." He says, "I want to help you address the evils associated with racial profiling" and cautions us in that regard.

I would like to offer that as part of the record.

Chairman FEINGOLD. Without objection, it will be placed in the record.

Senator SESSIONS. Mr. Kelly, you have taken some strong leadership on this. Have you had a chance to analyze this legislation as it is proposed today? I know Senator Feingold will consider any good suggestions we have. Do you have any parts of it that trouble you?

Mr. KELLY. Well, there are some issues that I am concerned about. Again, in my prepared remarks I said I hope that law enforcement agencies would adopt these good practices that are being put forth by PERF and other law enforcement organizations, and do it on a voluntary basis. I think most thoughtful law enforcement executives know that something has to be done and this has to be addressed.

I have some of the concerns that were voiced by Dr. Fridell, but I realize that, again, if the law enforcement community doesn't respond adequately and in a timely fashion, some legislation will be needed.

Senator SESSIONS. Dr. Fridell, with regard to this prime facie standard, as you read the legislation now, what kind of numbers would justify creation—a prime facie standard means that you can file a lawsuit and you can keep the case in court simply on a statistical outcome from this data. What kind of numbers would a plaintiff have to have to justify establishing a prime facie case to go forward?

Ms. FRIDELL. Well, I think one of the problems is that it is certainly not clear. Again, as I said, we do have the ability—

Senator SESSIONS. Just exceeding the—

Ms. FRIDELL. That is what I am afraid will happen, for instance, people using census data to benchmark their data. Again, I hope we come up with better measures, but when you are using census data to compare to your stop data, you are leaving out all the other things. You are assuming that the people on the streets are the same as those in the neighborhoods. You are assuming that driving behavior is the same, amount of driving behavior is the same, and deployment.

San Diego is a good example. Their first report of data collection came out using 1990 census data. Of course, they are an international border city, so how can we assume that the people on the roads are, in fact, the same as the residents?

Senator SESSIONS. I hear that Cincinnati and Seattle, which have gone toward this policy to some degree, have shown a decline in enforcement in minority neighborhoods. Has anyone heard that?

Dr. Harris, would you like to comment on that?

Mr. HARRIS. Yes, Senator Sessions, I have heard that with respect to Cincinnati, not to Seattle. It is important, I think, to remember that the great outcry in Cincinnati followed a situation of civil unrest. But it is also important to know that Cincinnati was, in the estimation of many, a tinder box, a kind of accident waiting to happen, that any particular incident could have set it off.

I spoke in Cincinnati 15 months before the incident that sparked the riots in a church basement setting. There were hundreds of people at this meeting on this issue. It is almost unheard of in that neighborhood-type politics. That indicated to me that people wanted something done and they wanted it addressed.

The fact that there has been some pulling back, as it has been characterized, I think is very unfortunate if that is true. But I would go back to what Captain Davis said a few minutes ago. If officers are pulling back and saying it is our way or the highway, or there is only one way to do this or we fear doing our jobs, that shows a failure of leadership.

You cannot have a police department that simply says, well, we are not going to do it, we are not going to go in there; even though people are getting shot and killed, we are not going to do it. There has to be a different attitude at the top so that the people all the way down know that it is not acceptable to disengage.

Chairman FEINGOLD. Thank you very much. I will start another round. Perhaps this will be the last one, but I do have a couple more questions. I would like to go to the issue you were just discussing.

Professor Harris, Mr. Young and Ms. Fridell criticize the section of the bill that provides "the proof that investigative activities have a disparate impact on minorities shall constitute prime facie evidence of a violation of this title." They seem to suggest that this would make any statistical study a weapon in a case against a police department. But the section says "proof of a disparate impact."

Now, how do you understand that provision will work, and if you could comment specifically on the effect of this prime facie evidence standard?

Mr. HARRIS. The prime facie evidence standard and the idea of disparate impact evidence is not a new one. It is common in civil rights law and in employment law. We use this all the time. There is nothing new about this. Putting this into this bill in this context simply means that mere allegations will not suffice. You have to have proof, you have to have a study that shows clearly disparate impact.

The bill also makes clear by using the phrase "prime facie" that this evidence can be rebutted. Any sufficient explanation, any kind of contextual explanation would suffice to rebut it. It is not a mandatory presumption, it is not a presumption, in fact, at all.

The fact that this is that open-ended is enough to protect police departments against the feared frivolous litigation. I just don't think that that would materialize at all because people know that they not only have to get in court, but they are going to have put forth that proof that the statute calls for. Mere allegations would not be enough. To anticipate a flood of litigation, I think, is greatly mistaken.

Chairman FEINGOLD. Captain Davis, did you want to say something about that?

Mr. DAVIS. Yes. I agree with Professor Harris, and I disagree with the idea about the census data. I think working with community-based organizations and civil rights organizations in collecting data in Oakland, the community is very aware of the variables involved in policing. It is a very complex job, and so it is not really a tendency necessarily to take the census data and automatically say that there are disparities. We do take a look at population density and calls for service and how officers are deployed.

But when you look at proof of disparity, then all those variables will be included in that proof. So I don't think it suggests to me or my colleagues that mere disparate numbers between the census and the numbers of stops conducted would constitute prime facie evidence. It would mean that the statistics, plus possibly allegations from the community, plus other evidence would establish proof.

So I think we have to step away from census data. It is just one tool. It is something like the Uniform Crime Report process we have. It shows us how many Part I offenses are committed in this country every year, but it does not suggest how much crime occurs every year. It is one benchmark that law enforcement can use to see if crime increases or decreases, so it is one very effective tool.

As a police manager, what I need are tools for effective management. I need to look at my systems, and it is not about individuals officers; it is about institutional behavior and can I track which systems where bias is influencing the decisions that we make and then coming up with solutions. If I don't collect the data, I don't know.

Two years ago, most of the people in this room who are now talking about establishing benchmarks made the argument that racial profiling was nothing but a perception of the minority community. They did not accept anecdotal evidence from the minority community. I am sitting here as a black man and a captain and I am telling you it exists. I am telling you as a manager that the data is necessary.

Two years from now, the actual data collection process will be something that will be part of the day-to-day business and operations of policing. And I will offer that we will probably learn more about managerial effectiveness through this data collection than anything else. Are our tactics working and what is the cost/benefit of using race and are we using race? So I think it is the most critical first step to address this issue of bias-based policing and racial profiling.

Chairman FEINGOLD. Thank you, Captain.

Mr. Henson, you were reacting to Captain Davis. Did you want to comment on that?

Mr. Henson. Yes, thank you, Senator. I agree fully with Captain Davis' remarks. I can share with you what we do in the city of Hayward, and that is reflective of many of my colleagues that are a part of the National League of Cities as well.

We do collect the data based on many of the factors as expressed by Captain Davis. We take that data; it is computerized. It comes before the local body, which is the city council, on which I am a representative. We discuss it openly, we make comments about it. We speak to our chief on the needs of that data. We enlist the input of all the community members.

This is something that we believe fosters good community policing. We have never had any problem with getting the community input into this process. So I agree with him. The end-all is not simply the collection of data, but it is the aftermath as well.

Chairman FEINGOLD. Thank you so much.

Senator Sessions, did you have anything further?

Senator SESSIONS. Chief Greenberg, I read this letter from Director of Public Safety Jimmy Seaton at Daleville. I also have a news article here, I believe, from the Seattle paper and this was the lead paragraph: "Amid charges of racism, many Seattle police officers say they are cutting back on the number of arrests they make in minority communities. Officers still respond to 911 emergency calls, but cops on the beat are ignoring many traffic violations and other minor offenses. This form of passive law enforcement some are calling the cops tourist in blue is not official policy, but the practice is growing among individual officers who fear more aggressive police work will be labeled racial profiling."

Based on your experience as a grass-roots leader in promoting cops out on the beat doing their jobs on a daily basis, is this a concern you have that somehow if we do this wrong we could do more harm than good?

Mr. GREENBERG. Yes, sir, if we go about it in the wrong way. As I said before, and I hate to repeat myself, but police officers are going to find out what it is their boss expects of them on whatever beat they work on anywhere in the city. They are going to find out what are the number expectations and they are going to try to meet those number expectations without imperiling themselves physically and without imperiling their particular jobs.

There will be officers who are going to back off, as they have in some of the other States that already have State legislation that inappropriately addresses this problem. They are going to figure out a way to be in line with what somebody somewhere else outside the law enforcement community is going to expect of them.

Senator SESSIONS. Now, is it your belief, your passion, as I understand it, having heard you speak, that the minority communities of this country deserve as much protection and as low a crime rate as any other neighborhood in your city?

Mr. GREENBERG. That is correct.

Senator SESSIONS. And when you have a situation where 12 percent of the population is African-American, but 54 percent of the murders—they are victimized by murders by that high a rate and the perpetrators tend to be of the same race as the victims.

Mr. GREENBERG. That is correct.

Senator SESSIONS. Is it a concern that we may be creating a system here that actually undermines protection for law-abiding minority citizens?

Mr. GREENBERG. That could be one of the results, yes. I find it very difficult to understand how we could have such high rates of victimization and not correspondingly have high rates of police contact to address the needs of those particular victims with reference to enforcing the law, since in our country people who are victims of rape or people who are victims of homicide tend to be victims from their own community. They are victimized by people in their own community.

You are not going to be able to have a positive impact on reducing the amount of high victimization that exists in minority communities with respect to certain kinds of crimes without having contact with those minorities in those communities.

Senator SESSIONS. Thank you.

Mr. Chairman, I would just say I believe there has been—and to some degree under the leadership of people like Chief Greenberg it has been broken down, but there was a subtle form of racism in America in which police officers just didn't take it as their responsibility to patrol, protect and defend minority citizens to the same degree as they did white citizens from being victims of crime. I think that was a serious problem.

I think most police departments in America today are doing a better job of responding to the honest cries of good and decent people for protection. I think that is one of the reasons that the crime rate has gone down in America, Community-based policing focusing on areas where crime is out of control, bringing it under control, and getting dramatic improvements and reduction in victimization, which is the ultimate goal. It is not to put anybody in jail; it is to reduce victimization so you don't have to punish people.

You are talking about a delicate, sensitive issue that is difficult to quantify in numerical terms, but is a real issue. We need to make sure that every American feels, no matter what their color, that they are going to be treated fairly when a police officer is up at their door or their automobile. So how to do it, I don't know, but thank you for your leadership.

Chairman FEINGOLD. Senator Sessions, thank you for your candor and your taking this issue seriously.

We are about to bring this to a conclusion, but I do want Professor Harris to respond to this testimony as to the question of, if this law is passed, whether police departments will ignore minority areas, leading to the effect that there will be greater victimization of minorities.

I wonder if you could respond to that, Professor?

Mr. HARRIS. Yes, sir, I would be glad to. When we talk about changing the incentive structure and the cues, if you like, that law enforcement officers respond to, we have to be aware that there is an existing set of incentives already out there.

There is no reason that we cannot have enforcement that is tough and effective, but also respectful. I started that way and I will say that again. If we have disengagement, if officers come to feel that they are going to be under the gun for going into minority communities or doing enforcement in minority communities, again

that represents a failure of leadership on the level of explaining it to them, on the level of having it be policy in the department, on the level of training, all of which are addressed by S. 989 in the best practices grants.

If we want to have enforcement in our communities that is effective and that is respectful of people, there is no reason why we can't have it. There is not a choice between tough and respectful. We can have both, and we will. Chiefs around the country are doing that. If there is disengagement, that is a by-product that has to be addressed. Police have to be told that it won't be tolerated. As Senator Sessions says, that is a subtle form of racism, no matter when it occurs and for what reason. No American should put up with that, and for that reason this bill is the way to start toward having effective and respectful treatment for everyone.

Chairman FEINGOLD. Thank you, Professor. I want to thank everyone. If there are no further questions, I am grateful for all the time that you have put in and your patience. This has been a very productive and lively hearing, and I think we all benefited from the different perspectives that you offered on this issue. It is my hope that we will work very closely with the Department of Justice on this legislation and that the full Committee will mark up this legislation this fall.

Let me just say to all of those who represent law enforcement organizations that we intend to speak with you, work with you, and that is exactly what I am already in the process of doing in Wisconsin, and we will do so nationally, to address some of the concerns.

Let me note that the record will remain open for additional submission by the witnesses or for written testimony from other individuals or groups for 1 week. In addition, I will ask Senators to submit any written questions that they have for the witnesses within the same period of time. I, of course, hope that the witnesses will give us their written responses promptly.

Again, I thank all of you for coming.

Senator SESSIONS. Mr. Chairman, could I just offer a letter from VOCAL, a premier victims rights group in Alabama, signed by Executive Director Miriam Shehane, relating to this legislation.

Chairman FEINGOLD. Without objection.

The hearing is adjourned.

[Whereupon, at 1:06 p.m., the Subcommittee was adjourned.]

[Submissions for the record follow.]

[Additional material is being retained in the Committee files.]

SUBMISSIONS FOR THE RECORD

AMERICAN CIVIL LIBERTIES UNION
WASHINGTON, D.C. 20002
July 31, 2001

Senator Russell Feingold, Chairman
Constitution Sub-Committee
Senate Judiciary Committee
5116 Dirkson Senate Office Building
Washington, DC 20510

Dear Senator Feingold:

We are writing in support of S. 989, "The End Racial Profiling Act of 2001." We appreciate the leadership you have shown on the issue of racial profiling.

Racial profiling is not a new problem. However, it has only recently garnered the type of public attention that it deserves. Unfortunately, since the issue has come to light, the federal government has been sluggish in acting. This landmark legislation is a necessary first step to developing a comprehensive response to racial profiling.

First, the bill defines racial profiling, and bans it. While most people agree that racial profiling is wrong, some disagree about how it should be defined. A federal definition would ensure that people traveling throughout the country know what to expect whether they are in Oklahoma or Maryland or another state. The bill also creates a limited right for individuals who have been victimized by racial profiling to go to court to seek injunctive or declaratory relief. It does not authorize money damages against police departments that have engaged in racial profiling.

More importantly, the bill gives the Attorney General the authority to establish categories of information to be collected on law enforcement encounters in order to determine whether racial profiling is occurring. The ACLU believes that data collection must be an integral part of any serious effort to address racial profiling. Those who claim that racial profiling is a problem, and those who disagree, will use anecdotes to make their arguments. Only careful data collection and analysis of data can provide the information necessary to assess whether there is a problem, and the extent of any problem that is identified.

Data collection is also a vital tool that can help the management of a law enforcement agency track potential problems and focus limited resources on effective responses. Data collection can also help a police department demonstrate to minority communities that the police department is responding to the concerns of the communities.

While the bill requires data collection and bans racial profiling, it also allows for needed flexibility. For example, it gives the Attorney General discretion to decide what types of data will be collected, and the discretion to decide whether a law enforcement agency that has failed to address racial profiling should lose any federal funding. The bill also establishes a grant program to help law enforcement agencies implement data collection and other types of best police practices.

Lastly, this bill has significant law enforcement support. The Alliance of Minority Law Enforcement Agencies, which includes every minority law enforcement organization in the country, supports the legislation. The bill has support from non-minority law enforcement as well.

Sheriff Robert A. Ficano of Wayne County Michigan endorsed the legislation at a press conference introducing the bill. Sheriff Ficano put it best when he said, "Racial profiling is not a legitimate tool for law enforcement. It is not only unconstitutional; more importantly, it is wrong. Law enforcement should work together to end a practice that casts a large shadow over public trust. Racial profiling is deeply corrosive to police and community relations."

Attached to this letter is an Executive Summary to a report that we will be releasing this fall. Please feel free to include this letter and the Executive Summary in the record of the hearings on this legislation.

Sincerely,

LAURA W. MURPHY, DIRECTOR
Washington National Office
American Civil Liberties Union

RACHEL KING, LEGISLATIVE COUNSEL
Washington National Office
American Civil Liberties Union

Additional Statement of Laura W. Murphy, Director, American Civil Liberties Union, Washington, D.C.

AN OVERVIEW AND RECOMMENDATIONS

In June 1999, the American Civil Liberties Union issued our first report on racial profiling, entitled "Driving While Black." At that time, most of the American public had never heard the term "racial profiling" or its derisive nickname, "driving while black or brown." And although the police practice of targeting African-American and Latino drivers for traffic stops and searches was all too well known in minority com-

munities, there was little hope or expectation in those communities that the problem would ever be addressed.

Two years later, the ACLU is preparing a second report on racial profiling, which will be released in the fall. The new report will discuss the progress that has been achieved in the fight against racial profiling as well as the obstacles that remain, and will make specific recommendations for eradicating this scourge. Above all, the report will urge lawmakers to pass federal legislation that clearly defines and outlaws racial profiling in all contexts and in every state.

Much has changed in the two years since we issued our first report. Polls now show that a majority of the American public is aware of, and disapproves of, racial profiling. Nine states have passed effective legislation addressing the problem. Many police departments have voluntarily begun collecting data on traffic stops in an effort to determine whether their officers engage in racial profiling. A powerful bill that would ban racial profiling has been introduced in Congress. And President Bush, Attorney General John Ashcroft, former President Clinton, and many other prominent officials have spoken out against racial profiling.

This is the good news. Yet racial profiling remains a fact of life in America. Lethal encounters in which unarmed black or brown people are shot and killed by white police officers grab the media spotlight and shock the public—as well they should. But for every headline-worthy horror like these, there are thousands of other everyday horrors that are unknown by all but their victims: ordinary, law-abiding men and women who are systematically harassed and sometimes physically intimidated by the police simply because of their ethnicity or the color of their skin.

Moreover, although many public officials now admit that racial profiling exists, few have the courage to publicly confront the larger context in which it occurs, or the invidious role it plays in our national life. Politicians find it difficult to acknowledge that racial profiling is but the first step in an inexorable process, justified by the so-called war on drugs, that feeds a swollen prison population that is overwhelmingly black and brown.

Racial profiling is a self-fulfilling prophecy based on erroneous racial stereotypes about who uses and sells illicit drugs. When the American public, including the police, look at who is in prison, they see a sea of black and brown faces and assume that people of color are responsible for most of the drug-related crime in America. This assumption is used to justify racial profiling, and the beat goes on.

This assumption, however, is false. Every comprehensive study of racial profiling has revealed that, in fact, people of color are no more likely than whites to be carrying drugs or other contraband in their vehicles. Indeed, the Department of Justice's 1999 national survey of Contacts Between Police and the Public found that "[s]earches of white drivers and their vehicles were more likely to find criminal evidence (17%) than searches of blacks (8%)."

Yet because African-Americans and Latinos are targeted, stopped, and searched at grossly disproportionate rates, they are also arrested and incarcerated at grossly disproportionate rates. The former New Jersey Attorney General dubbed this phenomenon "the circular illogic" of racial profiling. Law enforcement officials often point to the racial composition of our prisons and jails as a justification for racial profiling, yet the racial makeup of those behind bars is itself largely a product of racial profiling.

Police officials typically justify racial profiling programs with the claim that they target African-American and Latino neighborhoods and cars because "that is where the drugs are." But in truth, study after study shows that whites and nonwhites alike use and traffic in illegal drugs at rates that roughly match their percentages in the general population. So, for example, African-Americans make up 13% of the population and, according to the government's own best statistics, they constitute 15 to 20% of the nation's illicit drug users. Yet, they are 74% of those imprisoned for drug possession. The disproportionate number of people of color who are caught with drugs reflects not who uses or sells drugs more, but who is stopped and searched for drugs more.

A matrix of government policies and practices conspires to perpetuate the over-incarceration of black and brown men, and the terrible effects are now all too familiar. The Sentencing Project, which tracks and analyzes criminal justice statistics, calculates that almost one in three (32%) of black men ages 20-29 are incarcerated, on probation, or on parole (as compared to one in 15 white men of the same age range). This has had a devastating impact not only on hundreds of thousands of individual lives, but on minority families and communities.

Much less notice, however, has been paid to the crucial role that racial profiling has paid in producing these statistics. Police officers who assume that black and brown drivers are carrying drugs, and who therefore engage in racial profiling, cast

the massive dragnet that plucks people off the highways and streets and drops them into the criminal justice system.

Although traffic stops and searches are the form of racial profiling that has received the most media attention, profiling takes place off the roadways as well. Black and Latino pedestrians, particularly in certain neighborhoods, are regularly stopped and frisked without reasonable cause. Customs officials at international airports systematically target members of certain racial and ethnic groups, particularly black women, for intrusive and degrading personal searches, based on the false assumption that they are more likely to be transporting drugs.

Recent statistics from the New York District of the Immigration and Naturalization Service reveal that, for years, the INS has engaged in racial profiling as well. INS agents systematically single out Latinos in workplace raids, and 95 percent of people arrested by the INS–NY are from Mexico, Central America, and South America—a figure grossly disproportionate to the demographic makeup of the area's population of undocumented aliens.

Moreover, the ACLU is aware of incidents in which black boys on bicycles have been stopped and harassed by the police for being "in the wrong neighborhood," and in which black teenagers have been singled out on the basis of their skin color, and falsely accused of crimes committed in swimming pools.

Nor are blacks and Latinos the only groups that are subjected to such stereotyping and abuse by law enforcement officials. For example, people who have studied the prosecution against Wen Ho Lee, a government scientist who was accused of espionage-related crimes and treated far more harshly than was appropriate or necessary—and against whom most of the charges were eventually dropped—believe that he was singled out because he is foreign-born and of Asian ancestry.

The sad fact is that although much progress has been made in the United States to eradicate official discrimination, racial profiling and the racist assumptions that underlie it are deeply imbedded in America's culture, and particularly in police culture. Not all police are racist, and not all view every black or brown driver as a suspect. But because racism is so pervasive and so entrenched, even "good" officers may harbor unconscious racial stereotypes. That is why the mechanisms that foster racial profiling—pretext stops, consent searches, and any other practices that give police broad discretion to stop and search drivers despite little or no reason to suspect criminal activity—must be banned through federal and state legislation. Such legislation must clearly define, and explicitly outlaw, racial profiling.

Even with the passage of strong legislation banning racial profiling, however, eradicating it will be no easy task. Major hurdles remain, and more will appear as the inevitable backlash movement builds. Already, several conservative commentators have published articles in the press reasserting the false claim that racial profiling is necessary and appropriate to stop the flood of drug-related crimes by blacks and Latinos.

In addition, two recent decisions by the United States Supreme Court—in *Atwater* v. *City of Lago Vista* and *Alexander* v. *Sandoval*—pose new obstacles to reform. The Atwater decision gives police the power to arrest and search people—and in many instances to jail them—for even the most minor infractions, even if only a fine would result if there were a finding of guilt. The Sandoval decision limits plaintiffs' ability to use Title VI of the Civil Rights Act of 1964, which has formed the basis for many racial profiling lawsuits, to seek redress for discrimination.

Moreover, several state legislatures recently have either failed to enact proposed legislation aimed at ending racial profiling, or have watered the bills down until they are virtually powerless.

These hurdles may slow, but they will not stop, the essential civil rights struggle of our time——the fight to end racial profiling and the discriminatory mass incarceration of a generation. This struggle is as crucial and historic as the fight to end segregation was in the 1950s and '60s. As segregation did in its day, racial profiling assigns second-class citizenship based on race, and perpetuates a racist system in which whites can move freely in society, but people of color cannot. Rather than being forced to live on the "other" side of town, black and brown citizens are targeted, searched, and swept off to prisons on the basis of race. This new system of segregation appears race-neutral, and the rationale seems well intentioned: fighting drugs and crime.

Yet over the past two decades, the war on drugs has revealed itself to have little to do with solving the problem of drug abuse, and much to do with targeting communities of color for mass incarceration. This new form of discrimination and segregation does not only affect the guilty. Thousands of innocent, law-abiding people of color, who are simply trying to live a successful, decent life, find themselves stranded by the side of the road, fielding questions about imagined drug-related crimes, terrified that they too may find themselves swept into the criminal justice

system because of the color of their skin. The ordeal often begins with a simple traffic stop.

We must put an end to racial profiling forever. We call on every Member of Congress to join us in this crucial and historic fight.

There can be no question that, since the ACLU released our first report on racial profiling two years ago, much of the American public, many police departments, and government officials at every level have become aware of and now oppose the practice of racial profiling.

"Racial profiling" and "driving while black or brown" are now household words in white as well as black and Latino communities. Newspapers routinely report new revelations of racial profiling. Town meetings on racial profiling are packed with citizens in neighborhoods nationwide. An estimated 400 police departments across the country have acknowledged that racial profiling may be a problem among their officers and have taken steps to address it. Nine states—North Carolina, Connecticut, Rhode Island, Tennessee, Kansas, Washington, Massachusetts, Missouri, and Maryland—have passed legislation that addresses the problem by requiring police to collect data on traffic stops, and many more states are expected to do so this year.

Moreover, recent polls show that most of the public is now aware of racial profiling, believes it is wrong, and wants it to stop. A Gallup poll taken last year found that 81 % of Americans now reject racial profiling as wrong, and that 59% (including 56% of white respondents) believed it was taking place on a "widespread" basis.

In the past two years there have been some important victories in the war on racial profiling. For example, the California Highway Patrol announced in April that it is placing a moratorium on "consent searches," which have been a major factor in racial profiling in Northern California. Although the police commissioner denies that racial profiling is a problem among his officers, the ban on consent searches is an extremely positive step toward ending discriminatory police practices.

In another surprising and encouraging development, new statistics show that traffic stop searches have dropped dramatically along the southern New Jersey Turnpike, a notorious stretch of highway that has become a national symbol of police misconduct. Although the figures indicate that minority drivers are still disproportionately searched there, the drop in searches is good news and an encouraging sign that New Jersey's police may be changing their ways.

Despite this very real progress, however, there is still a very long way to go. The national disgrace of racial profiling is still a reality that subjects people of color all across America to systematic harassment and abuse by the police every day. Although some localities now voluntarily collect data on traffic stops, and some states have passed valuable legislation, in most parts of the country no steps have been taken to combat racial profiling, and this illegal practice is allowed to continue—despite the fact that ignorance, skepticism, and denial no longer serve as excuses.

Racial profiling and the attitudes and assumptions that lead to discriminatory traffic stops and searches, permeate our entire society, and lead to similar abuses in a range of other contexts. In April, the city of Cincinnati was under nighttime curfew for five days following disturbances that arose after a white officer shot an unarmed black man.

This tragic killing, whose particulars—including the policeman who claims to have thought the victim was reaching for a gun—have become painfully familiar, reflects the prejudice and the lack of restraint that fuel racial profiling and enable it to continue.

DATA COLLECTION: THE ROAD TO REFORM

Data collection—documenting who is stopped by police and what happens during each stop -has proven to be an extremely valuable weapon in the war against racial profiling. It convinces the public and the police that racial profiling is occurring, and offers some insights into who is engaging in the practice, and where it is taking place. Police departments across the country are now compiling data on whom they stop on the highways, for what reasons, how those drivers and passengers are treated, and the outcome of each stop. Some agencies have undertaken the data collection voluntarily, others have been required by legislation to do so, and still others are complying with the terms of a settlement agreement achieved through a lawsuit.

The data collection efforts that are now underway vary considerably in thoroughness and value. Some are perfunctory, with officers required to record only the most basic information, and are in effect only for a short period. Others require completion of a detailed, highly specific questionnaire and are in effect indefinitely.

Despite the lack of consistency in the data collection process, virtually all police department's data that have been collected thus far reveal that nonwhite drivers are stopped and searched far more often than whites, and far out of proportion to their numbers and percentages on the roads. The data also refute the claim that nonwhite drivers are more likely than whites to be involved in drug-related crimes—the claim that police and others typically make in order to justify racial profiling.

These data are extremely valuable. They persuade the public that racial profiling is a serious, widespread problem that must be addressed. And they force police departments to face up to their own complicity and lead them to implement reforms. Moreover, police departments that begin collecting data and show that they take the findings seriously build trust and cooperatoin among their communities, which in turn helps them to be more effective at fighting crime.

Police departments in at least 25 of the largest 50 cities in the United States have now implemented or have publicly agreed to implement data collection programs—and nearly three quarters of these agencies have made that commitment voluntarily. This is to be applauded. Yet most of the nation's major urban police departments still have not taken action. Fifteen or more state police agencies now have traffic stop data programs, but most state police agencies do not.

And while hundreds of agencies are now addressing racial profiling with data collection—and that is hundreds more than when the ACLU's first report on this issue was released—the current best estimate is that more than 90% of the nation's law enforcement agencies have not yet acted. Clearly, this figure must decline if further progress is to be made.

SEARCH DATA: THE REAL STORY

As useful and necessary as it is to collect data on traffic stops, collecting and analyzing data on searches that result from those stops is even more crucial. Statistics on what happens after cars are stopped—how drivers and passengers are treated by the police—are often more revealing, and more racially disparate—than the traffic stop data themselves. Search data should be analyzed according to the races of drivers who were searched, and what, if anything, was found.

It is virtually always possible for the police to legally justify a traffic stop, since all drivers are almost certain to violate minor traffic laws. But searches tell more about police behavior. Most car and driver searches are "by consent"—that is, they are not undertaken because a police officer sees something that constitutes probable cause, or because there is a warrant out on the driver. Thus the search data are a good indication of how police are exercising their discretion.

For example, figures that were released by the federal government in March 2001, as part of the Police Public Contact Survey, show that black and white drivers were not stopped in dramatically different numbers. The report's figures on searches, however, tell a different story. The racial disparity for searches is far more marked than that for stops. Moreover, a lower percentage of nonwhite drivers were found to have illegal drugs in their cars, contradicting the common belief that blacks and Latinos are more likely to have drugs.

But many traffic stop searches are more than simply useless: they are often a form of terror meted out disproportionately on black and Latino drivers. At the New Jersey hearings on racial profiling held in the spring of 2001, a state trooper testified that some state troopers bully minority motorists into allowing them to search their cars, even when there is little or no reason to suspect them of carrying drugs or weapons. He also said that black and Latino drivers are well aware that when they are asked to give consent to a .search, they had better say "yes."

"Consent" searches give abusive officers an easy excuse to mistreat innocent drivers, especially nonwhite drivers. They do nothing to further the prevention of crime. And they prove (as if any proof were needed) the necessity of the Constitution's Fourth Amendment ban on unreasonable searches and seizures.

LITIGATION: ANOTHER ROAD TO REFORM

Litigation has been a powerful weapon in the war on racial profiling. Since our first report was released, we have achieved important progress in several key lawsuits, and new cases have been filed by the ACLU and other groups across the country. Successful lawsuits can lead to settlement agreements or consent decrees that compel police departments to begin data collection and to discontinue discriminatory practices. Most recently, the chief of the California Highway Patrol announced a moratorium on consent stops throughout the state. Although he denies that the ACLU's lawsuit in California was a factor in the decision, it appears that the litigation did, in fact, play a role.

Of course, not all litigation results in a favorable ruling. The 1996 Supreme Court decision in *Whren* v. *United States* has become a considerable roadblock to lawsuits challenging racial profiling. In Whren, the Court ruled that police may use a traffic violation to justify a traffic stop, even if their real purpose for the stop is to search a vehicle. The Court concluded unanimously that such stops do not violate the Fourth Amendment, which prohibits unjustified searches and seizures. The Court said, however, that challenges alleging selective (i.e., racebased) enforcement of the law may be brought under the Equal Protection Cause of the Constitution. Such challenges have resulted in several highly effective rulings.

The two recent decisions by the Supreme Court, in *Atwater* v. *City of Lago Vista* and in *Sandoval* v. *Alexander*, are also likely to make it considerably more difficult to address the harms of racial profiling. The *Sandoval* decision, which does not directly address police practices, says that in cases based on Title VI regulations of the Civil Rights Act of 1964, it is no longer sufficient to show that police practices have a discriminatory impact; plaintiffs will now be required to show that they also have a discriminatory intent. This is sometimes, but not always, possible to demonstrate. Title VI regulations have been an important tool in challenging racial profiling. The Sandoval decision, by blunting that tool, raises the prospect that, in some cases, racial profiling practices that have a clearly discriminatory impact may now be allowed to continue.

The *Atwater* decision, which does address police practices, ignores the reality of racial profiling and virtually encourages and invites the police to stop, search, and even jail people with little or no reason to suspect them of crimes. This extremely dangerous ruling flies in the face of all the evidence that has been gathered in recent years about the need to limit police discretion and to take steps to reduce, rather than expand, individual officers' ability to target and harass drivers. It too will make it more difficult to bring and win racial profiling lawsuits.

THE DEA AND OPERATION PIPELINE: THE ROAD TO RACIAL PROFILING

As the ACLU pointed out in our 1999 report, much of the blame for the country's racial profiling problem stems from the so-called war on drugs. In the name of this "war," the DEA 's Operation Pipeline program has trained tens of thousands of the nation's police officers in the use of pretextual traffic stops in a "needle in a haystack" hunt for drugs among the overwhelmingly innocent driving public.

The stops that are made, while based on minor traffic violations, have nothing at all to do with traffic safety concerns. These stops, and the searches that often result, are based on the idea that it's appropriate and "worth it" to detain large numbers of innocent people in the hope of catching the guilty few who may be transporting drugs.

As all the data reported to date confirm, officers involved in these operations stop, inconvenience, and sometimes terrify far more innocent than guilty people. That's because, as one might expect, there is no correlation at all between committing minor traffic offenses -failing to signal a lane change, drifting a few miles above or below the speed limit, driving with overly worn tire treads, etc.—and a propensity to act as a drug courier or "mule."

If the police can stop anyone and everyone, the question becomes whom they are more likely to stop and/or search when their motivation has nothing at all to do with traffic safety and everything to do with guesses and hunches about who may be transporting drugs. Thus engaging in this type of law enforcement by hunch invites officers to rely on racial and ethnic stereotypes.

In fact, the DEA has not only permitted police officers to rely on stereotypes—it has taught them to do so. Training materials produced by the DEA and distributed to police departments across the country include specific characteristics of drivers to be targeted for stops and searches. These descriptions, the materials claim, serve as tip-offs as to who is likely to be transporting drugs.

It is therefore no surprise that litigation research, news accounts, and various investigations, have shown an obvious correlation between serious racial profiling problems and the presence of local Operation Pipeline activities. In state after state, in all regions of the country, high levels of racial profiling consistenly reflect Pipeline tactics and operations. In New Jersey, Maryland, North Carolina, Florida, Oklahoma, Colorado, Utah, California, and elsewhere, the connection is too clear to be ignored.

The DEA now claims to have eschewed racial profiling, and its official position is that "the best profile is no profile." This is surely a step in the right direction. Yet without data the DEA is blind as to how its training is really being used. And without data, the DEA cannot determine how tens of thousands of officers who were

trained in Pipeline techniques in years and decades past—when racial profiling was accepted and even advocated by the DEA—are behaving on the highways today.

PUTTING AN END TO RACIAL PROFILING

Racial profiling is a deeply imbedded problem whose roots lie in the complex, racist stereotypes and assumptions that infect our entire society. Eradicating it will therefore require a determined and long-term effort. Nevertheless, a number of straightforward and simple steps that can and must be taken immediately will make an enormous difference in that effort.

PASS FEDERAL LEGISLATION

First and foremost, federal legislation must be passed that clearly identifies and outlaws racial profiling in every context, by every agency and police department, in every state and locality in the nation. The ACLU vigorously advocates passage of the End Racial Profiling Act. This bipartisan bill contains the essential elements that would require all police departments and federal agencies to stop engaging in racial profiling and to implement measures to help prevent the use of profiling. ;It requires police departments to collect data on all types of law enforcement encounters and requires the attorney general to report regularly to Congress on these data.

BAN PRETEXT STOPS AND CONSENT SEARCHES

Pretext stops and consent searches, as explained above, are the mechanisms that make possible and perpetuate racial profiling. These mechanisms allow police to stop and search people and vehicles despite a lack of evidence of criminal activity or illegal substances. Because these practices give individual police officers the power to base stops and searches on hunches, assumptions, and baseless suspicion, they are responsible-for the disproportionate stopping and searching of African-Americans and Latinos.

PASS LEGISLATION IN EVERY STATE.

It is heartening that, in the two years the ACLU issued our report on racial profiling, nine states have enacted legislation addressing racial profiling through data collection. Legislation which explicitly outlaws racial profiling and requires data collection and reporting should be passed in every state in America.

END RACIAL PROFILING IN JUSTICE DEPARTMENT DRUG INTERDICTION PROGRAMS.

The U.S. Department of Justice claims that Operation Pipeline and other drug interdiction programs no longer teach officers to rely on racial profiling in an effort to identify drug-related criminals.

This is an encouraging development, but it is not enough. The Justice Department should require all its agencies to collect and make public data on traffic stops and searches, as well as searches in airports and other non-highway contexts. Funding should be withheld from agencies that fail to conduct data collection programs and that do not implement programs aimed at eliminating racial profiling.

ENCOURAGE DATA COLLECTION BY EVERY MAJOR CITY.

Many cities and localities across the country have voluntarily implemented data collection programs. We applaud these police departments and call on every police agency in the nation, especially those in major cities, to undertake data comprehensive, ongoing data collection efforts.

Racial profiling is the most recent manifestation of the racism and segregation that have plagued our nation since its founding. The fight to end it is the most important civil rights struggle of our time. We urge Members of Congress not to miss the opportunity to take part in this historic struggle. Please vote to end racial profiling in America.

For additional copies of this report, please contict the ACLU's Washington National Office:

Statement of Karen Murphy-Smith, Angela Davis Cop Watch and the Campaign Against Racial Profiling, Milwaukee, Wisconsin

Hello, I'm Karen Murphy-Smith, a human rights/prison reform public policy activist, and head of the Milwaukee based Angela Davis Cop Watch and the Campaign Against Racial Profiling (CARP) organization.

The Angela Davis Cop Watch and Campaign Against Racial Profiling is a citizen action group dedicated to raising public awareness and ending racial profiling. Racial profiling is any police initiated action that relies upon the race, ethnicity, or national origin of an individual rather than behavior of that individual, or information that leads the police to a particular individual who has been identified as being engaged or having been engaged in criminal activity.

We are comprised of citizens who believe that fighting crime is of the highest priority as long as it is done without violating citizen's fundamental rights and further eroding the public's confidence in law enforcement. We differ from other cop watch models where members take to the street with police/citizen interaction. Instead, we've adopted a research and development model that affords us the opportunity to lobby for reform and law enforcement accountability through the legislative process. (For further information visit ADCopwatch@againstthewalls.org)

Fortwo years our organizations have led the charge to end all forms of racial profiling in Milwaukee and throughout Wisconsin in the areas of.

> Driving While Black or Brown (DWB)—the practice of stopping, searching, and or detaining a motorist based on his or her race, ethnicity, gender, or station-in-life.
>
> Walking While Black or Brown (WWB)—the practice of stopping, searching, or detaining a pedestrian based on his or her race, ethnicity, gender, or station-in-life.
>
> Running While Black or Brown (WWB)—the practice of stopping, searching, detaining, and or arresting a pedestrian who is in a "high crime area", because he or she broke into an unprovoked run at the sight of law enforcement of officials.
>
> Shopping While Black or Brown (SWB)—the practice of detaining and searching a commuter based on his or her race, ethnicity, gender, or station-in-life.
>
> Flying While Black or Brown (FWB)—the practice of detaining and searching a commuter based on his or her race, ethnicity, gender, or station-in-life.
>
> Hailing a Cab While Black or Brown (HACWB)—the practice of avoiding to stop or acknowledge individuals of a specified race, ethnicity, gender, or station-in-life who hail a cab, based on a profile of descriptive attire and stereotypes.

According to social scientist, Henry Lefebvre, "a revolution takes place when and only when, in such a society, people can no longer lead everyday lives. . ." Such is the case with scores of African-Americans and other minorities—including prominent athletes, members of Congress, actors, lawyers, policemen, clergy and business leaders who have experienced the humiliation of being stopped on our nation's roads for no other reason than the alleged traffic offense referred to as "DWB".

In November of '99' we successfully lobbied the City of Milwaukee Common Council and Milwaukee Mayor John Norquist to sign into law a bill that requires the Milwaukee Police Department (MPD) to extract racial data from police records for quarterly publication by our citizen's review panel the Fire & Police Commission.

> In Milwaukee Blacks and Minorities received three of every four municipal tickets. Blacks and Minorities were 38% of the population, but received 75% of non-traffic and 70% of traffic citations from Oct. 25, 1998 through Oct. 25, I999.

A recent Milwaukee Journal Sentinel Newspaper analysis of 147,000 "quality of life" municipal citations issued between October 25, 1998 and another 122,913 "Zero tolerance" and "area specific policing" citations revealed that these strategies have "had a disparate impact on the poor and on blacks because most tickets—even for violations like jaywalking and speeding—are given to ethnic minorities in low-income, higher crime neighborhoods." (Source: Milwaukee Journal Sentinel "Policing or Profiling?", by Dave Umhoefer, 6/18/2000.)

On March 6, 2001 Governor Scott McCallum issued Executive Order No. 1 "Relating to the Findings of the Governor's Task Force on Racial Profiling." Executive Order No. 1 requires all law enforcement agencies in the State of Wisconsin to:

1) Enact a policy prohibiting the practice of racial profiling.
2) Implement the recommendations authored by the Governors Task Force on Racial Profiling without delay.
3) Identify the means necessary to implement the recommendations in cooperation with their communities.

The Task Force's mission was to study whether and to what extent there exists a pattern and practice of law enforcement stop based on racial profiles; to determine and examine public perceptions on this issue; to collect and analyze data; and to explore solutions and make recommendations to the Governor and other appropriate entitles. The task force chaired by Judge Maxine Aldridge White was comprised of law enforcement officials, the defense bar, state legislators and community leaders who found that racial profiling erodes the public's confidence in law enforcement that racial profiling is a nationwide issue; that there is anecdotal evidence that racial profiling occurs in Wisconsin; and that without emprircal data we will be unable to determine the extent of the racial profiling problem in Wisconsin.

We're currently corresponding with law enforcement agencies throughout the State In order to secure copies of policies prohibiting the practice of radial profiling. And will hold a news conference in the near future publishing our findings.

We also stand with and join our own—Wisconsin Senator Russ Feingold and Michigan Representative John Conyers in doing the right thing supporting (S. 989 and H.R. 2074). We can only now pray that president George W. Bush will follow suit.

Statement of Kabzuag Vaj, Co-Founder of Asian Emancipation Project, Madison, WI

POLICE PROFILING IN (HMONG) SOUTHEAST ASIAN COMMUNITIES

The recent attention to racial profiling has increased the awareness of the unconstitutional practice of law enforcement officers profiling, targeting, and harassing people of color, specifically, African Americans. Throughout the United States, people of color who are stopped and ticketed by police without justification are filing class action lawsuits, seeking to represent other people of color who alleged that they were also stopped on the basis of their racial/ethnic background. Although, many national and local agencies are working hard to eliminate and protect victims of police profiling, the focus is mainly on the African American community.

Police profiling is not partial to only African American communities. Today, in Madison, WI, the color of your skin makes you more likely to be stopped, searched, arrested and imprisoned. Wisconsin has been home to the one of the largest Southeast Asian refugee populations for over three decades. Currently, there are approximately, 49,000 Southeast Asians in Wisconsin, and as the population grows many new challenges arise. Traditionally, Southeast Asians have a great deal of respect for authority figures, this makes it hard for them to believe that officers of the law would have any reasons to harass their community, therefore, it is difficult for the elders to understand and acknowledge police harassment and profiling. One of the most controversial issues within the Southeast Asian community is the incarceration and police profiling of our young men and women.

An increase in police contact with the Southeast Asian community is not a result of an increase in gang activities and drug trafficking by community members. Myths, such as this one, only aim to further disempower and delegitimize Southeast Asians who are profiled on a consistent and systematic basis, and to justify law enforcement officers' unequal implementation of the law for people of color. The reality is that many of these unnecessary and inappropriate encounters occur because of police profiling. Studies have shown that there is no correlation between race and likelihood to commit a crime. In other words, people break the law roughly in proportion to their population.

Many Southeast Asians profiled by police officers have been harassed from a very young age, thus, they do not have the adequate resources and knowledge to defend themselves from police officers who abuse their power in an attempt to control the community they should be serving and protecting. Racial Profiling is systematically destroying the foundation of many communities of color, the destruction of the family unit, because of disproportionate incarceration rates of men of color and rising incarceration rates of women of color, causes fragmented families, single parent household, and unnecessary financial burden. The cultural, educational, and eco-

nomic ramifications of racial profiling in Southeast Asian communities are devasting. Racial profiling of Southeast

Asian's result in arrest, conviction, and incarceration, which in return criminalizes the community, disrupts family unity and creates lost of face, mistrust, tension and violence between family members. In addition, the Southeast Asian community must deal with immigration issues, and face deportation back to countries their families fled, as refugees, three decades ago, in fear of persecution. According to The Southeast Asia resource Action Center (SEARAC), a national civil rights organization committed to the advancement of Southeast Asians, as of February 21, about one-third of all long-term detainees were from Southeast Asia.

For example, a Hmong teen who is constantly profiled by police will be viewed as a criminal in his community, and bring his family humiliation and lost of respect and face. His father in response will put demands on the mother, who is responsible for the up brining of the child, in reaction to that, the mother will pressure the child. To avoid public criticizism and humiliation, many families resort to violence. In many instances, the father become depress and suicidal because he is unable to control the situation. The challenges in dealing with racial profiling in Southeast Asian communities are complex, therefore, without further resource and education, the consequences of racial profiling has contributed to many social, economic, familial and emotional problems.

1. TESTIMONY BY C. VANG (INTERVIEWED APRIL 2001)

C. Vang is 23 years old and has lived in Madison, WI all his life.

His first encounter with the Madison police department occurred in 1990, when he was 12 years old. While walking home from school, he was stopped and searched by an officer who alleged that C. Vang had stolen something from a nearby store. After searching C. Vang and finding nothing, the officer let him go, and apologized for misidentifying him for someone else. C. Vang and his family did not report this to the police department or file a compliant. C. Vang's family did not know that they could report this incident and they believed the police department would not do anything about it.

In 1992, at age 14, C. Vang and his friends were once again, profiled by the police department. While driving in Madison, C. Vang and 2 of his Laotian friends were ordered by five to eight police cars to pull over. Upon parking on the side, eight to ten officers surrounded the car with guns pointed at the teens. By gunpoint, the teens were ordered to step out of the car and lay flat on the ground, while the other officers searched the car. When the teens asked why they were being stopped and held at gunpoint, the officers replied that they were looking for a gun. After searching the car, only a wheel lock club was found (read: no gun was found). Once again, C. Vang and his friends did not report the incident to the police department or file a compliant against the officers.

From 1981 to 1996, C. Yang lived in a low-income neighborhood, where there were community police and security guards policing the community 24 hours a day 7 days a week. In the years when he lived in this community, C. Vang was stopped and questioned by officers on several other occasions; officers would stop him just for looking their way or even just smiling at them. They said his smile was intimidating and his look was insulting.

C. Vang has been threatened by Madison police officers on numerous occasions. While visiting his older brother, C. Vang was stopped by an officer and asked what he was doing in the neighborhood. Then the officer told C. Vang that the police department had their eyes on C. Vang and that one day they would catch him doing something wrong. In April of 2001, while visiting his older brother again, a police officer approached C. Vang and told him that he was no longer permitted to visit his brother, because the department had barred him from entering that community. When C. Vang asked why, the officer said that they know C. Vang had committed vandalism in that community and therefore, was no longer allowed to enter the community. Although, C. Vang was accused of a crime and prohibited from entering that community there was no ticket given and no arrests, just more threats. No other reasons were given for outlawing C. Vang from visiting his older brother. C. Vang has not filed a compliant against the department yet.

2. TESTIMONY BY J. VANG (INTERVIEWED APRIL 2001)

J. Vang is 21 years old and has lived in Madison, WI all his life.

In April 2001, J. Vang, his brother, and two Hmong friends went to Mc Donald's for lunch and ended up with two disorderly conduct tickets. After being mistreated and disrespected by the manager at the local fast food over a request for more barbecue sauce, J. Vang and his friends ate their meals in the restaurant, while the

manager called the police. Instead of investigating and speaking to both parties, the police officers order the Hmong men to leave the restaurant and cited two of the young men with disorderly conduct tickets. The manager was not ticketed, and no complaints were filed.

3. TESTIMONY BY F. XIONG (INTERVIEWED APRIL 2001)

F. Xiong is 21 years old and has lived in Madison for 10 years.

Since November 2000 to April 2001 F. Xiong has been stopped four times while driving by police officers. F. Xiong is stopped and questioned about the same issues: the color of his headlights, tail lights, and break lights and how his lights are either too pearl white, too yellow, too bright, or not bright enough. All four times, police officers asked all the people in the car to provide identification, and conducted background checks on all of them. Police officers never cited F. Xiong with a ticket, but aimlessly threatened and warned him. No complaints were filed.

In April 2001, a neighborhood officer told F. Xiong he could not stand his car in a prohibited area, although there were no visible markers against standing a vehicle. F. Xiong questioned the officers, and they in turn threatened to take F. Xiong downtown for disorderly conduct. At the same time, without his permission, the officer and his partner attempted to open F. Xiong's car door to search his car. F. Xiong told them that he did not consent to the search and that the officers had no reasons and grounds to search his car. The officers left after several other community members verbally agreed with F. Xiong. No ticket was given, no reports or complaints were filed.

4. TESTIMONY BY K. VUE (INTERVIEWED MARCH 2001)

K. Vue is 24 years old and has lived in Madison for 10 years.

In August 2000, while leaving for home from an Asian party, K. Vue and a friend was stopped and questioned by police officers about a crime in which 10 to 15 Asian men attacked an African man. After examining K. Vue and his friend the police officers agreed to let the two men go. While walking back to their car, several more police officers and the victim identified K. Vue and his friend as the perpetrators of the crime. K. Vue, his friend, and another Asian man were the first Asian men spotted on the streets, and were all arrested and charged with a hate crime against the African man. At the trial, however, the key witness confessed that he was not sure if these were the Asian men involved, and that the only thing he was sure about is that all Asians dressed like "gangsters." The victim, himself, admitted outside the courtroom that he was also unsure if these were the men. Regardless of the lack of evidence, all three Hmong men were charged with the hate crime and sentenced.; The Hmong men have filed no complaints.

After this incident, a number of other Asian men, regardless of their ethnicities, were stopped and questioned about their possible involvement in the attack of the African man.

Several weeks after the attack, campus officers stopped a Taiwanese American man at the University of Wisconsin-Madison to question him about the incident because the small band-aid on his head, which he was using to cover a pimple, caused suspicion.

5. TESTIMONY BY T. VANG (INTERVIEWED APRIL 2001)

T. Vang is 18 years old and was born and raised in Madison, WI

T. Vang was stopped outside of her home by two police officers that told her they had their eyes on her, and that one day they will arrest her. They also asked her what gang she belonged too. She has never been arrested but continues to get harassed by community officers daily. She has not filed any complaints against the officers.

6. TESTIMONY BY X. VANG (INTERVIEWED APRIL 2001)

X. Vang is 22 years old and has lived in Madison for 20 years.

Since X. Vang was 14 years old, police officers, neighborhood officers and neighborhood security guards have profiled him. They have all harassed him in an attempt to force a confession regarding his "gang affiliation." X. Vang is not involved in any Asian gangs. In fact, to his knowledge, there has never been an Asian gang in Madison, Wl. X. Vang has been stopped by police officers on many occasions.

In the summer of 2000, while walking around in his neighborhood, a police officer stopped X. Vang and requested to see his identification card. X. Vang refused. At that point, the office cited X. Vang for disorderly conduct and obstruction of a police

officer. Since the summer of 2000, X. Vang has received two disorderly conduct citations and many threats of being taken to jail from different police officers.

7. TESTIMONY BY L. YANG (INTERVIEWED NOVEMBER 2000)

L. Yang is 25 years old and lives in Madison, WI

In the summer of 2000, while playing volleyball at a public park, a group of 12 to 15 Cambodian, Laotian and Hmong youth were asked to provide identification by a police officer who justified his request by stating that the grass at the park was dying because Southeast Asian people had over-used the park. When one of the young Hmong men refused to do so, the officer threatened him. Many of the other young men showed the officer their state identification cards because they feared what could happen to them if they did not. L. Yang did present his identification card to the officer.

When asked why the youth did not report this to the police department, they said they did not know who to report it to and they believed that if they did report the incident nothing would happen. L. Yang also testified that after that incident, on many different occasions, officers would drive around the park to observe the youth play volleyball.

8. TESTIMONY BY F. VANG (INTERVIEWED 1997)

F. Vang is 25 years old and has lived in Madison, WI all his life.

In the summer of 1992 encounters with the police became a daily routine for F. Vang and his friends. One day, while standing in the parking, a few feet away from his home, F. Vang and his friends were approached by several undercover police officers. The officers asked F. Vang, who was at the time only 17, what gang he was affiliated with and why he was standing in the parking lot. F. Vang walked away from the officers and refused to answer their insulting questions. As F. Vang walked on the sidewalk towards his older brother's house, the officers asked him to stop so they could search him. F. Vang's older brother saw the officers harassing his younger brother and asked the officers to stop. The undercover officers shouted at F. Vang's older brother and told him to "shut up because he was nothing but an uneducated poor man and should stay out of their business." The undercover officers wanted to search F. Vang for drugs and weapons, but without a warrant F. Vang's older brother would not allow them to. No tickets were issues, no arrested were made and no reports were filed.

Article by Fox Butterfield, New York Times, July 30, 2001

Police departments in cities across the nation are facing what some call a personnel crisis, with the number of recruits at record lows, an increasing number of experienced officers turning down promotions to sergeant or lieutenant and many talented senior officers declining offers to become police chiefs, executive recruiters and police officials say.

Making the situation worse, in some cities a growing number of police officers are quitting for higher-paying jobs in suburban departments or private businesses.

These problems have come at a time when crime is at its lowest levels since the late 1960's and the police should be feeling good about themselves. But, the experts say, many officers from the lowest to the highest rank are questioning their occupation, tempted by higher pay in the private sector after a decade- long economic boom and discouraged by seemingly constant public and news media criticism about police brutality and racial profiling.

John Diaz, an assistant police chief in Seattle, said the long hours and the politics involved in a chiefs job made the position unappealing to him.

"I would absolutely not take a job as a police chief," said John Diaz, an assistant police chief in Seattle, who at 44 already has a good national reputation and is sought after by recruiters for a chief s post.

"The politics of being police chief have become so insane no one wants the job," said Mr. Diaz, who is particularly attractive to recruiters because he is Hispanic. "I work an 11-hour day, but our chief is here before me every day and doesn't leave until I'm gone, and all he gets is attacked in the media all the time."

The malaise felt by those from potential police recruits to chiefs "is a major crisis all over the country," said Cynthia Brown, the publisher of American Police Beat, the largest- circulation newspaper for law enforcement officers.

The difficulties are illustrated in her publication. Until a year ago, Ms. Brown said, she had never run an advertisement from a police department looking for recruits, because police forces could still find all the applicants they needed in their own communities. But in the current issue, there are advertisements for police recruits from a dozen cities, including Portland, Ore., and Seattle, and smaller cities like Santa Cruz, Calif, and Sheridan, Wyo.

There has been little public attention to the police departments' troubles, but Jeremy Travis, a senior fellow at the Urban Institute and a former deputy police commissioner in New York City, said, "If this was a business, we'd be in a panic mode."

There are no nationwide statistics on the problem. But figures from several cities show the magnitude of the drop in applicants for the police examination, the first step in becoming a police officer. In Chicago last year, 5,263 people signed up for the exam, despite months of recruiting at college campuses, military bases and churches throughout the Midwest, said Cmdr. Bill Powers, the head of the Chicago police personnel division. That is down from 10,290 people who signed up in 1997 and 36,211 applicants in 1991. Traditionally, only a tiny fraction of people who apply are eventually accepted, making a large applicant pool important.

In New York City, more than 1,700 officers left the 41,000-member force last year through retirement or resignation, a third more than the year before. The retirement rate is expected to accelerate, with concerns about morale and pay taking their toll and with a large portion of the force soon to complete 20 years of service, when officers can retire with a full pension.

The number of captains leaving the New York Police Department tripled in the 2000 fiscal year from the year before, and over the next four years, more than half of the force's 2,100 captains and lieutenants will be eligible to retire.

While the number of people signing up to take the test to become New York City police officers rose modestly this year over last year, the overall number of applicants has dropped sharply in recent years. In 1996, 32,000 people signed up. This year, 13,136 did.

In Los Angeles, where the police have been buffeted by scandals since the Rodney King beating in 1991, there were only 19 recruits in the police academy class in June, a record low, said Amira Smith, an officer in the employment opportunity development division. When Ms. Smith joined the force four years ago, there were 70 recruits in her class, and not long before that there were 100 recruits per class. This month Los Angeles canceled the police academy because there were not enough recruits.

In Seattle, the police department is having trouble finding officers to take the sergeants' examination, and sergeants to take the exam for promotion to lieutenant. Only 86 officers took this year's sergeants' test, down from 134 in 1997, and only 10 sergeants took this year's exam for lieutenant, compared with 33 in 1997, department figures show.

Many officers with seniority do not want to start over in a higher rank, risking having to work nights or weekends, officers say. And some sergeants do not want the promotion because lieutenants, unlike sergeants, do not get overtime pay.

"There has been a big change in the culture of policing in the past few years, as lifestyle becomes more important than the sense of public service," said Carroll Buracker, the head of a management and consulting firm in Harrisonburg, Va., and a former police chief in Fairfax County, Va. Detectives in many police departments now work only from 8 a.m. to 4 p.m., Monday through Friday, Mr. Buracker said, and therefore are unavailable to contact a victim when a crime occurs in the evening or over the weekend.

"So why would a detective want to give up that work schedule when they have a family," he asked, "in order to be a sergeant without seniority and face working nights and weekends?"

To attract and retain officers, some police departments are resorting to even more radical changes in the work week that Mr. Buracker, among others, thinks undermine the goals of good policing. In Tacoma, Wash., all police officers work on Thursday, he said, so officers on a rotating basis can get six days off in a row, from Friday through Wednesday. The new mayor of Los Angeles, James K. Hahn, won the endorsement of the city's police union by promising to institute a three-day work week, with 12-hour shifts.

But if officers work only three days a week, Mr. Buracker said, they would often not be available to go to court, an essential duty in everything from settling traffic tickets to felony trials. And they might start making fewer arrests to avoid having to show up to testify, he said.

Attrition is a growing problem from New York to Los Angeles. In Detroit, where the police department is under a federal investigation for charges that the police routinely violate citizens' civil rights, 600 to 700 officers have resigned in the last

five years, according to department figures, many to take better-paying jobs in suburban forces. In addition, more than 1,000 other officers have retired in the last five years, and 1,000 more are eligible to retire in the next two years, large proportion of Detroit's 4,000-member department.

Low pay is often a factor. In Detroit, the starting salary for a police officer is $28,865; in Houston, it is $26,000.

In Miami, the police department has only 883 officers, well below its authorized strength of 1,045 officers. "Because of the economy, people are not really interested in law enforcement as a career," said Sgt. David Ramras of the Miami police recruiting unit.

"We are not getting people coming out of the military," as police forces long did, Sergeant Ramras said. "It's easier for them to get a job working with computers making a lot more money, with evenings and weekends off."

Sgt. John Rivera, the president of the Miami-Dade County Police Benevolent Association, offered another explanation. "This is increasingly becoming a more miserable job. by the day," Sergeant Rivera said. It has not helped, he said, that the Miami police have been stung by accusations of abuse, corruption and cover-ups, and that the department is under investigation by federal prosecutors.

Most officers are good people, he said, "so to risk your life for increasingly ungrateful people isn't worth it."

The hardest part of the problem to quantify is the number of highly qualified senior police executives who are passing up offers to become police chiefs, and as a result, the number of cities that are having to settle for their second or third choice. Among cities that have had difficulty recently are Denver, Ann Arbor, Mich., Riverside, Calif, and Prescott Valley, Ariz., some recruiters and chiefs said.

"We are down about 35 percent in the number of qualified candidates when we do chief searches now," said Jerry Oldani, president of the Oldani Group, a search firm in Bellevue, Wash.

"Up until five years ago, people broke their necks to be big city chiefs," Mr. Oldani said. "But now there are a lot of senior police officials who just don't want to be chief."

There are several reasons for this, said Chuck Wexler, the executive director of the Police Executive Research Forum, an organization of police executives that does recruiting and training. Pay for police chiefs is relatively low—from $70,000 to $150,000—so low that some officers or sergeants, with overtime, earn more than their bosses, Mr. Wexler said.

Chiefs usually cannot take their retirement benefits with them from job to job, unlike many corporate executives, and they face hardships in relocating since cities do not offer the same help businesses do for their senior officers, Mr. Wexler said. Then there is the difficulty of going through a public examination by the local city council, or civilian advisory bodies, so an applicant's whole life can suddenly appear in the news media.

Moreover, Mr. Wexler said, "the expectations for chiefs are higher than ever, because of the new belief that chiefs can do something about reducing crime."

So for a mayor, picking a police chief "has become like drafting a star quarterback," Mr. Wexler said, "but with these expectations, there is danger, because you can't expect to get those crime drops forever."

"When people add up all these costs, it often isn't worth it to take a chiefs job," Mr. Wexler said.

In Seattle last year, when the city was looking for a new chief in the aftermath of the violent demonstrations at the World Trade Organization meeting, none of the assistant chiefs applied.

Mr. Diaz was one of those assistant chiefs. "It's really odd, because the usual route is to want to get promoted and become the head," he said, "but being chief is a thankless job."

The eventual choice was Gil Kerlikowske, a former police commissioner in Buffalo.

Last Sunday, Chief Kerlikowske went out for a run from police headquarters and came across a crowd surrounding a woman who had passed out—from a heroin overdose, it turned out. The chief, in his jogging gear, stopped to give her mouth-to-mouth resuscitation, then, when she began to breathe again, took her to the hospital. Later, Chief Kerlikowske had to go to the hospital himself, for hepatitis B shots.

But on the evening news, Mr. Oldani said, the chiefs good deed merited just a few seconds. The major item, he said, was about the police chase of a stolen car, which struck a pedestrian, and the criticism that the police were to blame for the injured pedestrian.

"It's a good example of what's wrong," Mr. Oldani said. "He was being a good cop, and that just got lost."

Article by Roger Clegg, National Review, June 29, 2001

Last week, the *Washington Post* ran a front page, above-the-fold story, headlined "Discrimination's Lingering Sting/Minorities Tell of Profiling, Other Bias." The story reports the results of a survey by the Post, the Henry J. Kaiser Family Foundation, and Harvard University. The gist of the survey is that in a wide variety of areas—police stops, employment, physical assaults, service at restaurants and stores, etc.—blacks are more likely to report that they have been discriminated against because of their race than whites are, with Hispanics and Asians falling in between.

But despite the stop-the-presses headline treatment, there is much less to the study than meets the eye, and in fact its findings do little to support the liberal agenda.

The basic limitation with the study is that it is not reporting the "sting" of actual discrimination at all, but only whether people think they have been discriminated against. On the second page of the story, on page A16, in the story's seventh paragraph, it is obliquely acknowledged that the study is measuring only people's perceptions and not necessarily reality, and it is not until the 24th paragraph that the *Post* story says outright, "An honest error or an unintended slight may be misconstrued as an act of racial intolerance."

Moreover, there is a half-empty versus half-full way of looking at the data. For the study's overarching question, "During the last 10 years, have you experienced discrimination because of your racial or ethnic background, or not?," more than half-53 percent of African Americans said no. That is surely an astounding indicator of progress. Less than a generation after Martin Luther King Jr.'s "I have a dream" speech and formal, de jure segregation, more than half of black Americans say they are not being discriminated against at all.

For Hispanics and Asian, the figures are even better: Six in ten say they have suffered no discrimination in the past ten years (for whites, the number is eight in ten).

The study also indicates that white-on-black discrimination is not the only kind. For instance, 35 percent of African Americans say they have lost out on a job or promotion because of their race, versus only 10 percent of whites. One way to look at this is that-assuming that the figures reflect reality and that the each individual who answered positively has suffered the same number of hiring/promotion denials—if you are black, you are three-and-a-half times more likely to suffer workplace discrimination than if you are white.

But, on the other hand, there are six times as many whites as blacks in the United States. And that means that there are 1.7 times as many instances in which whites are discriminated against in the workplace as instances where blacks are the victims. In other words, the study could be cited to support the conclusion that "reverse" discrimination is a much more widespread problem than "old-fashioned" discrimination.

The numbers are even more sobering when the question is, "Have you ever been physically threatened or attacked because of your race or ethnic background?" Seventeen percent of blacks said they had, almost double the number of whites (9 percent). So blacks are twice as likely to report that they have been physically threatened or attacked but there are more than three times as many racial assaults on whites as on blacks reported.

Two days after it published the results of this survey, the *Post* reported on a study by University of Michigan psychologist Lilia Cortina. This study, which was not focusing on race or ethnicity, surveyed 1,100 federal court employees. It found that 71 percent of them believed they had been insulted, ignored, or otherwise dissed by co-workers or superiors during the past five years.

The point is that there is a lot of perceived incivility in society. There is also much disappointment in life. When bad things happen, there is a universal human tendency to blame someone else. There is also a need to ascribe some motive to the wrongdoer.

The original *Post* article quotes Lawrence Bobo, a professor of Afro-American studies and sociology at Harvard, who asserts that the study reflects "the steady occurrence of slights and put-downs you know in your gut are tied to race but that rarely take the form of blatant racism. No one uses the N-word. There is not a flat denial of service. It is insidious, recurrent, lesser treatment."

The trouble is, the subtler the slights, the greater the likelihood that they may not be slights, or at least racial slights, at all. The media do minorities no favor by suggesting that discrimination is more widespread than it really is.

There is no doubt that bigotry still exists in our country and I have no doubt that African Americans suffer from it the most. But it is also undeniable that there is less of it than there used to be, and that black bigotry against whites is also a problem. The study helps document all this, but none of this is news, and so the study is not very helpful even after its limitations are recognized.

The tougher questions are: (1) Why does bigotry still exist?; and (2) What is to be done about it? The study offers no guidance on these, more important questions.

One suspects that the powers that be at Harvard and the *Washington Post* believe in their hearts that white parents teach their children to be bigots and that the way to solve the problem is by the use of racial preferences. The fact of the matter, however, is that prejudice nowadays is more likely to have its origin and certainly its reinforcement in the easily observable and undeniable pathologies of the inner city—no justification for bigotry, but a fact that has to be grappled with—and that racial preferences make race relations worse, not better, by confirming stereotypes, fostering white resentment, and feeding a victim mentality among African Americans.

Article by David Cole and John Lamberth, New York Times, May 13, 2001

THE FALLACY OF RACIAL PROFILING

Byline: By David Cole and John Lamberth; David Cole, a professor at Georgetown University Law Center, is author of ″No Equal Justice: Race and Class in the American Criminal Justice System.″ John Lamberth is associate professor of psychology at Temple University.

BODY

It is no longer news that racial profiling occurs; study after study over the past five years has confirmed that police disproportionately stop and search minorities. What is news, but has received virtually no attention, is that the studies also show that even on its own terms, racial profiling doesn't work.

Those who defend the police argue that racial and ethnic disparities reflect not discrimination but higher rates of offenses among minorities. Nationwide, blacks are 13 times more likely to be sent to state prisons for drug convictions than are whites, so it would seem rational for police to assume that all other things being equal, a black driver is more likely than a white driver to be carrying drugs.

But the racial profiling studies uniformly show that this widely shared assumption is false. Police stops yield no significant difference in so-called hit rates—percentages of searches that find evidence of lawbreaking—for minorities and whites. If blacks are carrying drugs more often than whites, police should find drugs on the blacks they stop more often than on the whites they stop. But they don't.

In Maryland, for example, 73 percent of those stopped and searched on a section of Interstate 95 were black, yet state police reported that equal percentages of the whites and blacks who were searched, statewide, had drugs or other contraband. In New Jersey, where police have admitted to racial profiling, searches in 2000 conducted with the subjects' consent yielded contraband, mostly drugs, on 25 percent of whites, 13 percent of blacks and only 5 percent of Latinos.

A study of stop-and-frisk practices in New York City in 1998 and 1999 found that while police disproportionately stopped young black men, the hit rates were actually marginally higher for whites than for blacks or Latinos. And while 43 percent of those searched at airports by the Customs Service in 1998 were black or Latino, illegal materials were found on 6.7 percent of whites, 6.3 percent of blacks and 2.8 percent of Latinos.

Other studies corroborate that drug use and dealing are equal opportunity offenses. The Public Health Service reports, based on anonymous surveys, that blacks, at 13 percent of the population, account for 15 percent of illegal drug users. Hispanics are 11 percent of the population and 8 percent of illegal drug users, and whites are more than 70 percent in both categories. A National Institute of Justice study found that most users report getting their drugs from dealers of their own racial or ethnic background; so dealing rates are likely to track user rates. These figures suggest that race and ethnicity are simply not useful criteria for suspicion.

The Customs Service's experience is illustrative. In late 1998, the service adopted reforms designed to eliminate racial and gender bias in its searches. In 2000, it conducted 61 percent fewer searches than in 1999, but seizures of cocaine, heroin and Ecstasy all increased. From 1998 to 2000, hit rates for whites and blacks increased

by about 125 percent, from less than 7 percent to 15.8 percent, while hit rates for Latinos increased more than fourfold, from 2.8 percent to 13.1 percent.

Perhaps most important is that every year the vast majority of both blacks and whites are not arrested for anything. A generalization linking race or ethnicity to crime will therefore inevitably sweep in many innocent people. And police will miss guilty people who don't fit their stereotypes. As cities from New York to Cincinnati have seen, reliance on race corrodes the legitimacy of the criminal justice system by reneging on its promise of equality. But that's old news. The new news is that racial profiling just doesn't work.

Article by John Derbyshire, National Review, February 19, 2001

IN DEFENSE OF RACIAL PROFILING

"Racial Profiling" has become one of the shibboleths of our time. Anyone who wants a public career in the United States must place himself on record as being against it. Thus, ex-senator John Ashcroft, on the eve of his confirmation hearings: "It's wrong, inappropriate, shouldn't be done:" During the vice-presidential debate last October, moderator Bernard Shaw invited the candidates to imagine themselves black victims of racial profiling. Both trade the required ritual protestations of outrage. Lieberman: "I have a few African-American friends who have gone through this horror, and you know, it makes me want to kind of hit the wall, because it is such an assault on their humanity and their citizenship." Cheney: "It's the sense of anger and frustration and rage that would go with knowing that the only reason you were stopped . . . was because of the color of your skin . . ." In the strange, rather depressing, pattern these things always follow nowadays, the American public has speedily swung into line behind the Pied Pipers: Gallup reports that 81 percent of the public disapproves of racial profiling.

All of which represents an extraordinary level of awareness of, and hostility to, and even passion against ("hit the wall . . . ") a practice that, up to shout five years ago, practically nobody had heard of. It is, in fact, instructive to begin by looking at the history of this shibboleth.

To people who follow politics, the term "racial profiling" probably first registered when AI Gore debated Bill Bradley at New York's Apollo Theatre in February 2000. Here is Bradley, speaking of the 1999 shooting of African immigrant Amadou Diallo by New York City police: "I . . . think it reflects . . . racial profiling that seeps into the mind of someone so that he sees a wallet in the hand of a white man as a wallet, but a wallet in the hand of a black man as a gun. And we-we have to change that. I would issue an executive order that would eliminate racial profiling at the federal level."

Nobody was unkind enough to ask Sen. Bradley how an executive order would change what a policeman sees in a dark lobby in a dangerous neighborhood at night. Nor was anyone so tactless as to ask him about the case of LaTanya Haggerty, shot dead in June 1999 by a Chicago policewoman who mistook her cell phone for a handgun. The policewoman was, like Ms. Haggerty, black.

A1 Gore, in that debate at the Apollo, did successfully, and famously, ambush Bradley by remarking that: "You know, racial profiling practically began in New Jersey, Senator Bradley" In true Clinton-Gore fashion, this is not true, but it is sort of true. "Racial profiling" the thing has been around for as long as police work, and is practiced everywhere. "Racial profiling" the term did indeed have its origins on the New Jersey Turnpike in the early 1990s. The reason for the prominence of this rather unappealing stretch of expressway in the history of the phenomenon is simple: The turnpike is the main conduit for the shipment of illegal drugs and other contraband to the great criminal marts of the Northeast.

The career of the term "racial profiling" seems to have begun in 1994, but did not really take off until April 1998, when two white New Jersey state troopers pulled over a van for speeding. As they approached the van from behind, it suddenly reversed towards them. The troopers fired eleven shots from their handguns, wounding three of the van's four occupants, who were all black or Hispanic. The troopers, James Kenna and John Hogan, subsequently became poster boys for the "racial profiling" lobbies, facing the same indignities, though so far with less serious consequences, as were endured by the Los Angeles policemen in the Rodney King case: endless investigations, double jeopardy, and so on.

And a shibboleth was born. News-media databases list only a scattering of instances of the term "racial profiling" from 1994 to 1998. In that latter year, the

number hit double digits, and thereafter rose quickly into the hundreds and thousands. Now we all know shout it, and we are, of course, all against it.

Well, not quite all. American courts-including (see below) the U.S. Supreme Court-are not against it. Jurisprudence on the matter is pretty clear: So long as race is only one factor in a generalized approach to the questioning of suspects, it may be considered. And of course, pace Candidate Cheney, it always is only one factor. I have been unable to locate any statistics on the point, but 1 feel sure that elderly black women are stopped by the police much less often than are young white men.

Even in the political sphere, where truth-telling and independent thinking on matters of race have long been liabilities, there are those who refuse to mouth the required pieties. Alan Keyes, when asked by Larry King if he would be angry with a police officer who pulled him over for being black, replied: "I was raised that everything I did represented my family, my race, and my country. I would be angry with the people giving me a bad reputation."

GOODBYE TO COMMON SENSE

Practically all law-enforcement professionals believe in the need for racial profiling- In an article on the topic for The New York Times Magazine in June 1999, Jeffrey Goldberg interviewed Bernard Parks, chief of the Los Angeles Police Department. Parks, who is black, asked rhetorically of racial profiling: "Should we play the percentages? . . . It's common sense." Note that date, though. This was pretty much the latest time at which it was possible for a public official to speak truthfully about racial profiling. Law-enforcement professionals were learning the importance of keeping their thoughts to themselves. Four months before the Goldberg piece saw print, New Jersey statepolice superintendent Carl Williams, in an interview, said that certain crimes were associated with certain ethnic groups, and that it was naive to think that race was not an issue in policing-both statements, of course, perfectly true. Supt. Williams was fired the same day by Gov. Christie Todd Whitman.

Like other race issues in the U.S., racial profiling is a "tadpole," with an enormous black head and a long but comparatively inconsequential brown, yellow, and red tail. While Hispanic, "Asian-American," and other lesser groups have taken up the "racial profiling" chant with gusto, the crux of the matter is the resentment that black Americans feel toward the attentions of white policemen. 13y far die largest number of Americans angry about racial profiling are law-abiding black people who feel that they are stopped and questioned because the police regard all black people with undue suspicion. They feel that they are the victims of a negative stereotype.

They are. Unfortunately, a negative stereotype can be correct, and even useful. I was surprised to find, when researching this article, that within the academic field of social psychology there is a large literature on stereotypes, and that much of it—an entire school of thought-holds that stereotypes are essential life tools. On the scientific evidence, the primary function of stereotypes is what researchers call "the reality function." That is, stereotypes are useful tools for dealing with the world. Confronted with a snake or a fawn, our immediate behavior is determined by generalized beliefs-stereotypes-about snakes and fawns. Stereotypes are, in fact, merely one aspect of the mind's ability to make generalizations, without which science and mathematics, not to mention, as the snake/fawn example shows, much of everyday life, would be impossible.

At some level, everybody knows this stuff, even the guardians of the "racial profiling" flame. Jesse Jackson famously, in 1993, confessed that: "There is nothing more painful to me at this stage in my life than to walk down the street and hear footsteps and start thinking about robbery, then look around and see somebody white and feel relieved." Here is Sandra Seegars of the Washington, D.C., Taxicab Commission:

> Late at night, if I saw young black men dressed in a slovenly way, I wouldn't pick them up . . . And during the day, I'd think twice about it.

Pressed to define "slovenly;" Ms. Seegars elaborated thus: "A young black guy with his hat on backwards, shirttail hanging down longer than his coat, baggy pants down below his underwear; and unlaced tennis shoes." Now there's a stereotype for you! Ms. Seegars is, of course, black.

Law-enforcement officials are simply employing the same stereotypes as you, me, Jesse, and Sandra, but taking the opposite course of action. What we seek to avoid, they pursue. They do this for reasons of simple efficiency. A policeman who concentrates a disproportionate amount of his limited time and resources on young black men is going to uncover far more crimes-and therefore be far more successful in his career than one who biases his attention toward, say, middle-aged Asian women. It is, as Chief Parks said, common sense.

Similarly with the tail of the tadpole-racial-profiling issues that do not involve black people. China is known to have obtained a top-secret warhead design. Among those with clearance to work on that design are people from various kinds of national and racial background. Which ones should investigators concentrate on? The Swedes? The answer surely is: They should first check out anyone who has family or friends in China, who has made trips to China, or who has met with Chinese officials. This would include me, for example-my father-in-law is an official of the Chinese Communist Parry. Would I then have been "racially profiled"?

It is not very surprising to team that the main fruit of the "racial profiling" hysteria has been a decline in the efficiency of police work. In Philadelphia, a federal court order now requires police to fill out both sides of an 8½-by-11 sheet on every citizen contact. Law-enforcement agencies nationwide are engaged in similar statistics-gathering exercises, under pressure from federal lawmakers like US. Rep. John Conyers, who has announced that he will introduce a bill to force police agencies to keep detailed information about traffic stops. ("The struggle goes on," declared Rep. Conyers. The struggle that is going on, it sometimes seems, is a struggle to prevent our police forces from accomplishing any useful work at all.)

A policeman who concentrates a disproportionate amount of his time and resources on young black men is going to uncover far more crimes.

The mountain of statistics that is being brought forth by all this panic does not, on the evidence so far, seem likely to shed much light on what is happening. The numbers have a way of leading off into infinite regresses of uncertainty. The city of San Jose, Calif., for example, discovered that, yes, the percentage of blacks being stopped was higher than their representation in the city's population. Ah, but patrol cars were computer assigned to high-crime districts, which are mainly inhabited by minorities. So that over-representation might actually be an under-representation! But then, minorities have fewer cars . . .

THE CORE ARGUMENTS

Notwithstanding the extreme difficulty of finding out what is actually happening, we can at least seek some moral and philosophical grounds on which to take a stand either for or against racial profiling. I am going to take it as a given that most readers of this article will be of a conservative inclination, and shall offer only those arguments likely to appeal to persons so inclined. If you seek arguments of other kinds, they are not hard to find—just pick up your newspaper or rum on your TV.

Of arguments against racial profiling, probably the ones most persuasive to a conservative are the ones from libertarianism. Many of the stop-and-search cases that brought this matter into the headlines were part of the so-called war on drugs. The police procedures behind them were ratified by court decisions of the 1980s, themselves mostly responding to the rising tide of illegal narcotics. In *US.* vs. *Montoya De Hernandez* (1985) for example, Chief justice Rehnquist validated the detention of a suspected "balloon swallowing" drug courier until the material had passed through her system, by noting previous invasions upheld by the Court:

> [First class mail may be opened without a warrant on less than probable cause . . . Automotive travelers may be stopped . . . near the border without individualized suspicion even if the stop is based largely on ethnicity . . .

(My italics.) The Chief Justice further noted that these incursions are in response to "the veritable national crisis in law enforcement caused by smuggling of illegal narcotics."

Many on the political Right feel that the war on drugs is at best misguided, at worst a moral and constitutional disaster. Yet it is naive to imagine that the "racial profiling" hubbub would go away, or even much diminish, if all state and federal drug laws were repealed tomorrow. Black and Hispanic Americans would still be committing crimes at rates higher than citizens of other races. The differential criminality of various ethnic groups is not only, or even mainly, located in drug crimes. In 1997, for example, blacks, who are 13 percent of the US. population, comprised 35 percent of those arrested for embezzlement. (It is not generally appreciated that black Americans commit higher levels not only of "street crime," but also of white-collar crime.)

We must confront our national hysteria about race, which causes large numbers of otherwise sane people to believe foolish things.

Even without the drug war, diligent police officers would still, therefore, be correct to regard black and Hispanic citizens other factors duly considered-as more likely to be breaking the law. The Chinese government would still be trying to recruit

spies exclusively from among Chinese-born Americans. ('The Chinese Communist Party is, in this respect, the keenest "racial profiler" of all.) The Amadou Diallo case-the police were looking for a rapist-would still have happened.

The best non-libertarian argument against racial profiling is the one from equality before the law. This has been most cogently presented by Prof Randall Kennedy of Harvard. Kennedy concedes most of the points I have made. Yes, he says:

> Statistics abundantly confirm that African Americans and particularly young black men-commit a dramatically disproportionate share of street crime in the United States. This is a sociological fact, not a figment of the media's (or the police's) racist imagination. In recent years, for example, victims of crime report blacks as the perpetrators in around 25 per cent of the violent crimes suffered, although blacks constitute only about twelve percent of the nation s population.

And yes, says Prof. Kennedy, outlawing racial profiling will reduce the efficiency of police work. Nonetheless, for constitutional and moral reasons we should outlaw the practice. If this places extra burdens on law enforcement, well, "racial equality, like all good things in life, costs something; it does not come for free."

There are two problems with this. The first is that Kennedy has minimized the black-white difference in criminality, and therefore that "cost." I don't know where his 25 percent comes from, or what "recent years" means, but I do know that in Department of justice figures for 1997, victims report 60 percent of robberies as having been committed by black persons. In that same year, a black American was eight times more likely than a non-black to commit homicide-and "non-black" here includes Hispanics, not broken out separately in these figures. A racial-profiling ban, under which police officers were required to stop and question suspects in precise proportion to their demographic representation (in what? the precinct population? the state population? the national population?), would lead to massive inefficiencies in police work. Which is to say, massive declines in the apprehension of criminals.

The other problem is with the special status that Prof. Kennedy accords to race. Kennedy: "Racial distinctions are and should be different from other lines of social stratification." Thus, if it can he shown, as it surely can, that state troopers stop young people more than old people, relative to young people's numerical representation on the toad being patrolled, that is of no consequence. If they stop black people more than white people, on the same criterion, that is of large consequence. This, in spite of the fact that the categories "age" and "race" are both rather fuzzy (define "young") and are both useful predictors of criminality. In spite of the fact, too, that the principle of equality before the law does not, and up to now has never been thought to, guarantee equal outcomes for any law enforcement process, only that a citizen who has come under reasonable suspicion will be treated fairly.

It is on this special status accorded to race that, I believe, we have gone most seriously astray. I am willing, in fact, to say much more than this: In the matter of race, I think the Anglo Saxon world has taken leave of its senses. The campaign to ban racial profiling is, as I see it, a part of that large, broad-fronted assault on common sense that our over-educated, overlawyered society has been enduring for some forty years now, and whose roots are in a fanatical egalitarianism, a grim determination not to face up to the realities of group differences, a theological attachment to the doctrine that the sole and sufficient explanation for all such differences is "racism"-which is to say, the malice and cruelty of white people-and a nursed and petted guilt towards the behavior of our ancestors.

At present, Americans are drifting away from the concept of belonging to a single nation. I do not think this drift will be arrested until we can shed the idea that deference to the sensitivities of racial minorities—however overwrought those sensitivities may be, however over-stimulated by unscrupulous mountebanks, however disconnected from reality—trumps every other consideration, including even the maintenance of social order. To shed that idea, we must confront our national hysteria about race, which causes large numbers of otherwise sane people to believe that the hearts of their fellow citizens are filled with malice towards them. So long as we continue to pander to that poisonous, preposterous belief, we shall only wander off deeper into a wilderness of division, mistrust, and institutionalized rancor-that wilderness, the most freshly painted signpost to which bears the legend RACIAL PROFILING.

Statement of Hispanic American Police Command Officers Association, Washington, D.C.

SUPPORT THE END RACIAL PROFILING ACT OF 2001

Washington. D.C. (AUGUST 1, 2001)—The Hispanic American Police Command Officers Association (HAPCOA) representing 15,000 police command officers and administrators strongly support the End of Racial Profiling Act of 2001 introduced by Senators Feingold (D–WI), Clinton (D–NY), Corzine (D–NJ) and Representatives Conyers (D–MI), Morelia (R–MD), and Greenwood (R–PA).

National President Sheriff Ralph Lopez in a fetter to Senators, asked for support of the bill. Sheriff Lopez stated "that racial profiling is a discriminatory practice that poses barriers to effective policing practices. This issue is of significant importance to the Hispanic community because it jeopardizes rapport building among Hispanics and the police; this makes it less likely that Hispanics will seek help from police, report a crime, serve as a witness. or otherwise cooperate with law enforcement." HAPCOA hopes to send a clear message to law enforcement agencies that "racial profiling practices based on race, ethnicity, and/or national origin since it threatens the integrity of all police entities."

HAPCOA further supports the *End Racial Profiling Act of 2001*, because; it bans the use of racial tactics by federal law enforcement, provides incentives to state and local law enforcement agencies to eliminate the practice, requires the coffection of data on routine investigatory activities, establishes procedures for receiving, investigating, and responding to claims of racial profiling, requires training of law enforcement agents, and finally, holds them accountable for engaging in racial profiling.

HAPCOA is a non-profit association composed of over 15,000 members, affiliate departments and offices, with command level law enforcement and other personnel throughout the United States and Puerto Rico. Its mission is to enhance capabilities and technological skills through training, networking, and establish relationships within law enforcement and other professions. Its national office is located at the Ronald Reagan Building &: International Trade Center, 1300 Pennsylvania Avenue, NW, Ste. 270, Washington D.C.

Statement of International Association of Chiefs of Police, Alexandria, Virginia

BIASED-BASED POLICING & DATA COLLECTION

The International Association of Chiefs of Police (IACP) believes that any form of police action that is based solely tin the race, gender, ethnicity, age or socio-economic level of an individual is both unethical and illegal.

Therefore, the IACP strongly encourages all law enforcement agencies to develop and implement anti-discriminatory policies that explicitly prohibit biased enforcement practices.

The IACP believes that data collection can play a role in reducing the incidence of biased enforcement actions. However, in order to achieve this goal, data collection programs must be conducted in a fashion that ensures that data is being collected and analysed in a impartial and methodologically sound fashion.

In addition, the IACP strongly believes that legislative proposals addressing the issue of biased policing should be carefully drafted so that legitimate law enforcement practices and operations are not compromised.

Therefore, the IACP believes that the following elements should be included in legislation that addresses biased-based policing and data collection.

DEFINITION OF BIASED-BASED POLICING

"Biased-Based Policing" should be defined as conduct by law enforcement officers motivated solely by an individual's race, gender, ethnicity, age or socio-economic level, but should not preclude consideration of race or ethnicity when it is part of a suspect's description or is otherwise validly related to an officer's investigation of criminal activity. A clear definition provides guidance to law enforcement officers and serves as a statement of legislative intent.

DATA COLLECTION

Data collection programs should have a specified and limited duration anal be confined to determining the existence or extent of hissed-based policing. This allows the collection and analysis of data over a finite period, without imposing an unending administrative burden on the law enforcement agencies.

The amount of information collected. should be carefully tailored to reduce the intrusiveness of the inquiry on citizens, yet sufficient for a complete and valid analysis. The data must permit an analysis that correlates the demographic data with causal predicates and other relevant factors, such as location and citizen complaints,

Therefore, the IACP strongly recommends that any proposed data collection regime should include data elements scientifically determined to provide valid results, such as:

1. Date and Time of Stop
2. Location of Stop, including highway type
3. Officer Identification Information (e.g. Badge Number)
4. Race/Ethnicity of Driver
5. Sex of Driver
6. Date of Birth of the Driver
7. Vehicle Type
8. Registration, including state
9. Specific Reason for making stop
10 Disposition of stop
11. Search Requested/Conducted?
   a) Reason for search request
   b) Type of search
   C) Race/ethnicity/sex/age of all passengers in vehicle if search is done
   d) Contraband found
   e) Property seized

DRIVER/PASSENGER IDENTIFICATION

The manner of data collection should be designed to minimize the intrusiveness of the data collection on the citizen involved and reduce the administrative burden on police.

Ideally, the IACP recommends that all drivers self identify their race/ethnicity on their drivers license application. The race/ethnicity should be included in a bar code on the license, but this information should not be displayed to the officer making the stop, on the ticket issued or the dispatcher running a computer check on the driver. This information should only be made available to the researchers/analysts performing the statistical analysis of the collected data.

However, until such a system is available nationwide, the officer making the stop should report race/ethnicity on the basis of their objective observations/perceptions at the time of tile stop.

DATA ANALYSIS

It is vital that the collected data be analyzed in an impartial and scientifically sound fashion. Therefore, the IACP believes that accredited academic institutions or other organizations that use qualified statisticians and analysts should be tasked with performing this work. The collected data should be compared to baseline data that provides an accurate reflection of the subject populations demographic composition when evaluating whether or not biased-based policing is, in fact, a problem. Researchers conducting the analyses should provide empirical evidence that the baseline data accurately reflects the demographic composition of the specific area (e.g., town, highway, etc.) being policed so that the results of the study will be statistically valid.

INCENTIVE BASED APPROACH

Legislative proposals addressing data collection should provide law enforcement agencies with an incentive to perform data. collection. Under such an incentive based approach, agencies that agree to perform data collection as set forth in the legislation would be eligible to receive federal assistance funds that may be used for a variety of uses related to combating biased policing. For example, agencies should be authorized to use these funds to:

1) Cover the costs associated with implementing the data collection regime
2) Purchase equipment, such as in-car video/audio equipment, that is useful in addressing concerns over biased policing (In-car video cameras are one

of the most effective ways to document motor vehicle stops and interactions between officers and drivers/passengers. These systems serve as a deterrent to biased-based stops and false reporting of incidents.)

3) Cover the costs of training programs for their law enforcement officers. (Training is an important component of legislation. Training will help sensitize police officers to the need to treat all persons equally and fairly. However, specific-training requirements, including the number of hours or topics to be covered, should be the responsibility of law enforcement administrators, whom should design training programs appropriate to their agencies.)

Article by Katherine Kersten, Weekly Standard, August 20–27, 2001

RACE TO CONCLUSIONS

WHAT THE ACTIVISTS DON'T TELL YOU ABOUT RACIAL PROFILING.

Five years ago, Minneapolis was nationally ' notorious as "Murderopolis." The murder rate was soaring, and many citizens walked in fear, especially in poor neighborhoods. A few short years later, there's been an astonishing turnaround. Today, thanks partly to a new initiative by local police, crime in Minneapolis has plummeted to its lowest level since 1966-and, in an added benefit, citizen complaints about the police are down 40 percent, though arrests have risen rapidly. Apparently, officers have managed to bring crime under control while dealing correctly with those they encounter when enforcing the law.

Yet instead of congratulations, police are catching brickbats. The department is under siege in the media, accused of making racial bigotry a standard operating procedure. The outcry began in January 2001, with the release of demographic data suggesting that officers who made traffic stops were pulling over proportionately more black drivers than white, and taking black drivers into custody more often. Activist groups quickly charged that police were targeting minorities because of their race, not their illegal conduct, and branded the department with the scarlet letter of racial profiling.

Like the decline in crime, the rancor over racial profiling is a national phenomenon. And as in Minneapolis, so in dozens of cities, studies of police stops by race are fueling the debate. Already, traffic-stop studies have been completed or are proceeding in locales as disparate as San Jose, California, and Volusia County, Florida. At least 10 states have passed laws requiring studies of traffic stops, and many others are considering legislation. At the federal level, representative John Conyers and senator Russ Feingold have introduced legislation that would require the Department of Justice to conduct a nationwide study of traffic stops.

The cost of these studies is often significant, both in dollars and officer time. But their chief drawback is something deeper. Though ostensibly undertaken to diagnose the problem, these studies to date don't begin to support the conclusions that the media and activist groups are drawing from them. The crusaders against racial profiling would have us believe that their findings trip the veil off a widespread abuse of civil liberties, and prove that police are targeting minorities because of their race. But the studies do nothing of the kind. To conclude from traffic-stop numbers like those gathered in Minneapolis that the police are racist is about as justified as it would be to conclude from the fact that 95 percent of Minnesota's prison inmates are men that police are sexist. A closer look at the Minneapolis experience makes this plain.

THOUGH OSTENSIBLY UNDERTAKEN TO DIAGNOSE THE PROBLEM, TRAFFIC-STOP STUDIES DON'T BEGIN TO SUPPORT THE CONCLUSIONS BEING DRAWN FROM THEM.

For six months beginning in May 2000, the Minneapolis police department gathered information on every traffic stop, noting the driver's race, the date, the location, and whether the driver was warned, ticketed, or taken into custody. The raw data released under pressure from a local newspaper appeared disturbing at first glance. Though blacks make up 18 percent of Minneapolis's population, they accounted for 37 percent of traffic stops, while whites, 65 percent of the population, accounted for only 43 percent of stops. No significant disparities turned up in the rates at which different racial groups received tickets, but black, Hispanic, and Indian drivers were more than twice as likely as whites to be taken into custody. And

these figures are only the beginning: Minneapolis is now conducting a more detailed two-year study. More challenging is to determine what the figures mean.

Here's the problem: To analyze raw traffic-stop numbers accurately, one must have an appropriate benchmark against which to measure them. But no one knows what the proper benchmark is. In the above example of prisoners' sex, to determine whether Minnesota has "too many" male inmates, we must compare the proportion of males in the prison population with the proportion of males in the criminal population, not the population at large, since in Minnesota, as elsewhere, men commit the vast majority of imprisonable offenses. Where traffic stops are concerned, however, no one has devised an appropriate benchmark, since the factors affecting who gets pulled over are numerous and complex.

Lacking a meaningful basis for comparison, study proponents usually take the easy way out: They compare the racial breakdown of traffic stops to the racial breakdown of the general population of, say, the relevant county or metropolitan area. Then they attribute to racism any deviation that appears to "favor" whites. But this simplistic approach merely gives a patina of science to what is essentially an ideological project.

So what would a meaningful benchmark be? Obviously, to determine whether an officer is stopping "too many" minority drivers, we must first know the racial breakdown of the motorists on the roads he patrols. For instance, suppose that over six months, an officer who patrols Minneapolis's heavily poor and minority Phillips neighborhood stops 80 percent black drivers, while another officer who works the swank Lake Harriet beat, where investment bankers jog, stops only 15 percent black drivers. Can one conclude that the first officer is a racist, while the other isn't? Of course not.

To learn whether either cop has stopped "too many" minority drivers, we need a street census of the neighborhoods in question-something few studies include. The time of day that the stops occurred is also likely to be crucial. Thus, between 4 PM. and 6 PM., traffic on Minneapolis's Portland Avenue, a major artery in Phillips, is made up largely of white suburban commuters. But between 9:00 PM. and 3:00 A.M., when most enforcement takes place, drivers on Portland are far more heavily minority. Since most stops occur when suburban motorists have left the area, traffic stops on Portland are likely to include a disproportionately high share of minority drivers.

But knowing who was on the roads when stops took place is only one requirement for meaningful analysis. We must also know whether some racial groups commit more traffic violations than others; if so, their stop numbers should reflect this.

For example, traffic stops often involve cars with faulty equipment, like broken tail lights, loud mufflers, or cracked windshields. Motorists who drive older cars which tend to be in relatively poor repair-are more likely than other drivers to be stopped for such violations.

Presumably, black drivers in Minneapolis drive older cars, on average, than white drivers do. (According to 1990 Census data, the per capita income of the city's black residents is less than half that of white residents.) Under these circumstances, one would expect proportionately more black than white drivers to be pulled over for equipment violations.

The story may be similar with moving traffic violations, though data are hard to come by. Writing in *City Jonrnal*, journalist Heather Mac Donald points out that random national surveys of drivers on weekend nights have found that blacks were more likely to fail breathalyzer tests than whites. Likewise, the National Highway Traffic Safety Administration has found that blacks were 10 percent of drivers nationally, 13 percent of drivers in fatal accidents, and 16 percent of drivers in injury accidents. (Mac Donald notes that lower rates of seat-belt use may contribute to these figures.)

Age is another important variable. Young drivers are more likely than older drivers to violate traffic laws, and to drive negligently or recklessly, as any parent knows who's footed a teenager's insurance bill. Minneapolis's black population is significantly younger than its white population, and thus presumably includes a larger proportion of young drivers. (While blacks are only 18 percent of the city's total population, they are 31 percent of residents under 18.) This racial age disparity reflects a national pattern. In Chicago, for example, blacks are 34 percent of residents over 18, but 44 percent of those under 18; in Boston, the figures are 22 percent and 40 percent. Most likely, this sizable age disparity contributes significantly to the black-white difference in traffic stops.

Clearly, many factors can explain legitimate racial disparities in traffic stops. But one factor appears to dwarf all the others: the extraordinary disparities in the rates at which various racial groups commit crimes. Nationally, blacks commit murder at seven times the rate whites do. Likewise, though blacks are 13 percent of the popu-

lation, they commit 46 percent of all robberies. In Minneapolis, the disparity is even starker. Blacks are 18 percent of the population, but crime victims report that blacks commit 66 percent of serious offenses, like murder, rape, and robbery, and 58 percent of "quality of life" crimes, like prostitution and vandalism. The implication is tragic, but undeniable: If police are to curtail crime, they will inevitably interact more with some racial groups than others.

Racial crime rates affect traffic-stop disparities most directly by shaping patterns of police deployment. If the police concentrate their activity in a relatively small number of neighborhoods, drivers there will have a higher chance of being stopped for traffic violations than drivers in less heavily policed areas. If these neighborhoods have relatively large minority populations, the share of minority drivers pulled over will be relatively high.

Minneapolis police do precisely this. The city is divided into 84 residential neighborhoods for purposes of law enforcement and administration. During the traffic stop study, 12 of these neighborhoods accounted for 50 percent of the city's crime, while a mere 5 neighborhoods-home to one-quarter of the city's black population-accounted for one-third of its crime. (These figures reflect calls for police assistance, a proxy for crime.) Under CODEFOR, the computerized crime-fighting strategy launched in January 1998 by police chief Robert Olson and mayor Sharon Sayles Belton, officers and squad cars are concentrated in high-crime neighborhoods, and traffic stops there are important to maintaining order. The stops assist officers in their effort to get guns and drugs off the street, discourage robberies, find stolen cars, and find people wanted for arrest.

In April 2001, an independent agency under contract with the Minneapolis Police Department released an analysis of the city's raw traffic-stop data. The report found that stops of black drivers were heavily concentrated in the city's five highest-crime neighborhoods. It also found strong evidence that racial disparities in stops were due to more intensive overall policing in such neighborhoods, rather than to a tendency on the part of officers there to conduct more traffic stops than their peers patrolling elsewhere. However, the report also cited a need for additional data. Its findings were largely ignored. Despite this evidence that neighborhood crime rates are the chief explanation for racial disparities in traffic stops, Minnesota's media and activist groups continue to point to police bias as the culprit, portraying it as a serious civil liberties problem that requires urgent countermeasures.

One real and very negative consequence of the irresponsible, ideologically driven use of traffic-stop studies-and they are likely to remain the preferred tools of police critics for some time to come-is the growing public belief that police bias is widespread. Among minorities, the perception of bias is undermining police authority and dissuading young citizens from joining police forces they insist harbor racist thugs. Defense attorneys, too, seek to discredit police actions by routinely invoking racial profiling in court. This ploy appears to be increasingly successful, especially in drug-related cases.

Most seriously, however, the perception of police bias is generating pressure for de facto racial quotas in all law enforcement activities, from traffic stops to searches to arrests. A Clinton-era law compounds the problem by giving the justice Department power to sue local police departments for tolerating "a pattern and practice" of misconduct in racial matters. (The feds are unlikely to suspect such a pattern, of course, if de facto racial quotas govern stops and arrests.) In the last few years, both Pittsburgh and Los Angeles have sought to avoid action under this law by agreeing to federal oversight of their law enforcement activities. Currently, the spotlight is on racially troubled Cincinnati, where the American Civil Liberties Union has filed suit alleging a 30-year pattern of racial profiling. Together, the trends toward racial quotas and federal oversight threaten to undermine local control of law enforcement and roll back the nation's recent striking gains in public safety.

By their nature, quotas are contrary to the fair, responsible exercise of professional judgment on the part of police, which alone can build confidence in law enforcement over the long haul. The rhetoric of racial profiling and the pseudo-science of traffic-stop studies, though deployed in the name of justice, actually inflame mistrust between police and citizens. Regrettably, they are driving the agenda of the activists further from the agenda of the people, who crave more than anything the right to walk safe streets.

LEADERSHIP CONFERENCE ON CIVIL RIGHTS,
WASHINGTON, D.C.,
July 31, 2001

The Hon. Russ Feingold
United States Senate
716 Hart Senate Office Building
Washington, DC 20510

Dear Senator Feingold:

The Leadership Conference on Civil Rights, a coalition of over 180 national organizations working to advance civil rights laws and policies, is pleased to endorse S. 989, the End Racial Profiling Act of 2001. We look forward to working with you to ensure enactment of this critically important legislation.

The reliance by law enforcement agents on race, ethnicity or national origin to determine whom to target for criminal investigation violates our nation's basic constitutional commitment to equal justice under law. Racial profiling is also contrary to effective law enforcement—police practices that result in disproportionate stops of minority pedestrians or motorists generate resentment among minority citizens and undermine the respect and trust that is essential for successful community policing.

We have no doubt that the majority of law enforcement officer discharge their duties with; honorable intentions. Nonetheless, empirical evidence from around the nation reveals that profiling by federal, state, and local law enforcement agencies is widespread. Despite efforts by some state and local governments to address this problem, federal legislation is necessary.

We are gratified that you and the other sponsors of S. 989 recognize the need to wove beyond mere study of the issue of racial profiling, and have crafted a bill that takes direct aim at this pernicious practice. Consistent with President Bush's declaration to Congress that racial profiling "is wrong and we will end it in America," S. 989 bans racial profiling and provides meaningful enforcement of that prohibition. The bill also provides state and local law enforcement. agencies with resources to implement procedures that can prevent racial profiling, including data collection. S. 989 is a balanced and comprehensive . solution to a problem that strikes at the heart of our basic constitutional guarantees.

"Equality In a Free, Plural, Democratic Society"

We thank you for introducing S. 989, and we stand ready to assist you in any way as the bill moves through the legislative process.

Sincerely,

WADE HENDERSON
Executive Director

DOROTHY I. HEIGHT
Chair

Mexican American Legal Defense and Educational Fund, Washington, D.C., July 31, 2001

Dear Chairman Russ Feingold and Ranking Member Strom Thurmond:

RE: S. 989—THE END RACIAL PROFILING ACT OF 2001

I write this letter on behalf of the Mexican .American Legal Defense acid Educational Fund (MALDEF), a national non-profit non-partisan organization dedicated to promoting the civil rights of the 35 million Latinos living in the United States. Chicago REF endorses The End Racial Profiling Act of 2001, introduced by Senator Feingold in the Senate, and urges that the members of the Judiciary Subcommittee on the Constitution, Federalism and Property Rights support the bill as well.

RACIAL PROFILING OF LATINOS BY FEDERAL, STATE, AND LOCAL LAW ENFORCEMENT IS A REGIONAL OFFICE NATIONAL PROBLEM

The following are several examples that support the conclusion that racial profiling of Latinos is a national problem.

According to a report by the Leadership Conference on Civil Rights, immigration laws have been more selectively enforced by the Immigration anal Naturalization Service (INS) against Latinos than any other group. Ninety percent of those subjected to INS enforcement actions are Latino, even though Latinos constitute 60% of all undocumented persons in the U.S. LEADERSHIP CONFERENCE ON CIVIL RIGHTS, JUSTICE ON TRIAL: RACIAL DISPARITIES IN THE AMERICAN CRIMINAL JUSTICE SYSTEM 4 (2000).

According to a poll conducted by *The Washington Post*, Kaiser Foundation, and Harvard University, in response to the question, "Have you ever been unfairly stopped by police because of your race or ethnic background?," 20% of Hispanies responded "Yes" compared to only 4% of white non-Hispanics. Richard Morin & Michael H. Cottman, *Discrimination's Lingering Sting, WASH. POST*, June 22, 2001, at Al.

In a review by *The New York Times* of a random sample of work site raids conducted by the INS New York District office, the *Times* found that 81 % of the raids were carried out after the agents who conducted the raids used factors such as "skin color, use of Spanish, foreign accents and clothing 'not typical of North America' as primary evidence that the workers were likely to be undocumented." As a result, 96% of the 2,907 persons arrested in the work; site raids were Latino even though Latinos do not represent 96% oaf the undocumented population in the New York District. Susan Sachs, *Files Suggest Profiling of Latinos Led to Immigration Raids, N. Y. TIMES*, May 1, 2001, at B1.

In areas of the country where there is new and rapid growth of the Latino community, local law enforcement officials are using racial profiling as a method to enforce the law. As one example, MALDEF brought suit on March 23, 2001 against the City of Rogers, Arkansas, and its police on behalf of three named Latino plaintiffs and a class of similarly situated individuals for violations of their Fourth and Fourteenth Amendment rights under the U.S. Constitution. The plaintiffs in the case allege that, not only was there no apparent justification for the stops made by police, they were improperly asked for immigration papers and their social security card, simply because they were Latino. T3López, et al. v. *City of Rogers, Arkansas, et al.*, USDC No. 01–5061, Western District of Arkansas, Fayetteville Division. MALDEF has received similar complaints from Alabama and Tennessee.

S. 989 TITLE I'S GENERAL PROHIBITION ON RACIAL PROFILING IS NEEDED, WILL NOT IMPEDE EFFECTIVE LAW ENFORCEMENT ACTIVITIES, AND WILL REDUCE VIOLATIONS OF INDIVIDUAL RIGHTS

The following is a vivid example of how reducing the use ofracial profiling does not impede effective law enforcement activities but does reduce the number of civil rights' abuses.

After a GAO study revealed that U.S. Customs Service inspectors used racial profiling to target persons suspected of smuggling drugs, the Service made major revisions in its policies and practices to reduce the use of racial profiling. As a result, 16,000 fewer black and Latino travelers were subjected to pat downs, X-rays, and other body searches last year compared to 1998 data. Overall, the total number of body searches dropped 80% froze 1998 to 2000. At the same time, drug seizures increased 38% since 1999. *Lori Montgomery, New Police Policies Aim to Discourage Racial Profiling, WASH. POST*, June 28, 2001, at Al.

S. 989 TITLE II'S PROHIBITION ON; RACIAL PROFILING BY FEDERAL LAW ENFORCEMENT AS WELL AS REQUIREMENTS THAT POLICIES AND PRACTICES BE ADOPTED TO ELIMINATE RACIAL PROFILING ARE NEEDED

The examples above demonstrate the use of racial profiling by the INS and the U. S. Customs Service. There are other federal agencies, such as the Drug Enforcement Administration and the Federal Bureau of Investigations that may also be using racial profiling. The federal government should be leading the country by example by prohibiting racial profiling, collecting data on investigatory activities, ensuring a legitimate complaint process is in place, and disciplining agents who engage in racial profiling, all requirements set forth in Title II of S. 989.

S. 989 TITLE III'S PROHIBITION ON RACIAL PROFILING BY STATE AND LOCAL LAW ENFORCEMENT AS WELL AS REQUIREMENTS THAT POLICIES AND PRACTICES BE ADOPTED TO ELIMINATE RACIAL PROFILING ARE NEEDED

Many state and local jurisdictions have not adopted a prohibition on racial profiling. Only approximately 13 states have passed laws requiring police to collect traffic-stop data. Lori Montgomery, New Police Policies Aim to Discourage Racial Profiling, WASH. POST, June 28, 2001, at A1. About 400 out of 18,000 police agencies nation-wide are collecting such data. ,Id. Many jurisdictions throughout the country do not have effective complaint or disciplinary procedures. The prohibition and requirements of Title III of S. 989 would address these concerns.

Title III would not infringe on states' rights since the only jurisdictions that would be subject on a mandatory basis to the provisions of Title III would be those jurisdictions that apply and receive .federal grants from the federal programs set forth in the proposed bill. The federal funds covered under Title III's mandatory provisions are set forth in Title V of S, 989. In addition, Title III provides additional development grants for which state and local jurisdictions can apply to further develop the best policing practices.

S. 989'S TITLE IV'S REQUIREMENT THAT THE ATTORNEY GENERAL SUBMIT REPORTS TO CONGRESS ON RACIAL PROFILING BY FEDERAL, STATE, AND LOCAL LAW ENFORCEMENT AGENCIES IS APPROPRIATE

As the leading law enforcement official in the country, the Attorney General is often asked to monitor the federal agencies as well as state and local law enforcement agencies to ensure that the laws are being implemented fairly. Since under S. 989, the federal, state and local agencies will be required to submit reports to the Attorney General, the Attorney General will be in the best position to collect the data and submit them to Congress. Congress, in turn, can continue to monitor the prevalence of the use of racial profiling on a national level to determine if further legislation is needed to address this matter.

It is our hope that the Subcommittee will support S. 989 a9 a needed and effective strategy to begin addressing the national problem of racial profiling by federal, state and local law enforcement. Until the use of racial profiling is adequately addressed, the civil rights of Latinos will continue to be violated. Furthermore, these violations create a feeling of distrust of the legal system and law enforcement within our community, thus compromising the public safety of the communities where we live.

In addition to the examples provided in this letter, we have also conducted legal analyses in the area of racial profiling and would be willing to provide such analyses in areas requested. Should you have further questions or requests, please do not hesitate to contact MALDEF's Regional Counsel in Washington, D.C., Marisa Demeo, at 202–293–2828.

Sincerely,

ANTONIA HERNANDEZ
President and General Counsel

Article Lori Montgomery, Washington Post, June 28, 2001

NEW POLICE POLICIES AIM TO DISCOURAGE RACIAL PROFILING

A troubling self-portrait has emerged a year after hundreds of police agencies began investigating the use of racial profiling by their officers, and a growing number of departments are responding with policies to discourage harassment of innocent minority travelers.

In Washington state, the highway patrol plans to use its data to question and discipline individual troopers whose records suggest racial profiling. The former chief also canceled awards for drug arrests, saying they may encourage troopers to use profiles instead of focusing on hazardous drivers, thus rewarding "the wrong kind of behavior."

In San Diego, city police have hired academic consultants and plan to convene focus groups to try to understand why officers stop and search black and Hispanic drivers at rates far higher than white drivers.

And last month, the California Highway Patrol declared a six-month moratorium on consent searches, the focus of a 'class-action lawsuit by the American Civil Liberties Union, which says the searches disproportionately target minorities. Troopers

must now develop probable cause of criminal activity before searching a vehicle, instead of relying on driver consent.

Some officers think "we're giving up the store" by voluntarily halting consent searches, said CHP Commissioner D.O. "Spike" Helmick. "But it's incumbent upon us to stand back and look at what we're doing."

The U.S. Customs Service appears to be the first agency to significantly reduce the number of minorities searched for contraband. After enacting far-reaching reforms that include requiring supervisory approval for every intrusive search, Customs slashed body searches by nearly 80 percent at the nation's airports from 1998 to 2000 and has increased drug seizures by 38 percent since 1999.

Long accused of inappropriately targeting black and Hispanic air passengers, Customs is providing strong evidence, analysts say, that good police work can spare minority travelers the indignity of criminal suspicion.

Meanwhile, numerous police chiefs across the nation have been genuinely troubled by the portraits their data paint. And many are proving willing to probe deeper.

"Some departments are still saying, 'No, we're not doing it,' even though the numbers show something different. But a fair number of departments are now saying, 'This is something that undercuts our ability to serve all of our clients, and we want to know what's going on and what to do about it,'" said John Lamberth, a psychology professor at Temple University and a leading analyst of racially biased police practices.

Racial profiling emerged as a national concern after widely publicized incidents indicating that police use ethnicity and skin color to make law enforcement decisions. A recent Washington Post survey found that more than half of black men and one in five Hispanic and Asian men say they have been victims of racially biased policing.

In February, President Bush told Congress that racial profiling "is wrong, and we must end it." At least 13 states—including Maryland—have passed laws requiring police to collect traffic-stop data. The Clinton administration ordered a variety of federal agencies to keep similar data.

At least eight agencies are collecting data by order of a federal court or under agreement with the U.S. Justice Department. Among them: the Montgomery County police, Maryland State Police and New Jersey State Police, which brought the profiling debate to a boil when two troopers opened fire on a van carrying four unarmed black and Hispanic men on the New Jersey Turnpike in April 1998.

In all, about 400 of the nation's 18,000 police agencies are collecting data, according to researchers at Boston's Northeastern University. About half have completed their first reports, said Amy Farrell, of Northeastern's Center for Criminal Justice Policy Research.

Regardless of what the numbers show, the "overwhelming conclusion" has been that "we don't have a problem," Farrell said.

Many police remain deeply wary of data collection, arguing that statistics fuel allegations of racism without offering clear solutions. No one has come up with a satisfactory method for identifying the racial makeup of a patrolled population—drivers on Interstate 95, for example—making it difficult to interpret the data.

Among the skeptics is Maryland State Police Superintendent David B. Mitchell. In 1995, an ACLU lawsuit forced the Maryland police to became the first major department in the nation to collect data on traffic stops.

Since then, Mitchell has enacted reforms that have cut searches of minority drivers. But he has refused to address lingering questions about why cars driven by minorities still make up more than 60 percent of vehicle searches on I–95, dismissing the numbers as a reflection of the broader reality that minorities are more often arrested for crimes.

"The issue of race is easy to raise and frankly hard to defend against," Mitchell said. "This is not a perfect world. Our numbers are never going to be perfect."

That attitude is still common in the law enforcement community. What's different now is that a vanguard of "smart departments" are taking action to improve their statistics, Farrell and others said.

The U.S. Customs Service is leading the pack.

"There's no doubt about it: They're doing a better job," said Ed Fox, a lawyer who represents 90 black women who sued Customs after being frisked or worse in 1997 and 1998 at Chicago's O'Hare International Airport. "They've stopped picking on the people who don't carry drugs."

The transformation began in the late 1990s, after a spate of lawsuits accused Customs inspectors of singling out minority air passengers, particularly women, for strip-searches. The most notorious case involved Amanda Buritica, a Hispanic

school crossing guard from Port Chester, N.Y., who was stopped in San Francisco on her way home from Hong Kong.

Buritica was handcuffed, transferred to a hospital and forced to swallow powerful laxatives that caused her to move her bowels 28 times. No drugs were found. After 25 hours, Buritica was released without so much as an apology.

Customs has broad constitutional authority to defend the nation's borders, including the power to search anyone and anything entering the country. Top officials were largely unconcerned by cases like Buritica's, said Raymond W. Kelly, Customs commissioner at the time.

"Their feeling was: 'Hey, it's a legal deal. We're winning the lawsuits,'" Kelly said in an interview. But Kelly was appalled. "My response was: 'Yes, you're winning the lawsuits, but you're abusing U.S. citizens. Just because you have the power to do something doesn't mean you should do it.'"

Kelly ordered inspectors to begin keeping detailed records on passenger searches, which were delivered to him each morning. Then he used the threat of a congressional inquiry into allegations of racial profiling, looming in May 1999, to persuade officials to adopt far-reaching reforms.

No longer could inspectors touch anyone without a supervisor's approval. If there was reason to believe a passenger had swallowed drugs, only the port director could authorize removal to a medical facility.

Port directors were ordered to consult a lawyer before approving X-rays or monitored bowel movements and to reassess detentions every few hours.

Kelly also made it more difficult to justify searches. He banned a list of 80 triggers that branded virtually anyone a potential drug courier, including passengers who were uncooperative or too cooperative, nervous or too calm, wearing sunglasses or bulky clothing.

"If you're stopping a disproportionate number of minorities, there may be good reasons for it. But they have to be articulated," Kelly said. "People should not be searched just because of a vague notion in some inspector's head."

Finally, Kelly acted to make searches less intimidating. Inspectors must now tell passengers the reasons for the search, offer to call relatives if detention lasts more than two hours, pay for hotels and missed flights and give searched passengers a comment card pre-addressed to Customs headquarters.

At first, inspectors were wary. Searches plummeted, along with drug seizures. "There was a feeling that we'll never make another seizure out here again," said Robert Meekins, deputy port director at John F. Kennedy International Airport.

But inspectors soon realized Kelly was not trying to identify scapegoats, Meekins said. The result: Pat downs, X-rays and other body searches dropped from more than 40,000 in 1998 to fewer than 10,000 last year. Seizures of drugs and contraband rose from 4 percent of searches in 1998 to nearly 18 percent so far this year.

Minorities still account for more than two-thirds of searches, a fact that may never change, Kelly said. Flights from Jamaica, Colombia, Africa and the Caribbean produce the vast majority of drug seizures, and those flights tend to be packed with black and Hispanic travelers, Customs officials said.

But compared with 1998, nearly 16,000 fewer black and Hispanic travelers were physically accosted last year, according to Customs data. The case of a recent arrival to JFK from Ecuador illustrates how the new system works.

The man said he flew to New York to see the sights. But when pressed by a Customs inspector, he couldn't name a single sight, not even the Statue of Liberty. He claimed to be a professional photographer but knew nothing about lenses or light. He said his ticket was purchased in Chile, but records showed it came from Uruguay. And he had no idea what the ticket cost or whether it was paid for by credit or with cash.

After extensive questioning, a supervisor approved a pat down. Nothing. So at 12:30 a.m., the beeper dangling from a scrunchie on Susan T. Mitchell's bedpost began to bleat. Mitchell, the Customs port director at JFK, consulted an equally groggy lawyer and authorized an internal search.

"You don't disturb the port director unless you have a really good feeling, especially if it's 2 a.m.," said Mitchell, who gave the go-ahead to X-ray the ersatz photographer, who passed balloons containing nearly a kilo of heroin just before dawn. "Inspectors go to great lengths to verify your story so they can say goodbye."

Kelly, a former New York City police officer, believes Customs offers a model for other police agencies. A growing number of officers share his belief that police cannot ignore the allegations of racial profiling.

"When the issue of profiling first came up, I went into police seminars where there was a lot of denial in the room. People were saying, 'This is not happening. This is a witch hunt,'" said former Washington State Patrol chief Annette Sandberg, who ordered the agency to begin collecting data in 1999.

"Given racial tensions across America," Sandberg said, "you have to be responsive to the community. We have to have the data to prove we deal with the bad cops and stand behind the good ones. And most people can live with that."

Article by Richard Morin and Michael H. Cottman, Washington Post, June 22, 2001

DISCRIMINATION'S LINGERING STING; MINORITIES TELL OF PROFILING, OTHER BIAS

More than half of all black men report that they have been the victims of racial profiling by police, according to a survey by The Washington Post, the Henry J. Kaiser Family Foundation and Harvard University.

Overall, nearly 4 in 10 blacks—37 percent—said they had been unfairly stopped by police because they were black, including 52 percent of all black men and 25 percent of all black women.

Blacks are not the only Americans who say they have been the targets of racial or ethnic profiling by law enforcement. One in five Latino and Asian men reported they had been the victims of racially motivated police stops.

But racial profiling is only one of many examples of intolerance that minorities say they continue to confront. More than a third of all blacks interviewed said they had been rejected for a job or failed to win a promotion because of their race. One in five Latinos and Asians also said they had been discriminated against in the Workplace because of their race or ethnicity.

Overwhelming majorities of blacks, Latinos and Asians also report they occasionally experience at least one of the following expressions of prejudice: poor service in stores or restaurants, disparaging comments, and encounters with people who clearly are frightened or suspicious of them because of their race or ethnicity.

"These are precisely the kinds of incidents that contribute to what is coming to be called black middle-class rage—the steady occurrence of slights and put-downs you know in your gut are tied to race but that rarely take the form of blatant racism," said Lawrence Bobo, a professor of Afro-American studies and sociology at Harvard University. "No one uses the N-word. There is not a flat denial of service. It is insidious, recurrent, lesser treatment."

A much smaller proportion of whites also say they have been victims of discrimination: One out of every three reported that they sometimes face racial slurs, bad service or disrespectful behavior.

Claims and counterclaims about the prevalence of racial profiling have been made for years. But there have been few reliable attempts to estimate the degree to which blacks, Latinos and Asians believe they have been victims of the practice. And no national data exist that firmly document the pervasiveness of the practice, making it impossible to compare perceptions with actual incidence.

For this survey, the latest in a series of polls on public policy issues conducted by The Post, the Henry J. Kaiser Family Foundation and Harvard University researchers, 1,709 randomly selected adults were interviewed by telephone from March 8 through April 22. The sample included 315 Hispanics, 323 blacks and 254 Asians.

The margin of sampling error for the overall results is plus or minus 3 percentage points. It is plus or minus 6 points for blacks, 7 points for Latinos and 9 points for Asians.

Widely publicized incidents around the country have drawn attention to the targeting of minorities by police, a practice some police officials have tried to justify by arguing that minorities are more likely to commit crimes. President Bush told Congress in February that "it is wrong, and we must end it." Sen. Russell Feingold (D–Wis.) and Rep. John Conyers Jr. (D–Mich.) recently introduced companion bills in the Senate and the House that would withhold funding from agencies that engage in racial profiling.

And suddenly, from New Jersey to California, victims of unwarranted police stops and harassment are telling their stories and, for the first time, are being heard.

Kinte Cutino, 24, a house painter in New Haven, Conn., said he was riding his bike when a police officer pulled him over. "He asked where I was headed, and I told him. He searched me, and didn't find anything and then he let me go."

Cutino shrugged off the encounter. "They will stop you in certain areas, and if you're black, most likely you will get stopped," he said. "You can't do anything about it. That's just the way it is."

Tommy Thorne would seem to be an unlikely target of police attention. Thorne, 62, is a retired Army lieutenant colonel who recently retired as director of an engineering company in Portland, Ore.

But last year, he and his wife were driving through the Mojave Desert on a vacation trip to Las Vegas. When he pulled his Cadillac Eldorado out of a gas station, "a police car was on my bumper; he was real close. When I turned, he turned; when I changed lanes, he changed lanes. He kept following me.

"Finally I pulled over and waited five minutes. And he stopped. When I pulled off, he followed me again and then came barreling up alongside me and started pulling ahead of me, and backing off, and pulling ahead."

Thorne said the officer's intimidating behavior continued for several more miles, and then the officer backed off. "He never pulled me over or issued a summons. It just irritated me. And there was nothing I could do about it. I think he saw a black guy in the desert and thought I was a drug dealer. Who knows? But I guess if you're black and male, at some point it's going to happen to you."

Steve Jaime, a guest services manager at a suburban Chicago hotel, recalled the night that he and some friends were coming home from the Taste of Chicago food festival when the police stopped their car in a predominantly Hispanic neighborhood. Without explanation, the officers ordered them out of their car.

"That's when the police officer put a gun to my head while he was checking me out," said Jaime, who is Mexican American. Then the officers abruptly told Jaime and his friends to go. "They were pissed off about something and they took it out on us, because we were Hispanic."

The survey found that other forms of racial intolerance are commonplace. More than 8 in 10 blacks and two-thirds of all Latinos and Asians say they occasionally experience at least one of these four intolerant acts: poor service, racial slurs, fearful or defensive behavior, and lack of respect. Two-thirds of all blacks and nearly half of all Latinos anti Asians say they experience two or more of these forms of intolerance from time to time.

Sometimes these ugly moments provoke anger, as when a waiter in an expensive steakhouse asked Earl Arredondo, a 30-year-old Latino from Harlingen, Tex., if he could afford the $ 32 rib-eye steak he had just ordered and later dismissively asked him if he knew "what calamari is."

And sometimes they provoke fear, as when a carload of drunken whites pulled to a stop alongside Martha Matsuoka, an Asian American who lives in Los Angeles. Then they threw beer bottles at her and demanded that she "go home" and "buy American."

I understand these kinds of things rationally, but personally I was stunned," said Matsuoka, 39, a graduate student at the University of California at Los Angeles. "It was so real. On a personal level, my mother was upset. She said she had hoped that I would never have to experience anything like that."

The prejudice reflected in these incidents is clear. In other instances, perceptions may not reflect reality: An honest error or an unintended slight may be misconstrued as an act of racial intolerance.

But Harvard's Bobo cautions that it would be dangerous to dismiss the bulk of these claims as misperceptions or misunderstandings. "These feelings of victimization are not arrived at easily, or because they are pleasant feelings to hold," he said. "We have to regard them as indicators of a very real social phenomenon. For example, blacks complained for years that they were being targeted by police and were ignored. Only finally, when a cannon-load of data was shot across the bow, did people begin to say, 'Oh, yeah, I guess it's going on.' "

Blacks confront far more discrimination than either Latinos or Asians, the survey found. And black men report facing prejudice more often than black women. Nearly half—46 percent—of all blacks said they had experienced discrimination in the past 10 years; including 55 percent of black men and 40 percent of black women.

Two years ago, Ali Barr, a television engineer in Atlanta, said he was in Baltimore on business and went to a jazz bar and restaurant with friends to get something to eat.

"It was a white bar, but it featured a black jazz band," Barr said. "But from the moment we walked in, we could feel the hostility. All the patrons were white. The waitress comes over and tells us we couldn't sit in the section we-were in. She said it was closed until later in the evening.

"But there were only 10 people in the bar, so we moved to the other section and we asked for coffee. She came back and slammed the coffee down and came back with the manager. The manager said we were not welcome here and that our money wouldn't be accepted.

"The manager pointed to a sign saying that management reserved the right to serve who they wanted. We were asked to leave. All we wanted was something to

eat. We were totally discriminated against. That will always be my memory of downtown Baltimore."

Four in 10 Latinos and Asians reported that they, too, had been discriminated against in the past 10 years.

Laticia Villegas, 27, owns a children's clothing store in Fort Worth. She recently tried to write a check at a supermarket. The white clerk refused to let her borrow or even touch her pen. Villegas fished around in her purse and wrote the check.

"It is culture shock," Villegas said. "I've never been discriminated against until I moved to Dallas [from San Antonio]. I was offended and surprised; I didn't expect it. I'm not used to being treated this way. I thought we got past this, but we haven't, and I know my [1-year-old] daughter will have to grow up experiencing these kinds of things because she does not have blond hair and blue eyes."

About 1 in 5 whites—18 percent—also report being the victims of discrimination in the past 10 years. Ten percent said they had been denied a promotion because of their race or ethnicity, 14 percent said they had received poor service because of their race, and an equal proportion reported having been called names or insulted.

Rose Evans, 26, of Aurora, Colo., said she has frequently been the target of racially prejudiced comments from Latinos and blacks.

Evans grew up West Denver, a predominantly Mexican American and Asian neighborhood where "I was picked on quite a bit. You know, 'stupid white girl' and worse things in Spanish. But my stepdad is Mexican American, and I learned to let it roll off of me."

Earlier this year, her 9-year-old daughter confronted prejudice. "A group of little black girls at school were picking on her a lot, calling her 'honky and stuff. She would come home from school crying. I told her to ignore them, they were just ignorant people."

But the bullying continued, and Evans requested a meeting with school officials and the mother of the girl who had been particularly vicious to her daughter.

"The mother became very hostile and started calling me 'white trash' and "honky and other stuff," Evans said. "I told her children aren't born ignorant, they acre taught it, and I saw where her daughter got it from."

Assistant director of polling Claudia Deane contributed to this report.

Statement of National Association of Police Organizations, Inc., Washington, D.C.

STATEMENT OF POLICY AND POSITION

GENERAL STATEMENT

Representative John Conyers, Jr. (D–MI) has introduced H.R. 2074 and Senator Russ Feingold (D–WI) has introduced S. 989 both entitled the, 'End Racial Profiling Act of 2001,' which would require the Justice Department to perform a nationwide study of alleged racial profiling on the nation's highways and roads. If JIM THOMPSON enacted' the bill would require the Attorney General to conduct a study of stops for Treasurer routine traffic violations, forcing police officers to record data such as: the number of individuals stopped, including race, ethnicity, age and gender; the reason for the stop (the alleged criminal behavior or traffic offense); warnings and citations issued; weather there was a search (and if so, any items seized); weather there was an arrest; and the duration of the stop. The bill contains a very limited prohibition on the use of the data, which could result in data being used against municipalities and officers in lawsuits or against officers in disciplinary actions.

The National Association of Police Organizations (NAPO), representing more that 220,000 sworn law enforcement officers through 4,000 unions and associations from across the nation, is strongly opposed to this legislation. This or any similar legislation which would monitor law enforcement officers and require them to obtain detailed data on alleged racial profiling by officers 1) is not needed; 2) is likely to increase hostility to officers; 3) is unlikely to produce any meaningful data; 4) is likely to threaten officers and their agencies with more frivolous lawsuits, seeking not only damages but possible strict regulation of when and who officers may stop; and 5) would have other serious long term consequences for law enforcement by deterring officers and preventing them from carrying out their responsibilities effectively and fairly.

Let it be emphasized that NAPO condemns any instances of blatant racial discrimination by law enforcement officers. This includes pulling over an automobile, searching personal property or detaining an individual, when based on the individual's race or ethnicity and not on probable cause. While we believe these instances are few and limited, any such incident is inexcusable.

NAPO urges law enforcement and members of the general public, including individuals who belong to a racial or ethnic minority, to come together to discuss any isolated patterns of racial profiling and to search for solutions rather than create problems by enacting this legislation. We must always be mindful of the progress of law enforcement in reducing crime. We must always ask the question: As the nation's violent crime rate continues to decrease, is it acceptable to change those aggressive police practices consistent with constitutional requirements, that have contributed to this significant reduction in crime?

POINTS IN SUPPORT OF NAPO'S POLICY AND POSITION

The legislation is not needed as there are already adequate protections and remedies in place against racial, ethnic, gender or age profiling. The presumption underlying the legislation is fallacious; the constitutional requirements of probable cause and articulable reasonable suspicion serve as checks on stops, searches and detentions to prevent racial, ethnic, gender or age profiling; and there are adequate remedies in current law to investigate and punish officers that engage in such profiling.

The Bill is based on two incorrect presumptions: first, that law enforcement officers routinely throughout the United States stop racial and ethnic minorities of color for traffic violations purposely to discriminate against such individuals, and second, that the number of traffic citations issued or arrests made (for more serious offenses, such as drug trafficking) are highly and unjustifiably disproportionate, as compared to numbers of citations for individuals whose color is white. These premises are erroneous. Other than a few anecdotes in a few states, there is no evidence to substantiate the premise for this bill. Often police officers do not know the race or ethnic background of an individual when they see a traffic offense, especially at night. Officers are trained to immediately pursue a vehicle for a traffic infraction or other violation, irrespective of the driver's appearance.

There are essential constitutional safeguards against racial profiling during traffic stops in place, specifically 'probable cause' to believe that an offense or crime has been committed or 'articulable reasonable suspicion' that an individual is dangerous. Violations of those standards can result, not only in the exclusion of evidence for one charged with a crime, but a federal civil rights lawsuit against the officer or the officer's department or disciplinary actions against the officer, as does often occur.

Individuals should understand that being stopped by law enforcement officers when they have good reason to do so, should not cause those stopped to believe that their rights were violated, even if they are inconvenienced. The application of constitutional safeguards means that whenever drivers of any race, ethnicity, gender or age have been pulled over by officers with probable cause to make those traffic stops, and it turns out that the drivers have done nothing wrong, they are then free to go. As a society, sometimes law-abiding citizens will be inconvenienced when police aggressively enforce laws and investigate crimes.

The U.S. Department of Justice has significant authority to investigate allegations of law enforcement officer misconduct and violations of constitutional rights to determine if there is a 'pattern or practice' of misconduct, which deprives individuals of constitutional rights. (Currently, the Department has several investigations underway.) If the Department finds such misconduct, it may collect data on traffic stops and sue the government agency involved to obtain an injunction or other relief. The Department has brought lawsuits, obtaining consent decrees in Pittsburgh, PA, Steubenville, OH and Los Angeles, CA, memoranda of understanding in Battle Creek, MI and Montgomery County, MD and a non-discrimination resolution in Portland, OR. The 19 investigations initiated by the Department of Justice does not constitute a national problem in the 19,000 plus state and local law enforcement agencies.

If passed into law, the nationwide study and officer reporting form provided by the bill would lengthen traffic stops, encounter resistance from drivers and passengers, subject officers to potential hostility and possible violence from drivers and passengers, and would place other burdens on law enforcement officers.

To obtain and verify the information required by the bill, a police officer would often have to ask a driver (and any passengers) about race or ethnicity and age. The officer could be expected to meet resistance and hostility to such questions, be-

cause many individuals would likely consider such questions about personal characteristics as highly offensive.

The proposed questions could turn a traffic stop into a dangerous situation, by escalating the tempers of the occupants when race or ethnicity is brought into the discussion. Pulling over a car for a traffic violation is one of the most vulnerable moments for a law enforcement officer. The statistics on the numbers of officers killed or feloniously assaulted in the line of duty during traffic stops confirm this danger.[1] An officer's life would be put at risk, being subjected to hostility, ridicule and potential violence, in which case the officer might conceivably have to act in self-defense.

The time necessary to fill out these forms would take away from other law enforcement efforts. For each stop the officer would fill out a detailed form with information including the reason for the stop, whether information about immigrant status was asked, whether a search was instituted and, if so, how it was conducted, the rationale for the search and the nature of any contraband.

It is unclear whether the data would be accurate and comprehensive and what the study would prove. There is a serious question as to whether the study would be worthwhile to prove or disprove police profiling based on race, ethnicity, age or gender. As proposed, this study would have a weak statistical basis.

If the study focuses on inner city police departments, it would indicate a greater number of minorities stopped as compared with suburban police departments, reflecting the population makeup of those communities. The study would reveal the obvious. If a study was focused on a college town, the study would show a greater number of individuals between the ages of 18–25 being stopped.

It is inconceivable that the data will be accurate unless an officer is able to verify racial and ethnic background and the violator responds cooperatively. If some of the drivers stopped for a traffic offense do not want to cooperate and provide this personal information, the data would be skewed and inaccurate.

The bill threatens to produce unnecessary and frivolous litigation against the regulation of law enforcement officers and their agencies. Similar legislation proposed and passed by the U.S. House of Representatives in 1998 was amended to limit the use of the data obtained from the study to only research and statistical purposes, and to prohibit, its use for any other purpose, including any legal or administrative proceeding to establish inferences of racial discrimination. Under the current legislation, lawsuits could be brought against municipalities, their police or sheriffs' departments and individual officers or to impose disciplinary action on officers, based on data from the study and not on identified cases of discrimination. The current legislative proposal would also enable a group of lawyers to obtain the data, supported by organizations actively eliciting information against law enforcement who make their living by suing police officers across the country and then recovering their legal fees from the defendants.

If enacted, this legislation could very well lead to unofficial practices by law enforcement officers of reverse discrimination or unofficial parity based on race, ethnicity, age or gender, both during the study and afterwards. We do not believe that most Americans want their government agencies to adopt and apply these practices which could include, 1) a lower standard of probable cause being applied to Caucasians and a higher standard being applied to individuals of color or, 2) a percentage limitation on the number of traffic tickets written or individuals detained because of suspected criminal activity. In summary, law enforcement officers across the country could be deterred from making traffic stops or conducting searches when there is justification to do so, solely based on identifying characteristics of drivers. This would send the wrong message to criminals across the country and would likely increase crime.

Statement of National Council of La Raza, Washington, D.C.

I. INTRODUCTION

Chairman Feingold, Ranking Senator Hatch, and the other Senators of the Subcommittee, on behalf of the National Council of La Raza (NCLR), thank you for

[1] Since the advent of the automobile, approximately 300 law enforcement officers are known to have died during traffic stops and approximately 80% of those officers were shot to death.

holding this hearing on an issue that is very important to the Latinol[1] community in the Unites States. NCLR is the largest national Latino civil rights organization, which serves as an "umbrella organization" for more that 250 local affiliate community-based organizations (CBO's) and 30,000 associate members. In addition to providing capacity-building assistance to our affiliates and essential information to our individual associates, NCLR serves as a voice for all Hispanic subgroups in all regions of the country.

I appreciate the opportunity to submit this statement for the record in support of a thorough revision of the law regarding racial profiling. First, this statement begins with a brief overview of Hispanic demographics in order to provide the Subcommittee with an accurate portrayal of the population about which we are speaking. Second, this statement explains our concerns regarding racial profiling as a law enforcement tactic and its effects on the Latino community. Next, it describes particular concerns with respect to reliance on racial profiling as a strategy to enforce immigration law, and emerging collaborations among federal, state, and local law enforcement. Finally, it concludes with recommendations on how we as a nation can respond at all levels—federal, state, and local—to better serve and protect all Americans from unnecessary and counter productive harassment and intimidation by law enforcement.

II. HISPANICS AND RACIAL PROFILING: THE SCOPE OF THE PROBLEM

A. DEMOGRAPHIC STATUS OF THE U.S. LATINO POPULATION

According to data from the 2000 Census, Hispanics constitute the largest minority group in the U.S.; currently, more than one in eight (12.5%) Americans is Hispanic. An increasingly large component of the nation's population (35 million) is Hispanic. Latinos are composed of several distinct subgroups: Mexican Americans, Puerto Ricans, Cubans, and Central and South Americans. The latest data also show that the majority of Hispanics are U.S.-born, or have U.S. citizenship. According to the latest data, (39.1%) or 12.8 million Latinos were born outside of the U.S. Among Hispanic children under 18, more than four-fifths are native-born. Latinos tend to be young; for example, more than one-third of the Latino population is under 18 years old; nearly one in six (16.2%) of the K–12 student population is Hispanic.

More than three-fourths of the Hispanic American population is concentrated in seven states: California, Florida, New York, Illinois, Arizona, New Jersey, and Texas. As the Hispanic community grows, Latinos are also living in some counties within "nontraditional" states. For example there were three states where the Hispanic population more than doubled between 1-990 and 2000: Georgia (increased by 299.6%), North Carolina (393.9% growth), and Tennessee (278.2% increased). Latinos are also the most urbanized of the minority populations: 91.5% of Hispanics live in major cities such as Los Angeles, Houston, New York, Chicago, and Miami. Given their share of the overall population, and the rapid growth and youthfulness of the Hispanic population, the status of Latinos is increasingly important to the future of all Americans.

This demographic snapshot provides an important context for the discussion of racial profiling, which NCLR believes is becoming more problematic in the Latino community. NCLR believes that stereotypes and misinformation have played a role in the increase of inappropriate police practices against minority groups, including Latinos, and that accurate information about the Hispanic community is critically needed. Latinos are moving into "non-traditional" cities, states, and regions in which other minority groups and/or White Americans predominantly reside. On its face, such a trend may not appear significant; however, many of these areas lack the infrastructure, organizations, and other civic participation mechanisms that allow Latinos to address increasing inter-ethnic tensions and assist in promoting integration into the American mainstream. The Latino community is struggling with these very issues in the already-established communities of Los Angeles, Houston, Chicago, and New York, and if it is difficult in those areas, one can only imagine the devastating effect law enforcement abuse and harassment has in these other areas where Hispanics are only now emerging as a major presence.

B. THE EFFECTS OF RACIAL PROFILING ON THE LATINO COMMUNITY

The use of racial profiling tactics not only violates civil rights, but also undermines the ability of law enforcement to effectively enforce the law. Specifically,

[1] The terms "Latino" and "Hispanic" are used interchangeably to refer collectively to Mexicans, Puerto Ricans, Cubans, Central and South Americans, and others of Spanish and Latin American descent. Hispanics can be of any race.

when an individual's ethnicity is used to establish a cause for suspicion of a crime, then that individual—along with family members, friends, and neighbors—loses trust in the integrity of law enforcement. As a result, public safety is placed in jeopardy because members of these communities fear harassment and abuse by the police and therefore are unlikely to seek police help when they legitimately need it, i.e., to report a crime, serve as a witness or on a jury, or otherwise cooperate with law enforcement.

The problem of racial profiling broadly manifests itself in the Latino community and cannot be dismissed simply as a matter of a few isolated incidents of poor judgment. For example, Latinos have been systematically targeted for "dragnet" tactics by local and state law enforcement officers, and those same tactics have been applied and used, as a matter of formal policy, by some federal law enforcement agents.

NCLR often receives reports from Latino individuals who have been victimized by police and federal agents overstepping the bounds of the Constitution in the name of drug and immigration enforcement. The vast majority of cases, however, goes unreported. Even fewer actually result in successful civil rights litigation or investigation by agencies responsible for enforcing civil rights.

1. Local Law Enforcement

Local law enforcement relies on a widespread number of tactics including traffic stops, "stops and frisk" approaches, and others to enforce the law. Such tactics cross the line when they have a disproportionate or disparate impact based on race or ethnicity. Below we cite just a few of the cases we are aware of involving racial profiling against Latinos by local law enforcement.

In 1999, the American Civil Liberties Union (ACLU) filed a federal lawsuit on behalf of a San Jose lawyer who says the California Highway Patrol (CHP) violated his civil rights when officers stopped him and other Hispanics allegedly because of their ethnicity. According to the lawsuit, the CHP pulled over the attorney and at least five other Hispanic drivers on the Pacheco Pass portion of Highway 152 while carrying out its federally-funded drug-interdiction program, "Operation Pipeline." According to a CHP Sergeant, the CHP canine units searched nearly 34,000 cars in 1997. Only 2% of them were carrying drugs. In other states, up to 95% of all "Operation Pipeline" searches have been found to be "dry holes."

Early this year, charges were brought before the U.S. Department of Justice against New Jersey State Troopers for routinely stopping Black and Hispanic drivers on state highways solely because of their skin color. Several state troopers were also found guilty of falsifying in their reports the race and ethnicity of drivers stopped. The troopers admitted that they did this so as not to give the appearance that they were only pulling over Black and Hispanic drivers.

In 1992, an Orlando Sentinel investigation into stops on an interstate highway found that 5% of the drivers on that highway were dark-skinned, yet nearly 70% of those stopped were Black or Hispanic. The stops of Black and Hispanic drivers also lasted, on average, twice as long as stops of White drivers. Only nine out of the 1,000 stops resulted in a traffic ticket.

In the past, the Louisiana State Police Department used a training film that explicitly exhorted officers to use traffic stops to conduct narcotics searches of "males of foreign nationalities, mainly Cubans, Colombians, Puerto Ricans, or other swarthy outlanders." [*United States* v. *Thomas*, 787 F. Supp. 663, 676 (E.D. Tex. 1992)]

In Colorado's Eagle County Sheriff's Department, race, ethnicity, and out-of-state license plates were common drug-courier profile factors in criminal investigations. After the use of such a profile was determined to be unconstitutional, they have switched to using traffic enforcement stops as a means of catching drug traffickers, but have not stopped the use of racial profiles. [*United States* v. *Laymon*, 730 F. Supp. 332, 337 (D. Colo. 1990)]

A December 1999 report by New York's Attorney General on the use of "stop and frisk" tactics by the New York City Police Department revealed that between January 1998 through March 1999, 84% of the almost 175,000 people stopped by NYPD were Black or Hispanic, despite the fact that these two groups compose less than half of the city's population.

The New York Attorney General's report on NYPD stop and frisk tactics revealed that stops of minorities were less likely to lead to arrests than stops of White New Yorkers—the NYPD arrested one white New Yorker for every eight stops, one Hispanic New Yorker for every nine stops, and one black New Yorker for every 9.5 stops.

2. Federal Law Enforcement

The use of racial profiling is not limited to local law enforcement agencies. Federal agencies such as the Immigration and Naturalization Service's (INS) Border Patrol, Inspections and Investigations divisions, Drug Enforcement Administration (DEA), and the U.S. Customs Service have been found to conduct community-wide "sweeps," searches, and seizures without proper reasonable suspicion, relying heavily on ethnic background and race as an exclusive or primary factor. The use of racial profiling has been justified by some due to the inaccurate perception that Blacks, Latinos, and other minorities are more likely to commit crimes—especially immigration and drug-related offences—than Whites.

a. INS

According to a May 1, 2001 *New York Times* article, a review of 37 INS work site raids in the district of New York City showed that agents frequently cited skin color, use of Spanish, foreign accents, and clothing "not typical of North America" as primary evidence that workers were likely to be undocumented. An example found in the review disclosed that an INS agent conducting a surveillance of delicatessen, between 34th and 35th Streets in New York City, reported that some workers appeared to be of South or Central American descent. Some spoke Spanish, the agent noted, and others spoke English "with a foreign accent." The *Times* study confirmed that the INS explicitly uses ethnicity to guide its enforcement efforts, a tactic the agency has denied using.

On January 29, 1998 in Bethesda, Maryland, waitress Allegra Foley was preparing tables for lunch at the Thymes Square Cafe when plainclothes INS officers entered the restaurant. They headed directly to the kitchen, where they questioned a number of Latino employees; six were arrested. Foley was particularly upset that employees at the Cafe were clearly targeted for questioning based on their perceived racial appearance. In a notarized affidavit, Foley testified that "at no time did they ever question a white, black, or Asian employee on duty at the restaurant. . .with sole exception of the manager. . .who. . .voluntarily provided his green card."

On July 9, 1997, in Portland Oregon, INS agents in unmarked vehicles began arresting almost 50 Latino day laborers who were waiting for work on street corners along East Burnside Street. The agents did not identify themselves and arrested the majority of people without asking questions. Most of the agents were dressed in plainclothes, although some of them later donned Border Patrol jackets when their colleagues arrived in bulletproof vests and uniforms. "I only saw one man questioned. It happened right in front of me. The INS agent came right up close to his face, leaned over him, and asked him where he was from and to show his papers. The worker didn't answer but started to fumble in his wallet in an effort to extract a document and was arrested before he could get it out. The entire interchange took less than a minute. Only Latino men were arrested. Other people on the scene, including a light-skinned Mexican, were not even questioned," recalled Lucy Bernard, a witness from the Workers' Organization Committee in Portland.

INS agents conducted a raid in Jackson Hole, Wyoming in August 1996, in which 153 suspected illegal immigrants were rounded up and detained. According to press reports, some of the suspects were picked up off the street merely because their skin was brown. It was reported that agents picked one man off his bicycle as he rode down the street; "They failed to ask him to stop, they simply ran him down, took him off his bike, put him in handcuffs, and stuffed him in the police car," stated an eyewitness. Some of those picked up had large numbers written on their arms with black felt pen, as though they were cattle. Further press reports stated that 18 of those picked up were "hauled away in a dirty horse trailer lined with fresh manure." In the end, 40 of the "suspects" were released after proving they were citizens or documented workers.

b. Border Patrol

The *New York Times* reported that many residents of South Texas believe that the Border Patrol agents in airports and roving patrol units systematically stop and detain too many blameless Hispanics. A federal judge, Filemon B. Vela, was stopped by Border Patrol when driving with three of his staff members (two of whom were also Latino) because, he was told, there were too many people in his car. The problem is pervasive enough to cause Cameron County Judge Gilberto Hinojosa to state that his community feels like "occupied territory" by the Border Patrol, that it "does not feel like we're in the United States of-America."

Border Patrol agents on roving patrols in Arizona have also been stopping motorists without reasonable suspicion that violations of immigration law have occurred. In fact, using information gathered through the use of "I–44" forms that Border Pa-

trol agents are advised to fill out after traffic stops, a Federal Circuit Court of Appeals in the class action *Durgin* v. *De La Vina* found that:

> Plaintiffs produced evidence of a pattern and practice of stopping persons without proper "reasonable suspicion" in the numerous I–44s that they submitted. Many of these reports do not describe facts that give rise to reasonable suspicion, and many of the reports list similar and repetitive reasons for stopping various persons. Plaintiffs also produced evidence of other persons of Hispanic appearance whom the Border Patrol had stopped, allegedly without reasonable suspicion. The Border Patrol had stopped some of these persons on numerous occasions.

The Border Patrol's lack of clear record keeping indicates an inclination to hide a pattern and practice of profiling. In the *Durgin* case, Border Patrol agents did not fill I–44 forms after stopping the plaintiffs. The Court quoted an internal training memorandum that shows that Border Patrol agents are strongly advised to fill out I–44 forms after every traffic stop they conduct because:

. . .written descriptions of "reasonable suspicions" are important not only to win the case against the suspect, but also to prove that agents acted properly in the event of civil lawsuits. . .[I]f the Border Patrol and/or individual agents are sued in a civil lawsuit alleging a pattern of discriminatory vehicle stops. . .[agents'] written description of "reasonable suspicion" will be critical to prove that the agents acted properly.

Agents are trained to use the forms to protect against potential frivolous allegations of civil rights abuses. Thus, any instance where an agent does not fill out an I-44 should raise a concern that ethnic and racial profiling is being relied upon instead of the reasonable suspicion standard required for a lawful stop.

c. Customs Service

A March 2000 GAO report on the U.S. Customs Service found that Black, Asian, and Hispanic female U.S. citizens were four to nine times more likely than white female U.S. citizens to be subjected to X-rays after being frisked or patted down.

In reported cases regarding federal bus and train sweeps, overwhelmingly the defendants are Black or Hispanic. From January 1, 1993 to August 22, 1995, of 55 cases in which the defendant's race could be identified, Hispanics were 20% of those stopped and searched. According to the courts, if no "seizure" takes place, law enforcement agents do not need to explain how they select their targets. A federal court upheld the case allowing the stop and search of a "roughly dressed black male." [*United States* v. *Weaver*, 966 F.2d 391, 396 (8th' Circuit 1992)]

C. COLLABORATION BETWEEN FEDERAL AND LOCAL/STATE LAW ENFORCEMENT

The INS and other federal law enforcement agencies have significantly stepped up efforts in the last several years to enforce immigration laws along the U.S./Mexico border, inland, and at the workplace. Efforts such as increased workplace raids, an escalating number of armed INS agents along the border and the interior, and more joint operations between INS and other state/local law enforcement agencies have served to undermine the physical safety and constitutional and civil rights of Latino communities throughout the United States. NCLR has noted that numerous civil rights violations and abuses have been committed in the process of enforcing immigration law. Incidents of illegal or inappropriate seizures, traffic stops based solely on ethnic appearance, arrests without cause, deprivation of food and water or medical attention, and actual physical abuse have been recorded. Immigration enforcement by local police, even under the guise of enforcement of separate criminal statutes, compromises and detracts from the true mission of local police of ensuring public safety, and worst of all, it undermines public trust and confidence. Many victims of abuse and mistreatment by immigration authorities are U.S. citizens or legal permanent residents. Examples of joint collaboration between federal and local/state law enforcement agencies follow:

The Mexican American Legal Defense and Educational Fund, (MALDEF)[2] has filed litigation in connection with allegations of widespread civil rights violations by local police involved in immigration enforcement in northwest Arkansas. According to one of the plaintiffs, the Rogers Police department has been turning over "suspects" to the INS for immigration investigation. One of the claims is that of a woman who, after calling the police for protection from her abusive husband, was investigated as to her immigration status, arrested, and turned over to the INS.

[2] NCLR is grateful for the assistance of the Mexican American Legal Defense and Educational Fund (MALDEF) in providing the latest information on the litigation.

After a federal judge in Ohio ordered the INS' Border Patrol to stop making discriminatory traffic stops (*Ramirez* v. *Webb*, later affirmed by the 6th Circuit Court of Appeals), the INS requested officials in the Ohio Highway Patrol to conduct the stops instead. Consequently, a federal court ordered the Highway Patrol to stop illegally confiscating green cards from legal migrant workers during profile-based traffic stops [*Farm Labor Organizing Committee* vs. *Ohio State Highway Patrol*].

In Chandler, Arizona in 1997, local police collaborated with Border Patrol agents in illegal traffic stops to find undocumented immigrants. What they found instead was a multimillion dollar lawsuit on behalf of U.S. citizens and permanent residents who were repeatedly harassed and detained by local police officers—without probable cause by their own admission—because they "looked Mexican." Arizona Attorney General Grant Woods concluded "without a doubt that residents of Chandler, Arizona were stopped, detained, and interrogated by officers. . .purely because of the color of their skin." Some of the plaintiffs have settled the case while other claims are still pending.

On January 29, 1997, in Crescent City, Florida, INS agents, Putnam County Sheriff's deputies, and Crescent City police officers conducted a nighttime joint operation in search of undocumented immigrants. They set up a highway checkpoint and conducted a sweep of a trailer park and public housing facility largely inhabited by Hispanic residents. Although the police explained to the press that they were searching for drugs, there were no drug arrests made, nor were any drug searches conducted. An eyewitness, a worker at the Farmworkers' Association of Florida, lives in the neighborhood between two White families whose homes were not raided.

His home was approached twice. His wife was home but did not respond to the knock on the door. Approximately 50 other homes with Hispanic residents were raided. The police and Border Patrol would knock, announce "Police!" and barge in after the door was opened, without consent and without cause. The officers also stopped Hispanics in the street and requested immigration documents without cause. A 12-year-old U.S. citizen was arrested in the street and taken miles from home for not having "papers." When police realized their "mistake" they let him go and told him where he could catch the bus home. Border Patrol agents were involved, but one of them told local newspapers that he would never again participate in such a horrible operation.

Currently, in the Chicago Metropolitan Area, suburban police officers are increasingly detaining and questioning Hispanic Americans for immigration purposes. The local police in Summit, a southwestern Chicago suburb, detained a young U.S. citizen for several hours because he had a thick Spanish accent and could not prove he was a U.S. citizen. Another young Mexican American U.S. citizen was actually turned over to the INS detention facility by a suburban police officer, but was released by federal agents after a few questions. "The arrest followed a pattern of routine traffic stops, generally of Hispanic men in their 20s, followed by questioning and detention because, as one suburban police chief put it 'they look illegal'," according to the *Chicago Tribune*.

On May 27, 1998 in Minneapolis Minnesota, just after 7:00 p.m., five police cars arrived at southeast Minneapolis' Holmes Park—a popular hangout for some of the city's Latino community—and drove over street curbs and grass until they had surrounded the volleyball courts. Dozens of Latinos in the park were subjected to more than an hour of degrading interrogation; many were searched and frisked, with legs spread and hands placed against squad cars. According to Curtis Aljets, INS District Director for Minnesota and the Dakotas, the raid was a joint operation between police and the INS to find the "twenty most egregious aggravated felons" from a computer-generated list of immigrants. Following the arrests, 14 people were deported; only one of the detainees had a criminal record.

Courts have condemned INS and local police departments in several other similar cases, including *Velazque* v. *Ackerman* (Director of INS, San Jose, CA.); *de Haro* v. *City of St. Helena*; *Mendoza* v. *U.S. City of Farmersville*; and *Cedillo-Perez* v. *Adams* (Chief of Police of Katy, TX)).

In 1996 Congress established a formal Memorandum of Understanding (MOU) process between the Department of Justice and state or local government to guide such INS-state/local collaborations. However, none of the programs cited above were conducted under the auspices of an MOU, which would have assumed review by DOJ's Civil Rights Division and training in immigration law for state/local offices.[3] Thus, these collaborations are taking place informally, without any formal review or guidance from the Department of Justice.

[3] One proposed MOU between DOJ and Salt Lake City was rejected by the City Council after extensive protest from Latino community leaders and other civil rights organizations.

III. OVERVIEW AND RECOMMENDATIONS

A. OVERVIEW

As this brief review shows, the Latino community is disproportionately targeted by law enforcement. The use of racial profiling tactics not only violates civil rights, but undermines trust between the Latino community and the police. Racial profiling disparately impacts the Latino community significantly because it is not only targeted by local and state law enforcement agencies, but also by federal agencies including the INS and Customs Service. Joint operations between local/state and federal law enforcement agencies are becoming a routine method of law enforcement resulting in wholesale civil rights violations.

Racial profiling unfortunately is not a new problem. The Latino community has been struggling with racial profiling and law enforcement abuse for too long. Legislation was introduced without avail in the past two Congresses to study, address, and put an end to racial profiling. However, never before has the political climate been more favorable for enacting racial profiling legislation. President Bush acknowledged during his inaugural address that racial profiling was a national problem, and he indicated his firm commitment to the elimination of this discriminatory practice. Later, Attorney General Ashcroft pledged to work with Congress to take the necessary measures to address racial profiling.

In that spirit, the National Council of La Raza strongly supports the End **Racial Profiling Act of 2001** because it strives to eliminate racial profiling comprehensively, including racial profiling by federal agencies, such as the Immigration and Naturalization Service (INS), Drug Enforcement Administration (DEA), and Customs Service, and joint federal-state/local operations. It is crucial that federal law enforcement be held to the same high standards as state and local law enforcement, so that all communities, including the Latino community, can rely on law enforcement to provide protection and safety for everyone.

B. RECOMMENDATIONS

To address the growing problem of racial profiling, NCLR:

Urges Congress to pass and the Administration to sign the End Racial Profiling Act of 2001. The Act, introduced by Senators Feingold (D–WI), Clinton (D–NY), Corzine (D–NJ), and Representatives Conyers (D–MI), Morella (R–MD), Ferguson (R–NJ), Greenwood (R–PA), and Johnson (R–IL) would ban the practice of racial profiling by federal law enforcement agencies, and provide incentives to state and local law enforcement agencies to eliminate this practice. Additionally, it requires the collection of data on routine investigatory activities; establishes procedures for receiving, investigating, and responding to claims of racial profiling; and requires training of law enforcement agents and holding them accountable for engaging in racial profiling. In addition, the Act offers incentive grants that encourage compliance, development, and implementation of practices such as the acquisition of technology to facilitate data collection, training to prevent racial profiling, and a fostering mechanism that would make the interaction between law enforcement and the community more respectful.

Urges President Bush and Attorney General Ashcroft to take proactive, interim steps to address racial profiling. We urge them to reaffirm their commitment to the eradication of this social problem by declaring and enforcing a ban on racial profiling by all federal agencies. Further, we recommend the Administration to require collection of data relevant by all federal law enforcement agencies.

Encourages Congress and the Administration to provide adequate resources to the Department of Justice's Special Litigation Section to enable it to fulfill its task of pursuing "pattern and practice" lawsuits against police agencies nationwide which commit widespread abuse. While many in Congress and the White House have said that they want to ensure the prosecutors have all the resources they need to enforce U.S. laws in these cases, funding of the Civil Rights Division's work in this areas remains inadequate.

Calls on the Department of Justice to end collaboration between INS and other law enforcement agencies in conducting enforcement operations. Any existing cooperation agreement between the INS and local/state law enforcement should be terminated, and the Attorney General should decline to pursue additional agreements.

Urges the INS to establish an improved mechanism to address complaints about abuse of authority in the enforcement of federal immigration laws.

> The federal government has the authority and obligations to ensure that enforcing the nation's immigration laws do not result in abuse. A body, such as a "civilian review panel" with the ability and resources to accept and investigate complaints of federal law enforcement abuse and to make recommendations for remedial action, should be established to help ensure government accountability and deter further civil rights violations. Such a panel could be a step forward in addressing the ever-increasing number of complaints filed against immigration enforcement agents.

I thank Chairman Feingold for his leadership and vision on this issue that deeply affects the Latino community.

NATIONAL TROOPERS COALITION
ALBANY, NEW YORK 12207
August 1, 2001

The Hon. Patrick J. Leahy
Chairman, Senate Committee on the Judiciary
224 Senate Dirksen Office Building
Washington, DC 20510

Dear Chairman Leahy:

I write to express the opposition of the National Troopers Coalition (NTC) to S. 989, End Racial Profiling Act of 2001, to be heard this morning by the Subcommittee on Constitution, Federalism, and Property Rights. As you know, the NTC is composed of state police and highway patrols from throughout the United States and has a membership of approximately 45,000 of all ranks, trooper through colonel.

As background, criminal profiling is an effective tool for law enforcement. Local, state, and federal law enforcement agencies have been utilizing criminal profiling as a proven and valuable technique to identify criminals for decades. As an example, "Criminal Drug Interdiction Profiling" is a law enforcement practice whereby identifying drug traffickers is an essential component of an officer's training. Police officers are, in fact, taught to observe the individual for characteristics or indicators of drug courier activity. It is "Reason not Race" that directs the attention of police officers to drug smugglers, "Criminal Drug Interdiction Profiling" is rooted in statistical reality, not based on race or other such factors.

At the same time, I am not aware of any law enforcement agency that teaches or condones racial profiling as an institutional endeavor, nor does the NTC condone the use of race alone as the rationale for police action.

The NTC is on record opposing data collection to address this issue. We believe it is a misuse of valuable resources at every level of government. Rather, we support the use of resources to increase awareness of existing policies, both internally and externally, increased training and education for law enforcement, and financial support for greater use of video and audio recording devices in police vehicles.

For these and other reasons, we again stress our opposition to the approach contained in this legislation.

Sincerely,

SCOTT REINACHER
President

Article by Susan Sachs, New York Times, May 1, 2001

FILES SUGGEST PROFILING OF LATINOS LED TO IMMIGRATION RAIDS

Before immigration agents raided Al's Deli on Seventh Avenue in Midtown Manhattan four years ago, they considered several factors. One was an anonymous tip alleging simply that 10 of the 20 or so workers were illegal Mexican immigrants. Another was their own surreptitious observations about the employees.

An agent who conducted a surveillance of the delicatessen, between 34th and 35th Streets, reported that some workers appeared to be of South or Central American descent. Some spoke Spanish, the agent noted, and others spoke English "with a foreign accent."

That was enough to prompt a raid of the deli in search of illegal immigrants.

The raid was a modest law enforcement success for the Immigration and Naturalization Service's New York district, which covers New York City and Long Island. It netted three illegal immigrants from Mexico and one from India from among the dozen workers present.

But the operation also followed a familiar pattern in the New York district, one that senior immigration officials say may have violated the federal agency's guidelines for avoiding ethnic or racial profiling. In this and other cases, agents appeared to rely almost exclusively on Latino appearance or foreign accents—common attributes in New York and other American cities—to reach a conclusion that workers could be illegal immigrants.

A review by The New York Times of 37 I.N.S. work site raids in the district showed that agents frequently cited skin color, use of Spanish, foreign accents and clothing "not typical of North America" as primary evidence that workers were likely to be undocumented.

Agents are required to have specific facts in hand or a reasonable suspicion to question someone's legal status, like nervousness when confronted with the immigration agency or unfamiliarity with the surroundings. Appearance may be one factor, but courts and the agency itself have said it is discriminatory to stop and search a person based on foreign appearance alone.

The files reviewed represent 20 percent of the district's 187 work site cases during a 30-month period from January 1997 through June 1999. The Immigration and Naturalization Service itself selected the cases as a random sample and provided them to Unite, the garment Workers' union, as part of a settlement of a lawsuit alleging selective enforcement. The union provided them to The Times.

All but a handful of the 37 raids did result in the arrests of illegal workers and, unsurprisingly considering the criteria used, nearly everyone arrested during that period was Latino. And while some investigations grew out of detailed accusations by an informed tipster, in 30 of 37 cases a raid was carried out after agents made observations as simplistic as those at Al's Deli.

"Obviously, mere nationality and mere ethnicity by themselves, unsupported by other facts, are absolutely no basis for us to determine a person is illegally in the United States," said Joseph Greene, the assistant I.N.S. commissioner for investigations in Washington. "There's a whole body of jurisprudence that has heightened everybody's sensitivity to that," he added.

As the nation has become more diverse, largely because of an influx of legal immigrants from Latin America and Asia, the role that ethnic profiling may play in the enforcement of immigration laws has become an issue of mounting concern for advocates and the agency itself.

Nationality is clearly an element to be considered when looking for illegal immigrants: all illegal immigrants, by definition, are foreigners. But simply looking or sounding foreign, civil rights groups have argued, is not a sufficient basis for suspicion in a country where illegal immigrants may not differ in race, ethnicity or national origin from everyone else around them.

And as in other instances of profiling—whether on the New Jersey Turnpike or the streets of Harlem—there are costs to the innocent people swept up. In the New York raids and others like them, fully legal people are subjected to the humiliation of proving their status, sometimes after being jailed.

That happened to Maria Espinoza, a worker from Ecuador who was arrested during an immigration agency raid on the SPD Molding factory in Long Island City, Queens, in September 1999. She told agents she was a legal permanent resident, but was detained with other Latino workers and told she would be deported.

"At that moment, I did not carry my green card, butt the people did not believe me," Mrs. Espinoza recalled this week. "They handcuffed me and arrested me." A computer check eventually confirmed her innocence, and she was released after spending three hours in detention.

A number of legal challenges have been brought recently in several states, including Arkansas and California, accusing the authorities of singling out Latinos for questioning about their immigration status.

A federal judge in Ohio recently ruled that state highway patrol officers, acting as de facto immigration agents, violated people's rights by routinely pulling over Latino drivers to question their immigration status. In one instance, legal migrant workers were stopped and had their green cards taken by officers who said they were fraudulent.

Courts have generally given I.N.S. officers themselves greater latitude to stop people for immigration checks, particularly near the border, but still set constitutional limits. The Supreme Court has ruled, for example, that I.N.S. agents working near the Mexican border may use their suspicion of someone's Mexican ancestry as one

of the grounds for stopping that person, although it legally cannot be the only grounds.

In three more recent cases in California, federal judges said immigration agents committed "egregious" violations of the Fourth Amendment when they stopped individuals. solely on the basis of their Latino appearance or foreign-sounding name.

"There may or may not be an argument for using ethnicity or national origin as one of the predicates for enforcement actions along the border," said Charles Kawasaki, vice president of the National Council of La Raza, a Latino group in Washington. "But you just can't make that case in the interior of the country," he added.

In its own rules, the immigration service specifically warns its agents not to assume that illegal immigrants can be identified by foreign appearance, language or ethnic characteristics."This is not science," said Mr. Greene, the agency enforcement chief. "It is art."

Edward J. McElroy, the New York district director, would not talk about the enforcement program. The district issued a statement saying that all of its work site raids are based on a "reasonable suspicion" that an employer is violating immigration laws.

Reasonable suspicion, the statement said, "can include the officer's training and experience, information from reliable informants and other communications, and or any other factors that in their totality would validate the investigation."

The immigration service, however, arrested almost no one but Latinos during the 30-month period covered by the random sample. According to a summary released as part of the settlement, Mexicans, Ecuadoreans and others from Central and South America accounted for 96 percent of the 2,907 people arrested in the district's 187 work site raids. That is a far bigger proportion than Latinos represent in either the city's illegal or legal population.

The preponderance of Latinos stands out even more sharply when the type of company that was raided is taken into consideration. Most of the businesses were garment factories, where employers' groups, unions and the immigration service all say that about half the employees are Asian, some of them illegal.

Yet in two and a half years of enforcement actions, the New York district arrested only two Chinese people during any of its work site raids.

While it is not surprising that immigration officers found illegal immigrants from Latin America working in the kinds of low-wage businesses they raided, it is not clear why they found Latinos almost exclusively.

"They are playing a numbers game," speculated Wing Lam, director of the Chinese Staff and Workers Association, which represents many undocumented Chinese workers. "It's easier to arrest a Latino and send him back than it is to send someone all the way back to China."

The New York files provided by Unite afforded a highly unusual opportunity to analyze the conduct of the local Immigration and Naturalization Service district, which fights to keep its operations secret. The tip sheets, investigative memos and other documents—with the names of agents and immigrants blacked out for privacy—provide at least a written record of how agents built their cases.

In many files there is no evidence that agents based their decision to raid a particular business on anything other than nonspecific tips and their own deductions drawn from the workers' ethnicity.

Liverpool Industries in Brooklyn, for instance, was raided in August 1997. Documents in the file showed that the company caught the attention of the immigration agency when it applied for permission to hire foreign workers to take jobs as brake operators. During a surveillance, an agent noted seeing several "Latin individuals" speaking Spanish and wrote in a report that "it was determined that some of these individuals were most likely undocumented aliens."

Two of the 70 employees were arrested in a raid.

In another case, the district received an anonymous tip that 15 workers at a Midtown garment factory called BNA Fashion were illegal immigrants from Mexico and Korea. The agent who conducted a surveillance at the factory reported that some employees were heard speaking Spanish.

"Many individuals," the agent also wrote, "had dark black hair, medium skin color and wore clothing typical of Mexican and Ecuadorean descent."

The factory was raided. Seven of the 35 workers were arrested, 3 from Ecuador and 4 from Mexico.

An agent checking a tip about undocumented workers at H.C. Contracting, a Midtown garment factory, noted that Spanish music was playing on a radio and 40 to 50 of the 70 employees "appeared to be of Central or South American descent." Those workers, the agent added, may support the allegation of illegal immigrants.

"The I.N.S. seems to equate Latino physical and cultural characteristics with illegality—that is, with being an undocumented immigrant," said Michael J. Wishnie, a director of the Immigration Law Clinic at the New York University Law School.

The clinic represents two union members who are fighting deportation on the grounds that they and other Latinos were improperly singled out for arrest during the H.C. Contracting raid in 1998.

In a few instances, agents made similar observations but hesitated to draw the same conclusions. Observing a Manhattan garment factory in 1997, an agent said that about 35 workers appeared to be of Mexican or Central or South American descent. "here was no way of determining," the agent wrote, "the legal status of any individual at this time."

Over the past two years, with labor shortages affecting many industries, the immigration service has largely abandoned workplace raids as a means of finding illegal immigrants.

Nationally, the number of raids dropped by half last year. In New York, only 125 work site cases were completed last year compared with 263 the year before. Arrests by the New York immigration district from raids also declined sharply, from 1,400 in 1997 to 166 in 2000.

Enforcement efforts, immigration officials said, are now focused on better sealing the border with Mexico, snaring immigrant smugglers and catching illegal immigrants involved in organized crime.

http://www.nytimes.com

GRAPHIC: Photos: Case files and memos of immigration and Naturalization Service agents in the New York district suggest that work site raids are often based on language or appearance. (pg. B1); A file from a workplace surveillance by the immigration agency's New York office. Over 30 months, Central and South Americans accounted for 96 percent of the 2,907 people arrested in the district's 187 work site raids. (pg. B6)

DALEVILLE DEPARTMENT OF PUBLIC SAFETY,
DALEVILLE, ALABAMA,
July 31, 2001

Chairman Russell D. Feingold
Subcommittee on Constitution, Federalism,
and Property Rights
U.S. Senate
Washington, D.C. 20510

Ranking Member Strom Thurmond
Subcommittee on Constitution, Federalism,
and Property Rights
U.S. Senate
Washington, D.C. 20510

Dear Chairman heingold and Ranking Member Thurmond:

I am the director of Public Safety for Daleville, Alabama, a town of approximately 4,653 residents. Accordingly, 1 dm responsible for law enforcement activities within my community. Approximately 25.4% of our population is African American, I am very concerned that S. 989, the .End Racial Profiling Act of 2001, will deter police officers in my community and others from effectively policing African American neighborhoods.

While no police officer should stop, arrest, or treat any person differently just because of the color of his of her skin, There is not a single officer around who can fully and capably perform his or her job based on statutory formulas prescribed by Congress. The threat of being sued because proportions of people being stopped or arrested do not comply with lcderally-prescribed formulas is, again, dangerous.

1 fear that lower income African American citizens, many of whom are elderly or are single parent families, art: most vulnerable to the dangers brought about by a retreat from their neighborhood. They need our protection most. We cannot give it to them if we are under the threat of being sued.

I certainly urge you to address the evils associated with racial profiling, but nut in the harsh and constricting ways that this legislation prescribes. Please reject the mechanical, unwavering standard of this legislation. While we do rived to end racial profiling, I respectfully submit that this legislation is not the appropriate way in

which to do it. Frankly, I feel that it may only serve to exacerbate, rather than ameliorate, the problem.

Thank you for holding this hearing and for taking the time to consider my concerns over this well-intentioned, but practically misguided legislation.

Sincerely,

JIMMY L. SEATON
Director, Daleville D.P.S.

Article by Jonathan Serrie, Fox News, July 27, 2001

SEATTLE COPS, WARY OF RACE-PROFILING ACCUSATIONS, CUTTING BACK ON MINORITY ARRESTS

SEATTLE—Amid charges of racism, many Seattle police officers say they are cutting back on the number of arrests they make in minority communities.

Officers still respond to 911 emergency calls. But cops on the beat are ignoring many traffic violations and other minor offenses.

This form of passive law enforcement—some are calling the cops "tourists in blue,"—is not official policy, but the practice is growing among individual officers who fear more aggressive police work will be labeled as "racial profiling."

Sgt. Mike Edwards, president o1 the Seattle Police Officers Guild, describes the practice as NCNC—"No contact. No complaint."

Seattle police have been inundated with complaints of "racial profiling" following the recent fatal shootings of two black suspects.

On May 31, a white policeman shot work-release escapee Aaron Roberts while the suspect was dragging the officer's partner from the side of his car.

In April 2000, David John Walker was shot while walking down a sidewalk brandishing a knife. Walker was also carrying a gun and had fired shots outside a nearby grocery store.

In both cases, police say the suspects ignored repeated warnings to surrender. In the Walker case, there was even local 1V news footage confirming the officer's story. Yet both shootings prompted hundreds of protesters, black and white, to take to the streets accusing Seattle police of murder and genocide.

Such accusations carry a lot of weight with leaders of this city, which prides itself on civility. But many rank-and-file cops say weak-kneed politicians are affecting their ability to serve and protect.

Seattle police were ordered to hold back during this year's Mardi Gras protests, when a white man was beaten to death by an angry mob while trying to rescue a woman under attack.

Most of the suspects arrested in the disturbances were black, and the cops were subsequently accused of targeting minorities.

Racial profiling has become a popular charge among critics of police, who say officers place a disproportionate emphasis on patrolling minority neighborhoods and are more likely to be suspicious of minorities.

"There's a bad element everywhere," said Seattle resident Richard Mitchell. "The patrols should be just as balanced in the predominantly white neighborhoods as they are in the black neighborhoods."

Sgt. Edwards disagrees.

"The officers are there because they're being called there. The minority communities, the poor communities, the areas that have the highest incidence of crime have the greatest need for police," Edwards said.

But some officers are starting to wonder whether aggressive police work is worth the risk of being accused of racism and being investigated by city officials.

The problem is not unique to Seattle Police around the country say the reputations, and even careers, of men and women in blue are often jeopardized by the racial politics of those who see law enforcement in black and white.

Article by Stuart Taylor Jr., National Journal, April 24, 1999

RACIAL PROFILING—THE LIBERALS ARE RIGHT

While fueled by demagogic rhetoric and political opportunism, the. current uproar over allegedly racist police practice in New York City and elsewhere has spotlighted one dearly abusive practice that moderates, conservatives, and, indeed, police chiefs should join liberals in assailing: racial profiling. That is the apparently widespread police habit of using skin color or ethnicity as a factor in deciding whom to stop and search for residence of crime.

Just this week, New Jersey Gov. Christine Todd Whitman admitted that a 111page internal review had confirmed a 1996 judicial ruling that some state police officers had engaged in racial profiling in deciding which cars to search during traffic stops on the turnpike.

Around the country, thousands of minority-group members have been humiliated by police stops and searches, often for conduct no more suspicious than "driving while black" or walking the streets of their communities. This, in turn, has helped to breed a deeply corrosive mistrust of law enforcement.

The full extent and the perniciousness of racial profiling are difficult to grasp for those of us who have not been targeted. The practice is virtually invisible to whites, except in the minority of cases in which police find illegal drugs or guns and make arrests. Almost all police organizations deny that they condone racial profiling. It is easily camouflaged by nonracial pretexts for searching cars and pedestrians; and it is sometimes confined with proper police work.

All this, plus the assumption that falling crime races mean that the police must be doing something right, helps explain why moderate and conservative leaders have so far expressed relatively little concern about racial profiling. But the result has been to leave a void to be filled by race-card-carrying police-bashers such as Al Sharpton (sponsor of the Tawana Brawley hoax) and Jesse Jackson (who recently accused police in Mew York City of declaring "open season on blacks").

This issue is too important to be left to opportunists such as these. More law enforcement officials and politicians alike should recognize that whatever short-term benefits racial profiling may produce in catching a few criminals are far outweighed by the long-term costs. The biggest cost is the poisoning of police relations with .minority-group communities, and thus with potential witnesses and juror in the communities most in need of effective law enforcement.

While there have been few systematic studies of racial profiling, the scattered data collected so far are striking.

In New Jersey, the report released on April 20 showed that 77 percent of motorists searched on the turnpike were black or Hispanic, even though 60 percent of those stopped were white.

In Maryland, according to statistics compiled by state police as part of a 1995 court settlement, 70 percent of the drivers searched on a stretch of Interstate 95 from January 1995 through September 1996 were black—even though blacks made up only 17 percent of all drivers (and of all speeders) on that road, according to a related study by the American Civil Liberties Union.

Thus, an innocent black driver was four times as likely to be searched as an innocent white driver. And this was after the state police had (in the court settlement) issued a written policy barring race-based stops.

Studies of car stops in places ranging from Volusia County, Fla., to Eagle County, Colo., also reflect dramatic racial disparities. And in Louisiana, a state police training film a few years ago told officers to use traffic stops to do drug searches of "males of foreign nationalities, mainly Cubans, Colombians, Puerto Ricans, or other swarthy outlanders."

The most telling evidence of the extent and offensiveness of race-baled stops and searches may be the personal accounts of the many black and Hispanic people who see such stops as emblematic of a discriminatory criminal justice system.

"You cannot talk to an African-American who has not either had this experience or had a relative go through it," sacs David A. Harris, a law professor at the University of Toledo, whose research on car stops and searches has included interviews with large numbers of middle-class blacks. "It's a humiliating and angering experience," Harris reports. "One man said it's like someone pulling your pants down around your ankles. . .And any African-American who has teenage kids, especially male kids. . .they've had 'the talk' with them, about what to do when not if, when-they are stopped. This is in the nature of instructions for survival."

Is there any justification for racial profiling? Defenders of the practice point out that certain crimes are disproportionately committed by young black and Hispanic men-or by members of particular ethnic groups, such as Jamaicans or Colombians-and that police logically look for evidence where the criminals live, in the inner cities.

Such rationales reflect the tendency of practitioners and critics alike to confuse racial profiling with a different phenomenon: the policies of police in places like New York City to patrol (and stop, and search) most aggressively in high-crime neighborhoods. When done with respect and sensitivity, this can produce safer communities and better community relations. When it veers into wholesale intimidation, and indiscriminate frisking of young men on the street, it can become indistinguishable from racial profiling.

Even critics acknowledge that racial profiling is not entirely irrational in treating young black inner-city men as presumptively more worthy of attention than, say, grandmothers. Jesse Jackson himself implied this when lie said in 1993: "here is nothing more painful to me at this stage in me life than to walk down the street and hear footsteps and start thinking about robbery-then look around and see somebody white and feel relieved."

A citizen such as Jackson might be justified in keeping a prudent distance from a group of black youths in certain settings. But a police officer would not be justified (absent some particularized basis for suspicion) in picking up a black youth, standing him against a call. and frisking him.

While "it is rational to be more suspicious of a young black man than an elderly white woman." in the words of a trenchant new book be David Cole, *No Equal Justice: Rare and Class in the American Criminal Justice System*, that "does not make it right. First, the correlation of race and crime remains a stereotype, and most blacks will not conform to the stereotype. . .A police officer who relies on race in stopping and questioning individuals is therefore likely to stop many more innocent than guilty individuals. Second, our nation's historical reliance on race for invidious discrimination renders suspect such consideration of race today, even if it might be 'rational' in some sense."

And outside of the inner cities, it's unclear that such practices as race-based traffic stops on major highways-in which police are usually looking not for murderers, rapists, or robbers but for drugs-produce airy significant law enforcement benefit at all.

Meanwhile, the costs mount; as innocent people who are searched come away feeling mistreated. This takes an incalculable toll on the willingness of many black and Hispanic citizens to cooperate with police, to provide leads, to testify as witnesses, and, when they serve as jurors, to convict guilty people.

What can be done about racial profiling? The practice is too deeply ingrained in police culture, and too easily camouflaged, to be eradicated by legislation or lawsuits. The best remedy may be for police chiefs to train their officers to shun such profiling, and to recruit more black and Hispanic officers.

In the short run, we need more studies to expose the extent of racial profiling: San Diego and San Jose, Calif., are both doing studies of their own police forces. Political pressure, lawsuits, and enlightened self-interest should spur other cities and states to do the same.

Meanwhile, Congress should give careful consideration to a proposal by Rep. John Conyers Jr., D–Mich., to require the justice Department to collect and study racial and ethnic data about the drivers stopped and searched by state and local police.

Racial statistics can, of course, be manipulated to draw misleading inferences of discrimination, such as the wrong—headed notion that elite colleges discriminate against minorities by giving weight to Scholastic Aptitude Test scores in admissions. But unlike the case of SAT scores, racial profiling involves real discrimination. And on this issue, sunlight may be the best disinfectant.

Article by William Tucker, Weekly Standard, June 18, 2001

THE TRAGEDY OF RACIAL PROFILING

IT'S UNJUST-AND IT WORKS.

Last week, Hillary Rodham Clinton joined a growing chorus of lawmakers in calling for a federal ban on racial profiling. "Profiling is not an effective law enforcement tool," said New York's junior senator. "The vast majority of African Americans

and Hispanics who are stopped or searched have committed no crime." As this movement gathers steam, it's worth recalling one of the incidents that fueled the debate.

In November 1999, Academy Award-winning actor Danny Glover came to New York and found he couldn't get a taxicab. Angry, he called a press conference the next day to denounce "racial profiling." Within hours the New York Daily News was inundated with faxes and letters from middle-class blacks complaining of similar problems. Makeup artist Donyale McRae, cousin of the late jazz singer Carmen McRae, said he could not get a taxi while dressed in a tuxedo after attending the Grammy Awards at Radio City Music Hall. "I can hail a cab until I'm blue in the face," complained a 62-year-old publishing executive. "They will not stop."

Al Sharpton promptly filed a class action against the Taxi and Limousine Commission. Former mayor David Dinkins chided mayor Rudolph Giuliani for not doing his job. The New York Times-acknowledging that most of the drivers are immigrants-concluded: "Racism is perpetuated by cabbies whose attitudes have roots. . .in colonial rule." The drivers themselves claimed not to be bigots but admitted to racial profiling. Their defense was that they were justified in making race-based assumptions, because African Americans were more likely to take them into bad neighborhoods, rob them, or beat them for the fare. Giuliani sent undercover officers into the neighborhoods to catch the cabbies in the act, and several drivers-all from the Middle East or East Asia-were arrested.

Then another trend began. Within weeks of Glover's press conference, a string of cab drivers were killed by passengers. Two were murdered in November and December and two more in early 2000. When a 48-year-old Venezuelan immigrant, the father of five, was shot in his cab on February 24, police commissioner Howard Safir announced the formation of a special task force to investigate what the Daily News called the "wave of killings."

Meeting with police in Manhattan, 400 drivers agreed to allow police to stop cabs in traffic at any time to make sure they were not in trouble. Research showed that while only 22 licensed cab drivers, who operate mainly in midtown Manhattan, had been killed over the last decade, 230 livery drivers-who operate in poorer neighborhoods had been victimized. By March the "profiling police" were forgotten. Instead undercover officers were posing as livery drivers in East New York and the South Bronx. Even so, during two particularly grim weeks in April, four more drivers were murdered. During the first five months of 2000 ten drivers were killed one more than in all of 1999. Not until the city government spent $7 million helping livery services install bulletproof partitions or security cameras in their cars did the attacks subside.

Now, it's impossible to prove that the crackdown on "racial profiling" by cabbies led to the subsequent crime wave, but the sequence is suggestive. Though infuriating to honest customers, the cabbies' discrimination is not irrational. And the effort to stamp it out adds to the danger of driving a cab. This is a cautionary tale for those who would outlaw racial profiling by police. Because the evidence suggests, for all that good liberals like Hillary Clinton want to believe otherwise, that racial profiling is an effective law enforcement tool, though it undeniably visits indignity on the innocent.

Indeed, racial profiling is a predictable outcome of the stepped-up law enforcement of the 1990s. Violent crime rates have fallen in the last decade as in no other period in American history. In 1991 there were 24,700 murders in America. In 1999 there were 15,530 with a larger population. There are no doubt a number of factors at work, but one obvious one is the new style of law enforcement, pioneered in New York, where police seek to control "disorder" as well as crime. An outgrowth of George Kelling and James Q. Wilson's "broken windows" theory of the importance of public order, this labor intensive policing of the streets is effective, but intrusive. And it is unfortunately law-abiding blacks who often get caught in the crossfire. Those stories about well-dressed corporate lawyers being stopped for walking through their own suburban neighborhoods or "driving while black" are true. A few months ago I discovered a burglar in the living room of our Brooklyn home. After I ushered him out the door, the police arrived and began driving me around the neighborhood looking for the suspect. Halfway down the block, the detective started shouting, "Is that him? Is that him?" He was pointing to my friend and neighbor, a gray haired 55-year-old black man who is president of our block association.

Police officers usually come from working class backgrounds and seem unable to make distinctions between street criminals and middle-class blacks. Instead of using race as one of a number of cues, they over-generalize. Obviously, there is room for

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improvement. Yet the key questions remain: Are the police justified in paying more attention to blacks as potential criminal suspects? And will a broad-brush campaign against racial profiling undo the progress made against crime over the last ten years?

Downplaying this dilemma, liberals simply assert that the perception of black over representation in crime is a result of "racial profiling." New York State attorney general Eliot Spitzer issued a 1999 report concluding that blacks and Hispanics were "disproportionately represented" in 10,000 stop-and-frisks by New York City police. Disproportionate to what he didn't specify. Blacks constitute 44 percent of the population and were 49 percent of those stopped and frisked. They were also identified by the victims as perpetrators in 60 percent of all street crimes and constituted 55 percent of those arrested. From these numbers, you can more accurately argue that blacks were under represented in stop-and-frisks.

Writing for the New York Times, David Cole and John Lamberth, two of the leading spokesmen on "racial profiling," argue that, "even on its own terms, racial profiling doesn't work." As proof they note that "73 percent of those stopped and searched on a [Maryland] section of Interstate 95 were black, yet state police reported that equal percentages of the whites and blacks who were searched, statewide, had drugs or other contraband." Yet these equal arrest percentages are prima facie evidence that the police were doing their jobs fairly. If they were mistaken in their assumptions about black drivers, there should have been a lower percentage of arrests among the blacks searched.

In December, former attorney general Janet Reno stopped the first federal execution in almost 30 years,when she and former president Bill Clinton became concerned that the killer, drug kingpin Juan Raul Garza, was subject to discrimination because of anti-Hispanic racial profiling. Yet the federal statute under which Garza was tried applies to murders committed by drug dealers, and law enforcement officers up and down the line agree that the drug trade is now controlled by African-American, Caribbean, and Latin American groups. As Heather Mac Donald noted in her seminal work on racial profiling in the Manhattan Institute's *City Journal*: "The notion that there are lots of heavy-duty white dealers sneaking by undetected contradicts the street experience of just about every narcotics cop you will ever to talk to." (Garza is scheduled to be executed June 19, but there will probably be another stay as the justice Department continues its investigation.) Meanwhile the American Civil Liberties Union and the NAACP want to abolish capital punishment altogether because 43 percent of the people on death row are black. Yet blacks committed 52 percent of the murders in America over the past quarter century and are arguably under represented on death row-for reasons we'll see in a minute.

Discussions of racial profiling almost inevitably are based on an assertion that racial and ethnic groups should be subject to procedures in the criminal justice system based on their representation in the population rather than by the number of crimes they commit. But the justice system is not the House of Representatives. There is no constitutional guarantee of equal representation in the criminal dockets. Blacks are over represented for one simple reason-they commit many crimes at multiples above other racial groups. This propensity toward violent crime is probably the nation's number one social problem. Yet liberals, out of either willful naivete or chutzpah, choose to pretend it doesn't exist. Senator Robert Torricelli, for instance, made this claim at the confirmation hearings of attorney general John Ashcroft: "Statistically, it cannot be borne out that certain ethnic or racial groups disproportionately commit crimes. They do not." It would be interesting to know where he is getting his statistics.

Here are some of the ones he apparently is not familiar with. Murder is a common barometer for violent crime because it is nearly always reported. The homicide rate in America in 1999 was 5.7 per 100,000, more than three times the rate of other industrialized countries. The figure has dropped from 9.8 per 100,000 in 1991, and has not been this low since 1966.

Yet these national figures mask an extraordinary differential between black and white homicide rates. In 1999, the murder rate for white offenders was 3.5 per 100,000double that of some European countries. The rate among blacks was 25.5, seven times the white rate. In 1991, the disparity was even greater-5.7 for whites and 50.4 for blacks. The victimization rate is similarly disproportionate. A young black male living in Detroit or the District of Columbia from age 16 to 25 is half as likely to "die in combat" as was a U.S. soldier during World War II. While murder rates among whites have been in a slight but steady decline over the past 20 years, murder rates among blacks have fluctuated wildly. Indeed, the dramatic rise and fall of murder rates over the past 25 years is almost entirely a reflection of black crime rates.

The figures for other violent crimes reflect the same pattern. While only 13 percent of the population, blacks commit 46 percent of all robberies and 21 percent of rapes. The victims of rape and armed robbery survive, and reports of the racial identity of the offender are highly reliable. Blacks are arrested for rape and robbery in the same proportions, indicating there is no bias in the system. More than 68 percent of all crimes of violence occur among blacks. The term "among blacks" is very precise. Interracial crimes usually get more press coverage, but that's because they are less common. More than 85 percent of murders are intraracial. Black-on-black killings are 42 percent of all killings, while white-on-white killings are 46 percent. Only 15 percent of white victims were murdered by blacks, and only 6 percent of black victims were murdered by whites.

It has been argued that whites do not have to resort to violence, and that they commit their crimes in a white collar venue. "Some will rob you with a six-gun, some with a fountain pen," as the old song goes. But this turns out to be untrue as well. Although under represented in the white-collar work force, blacks commit more than 30 percent of all fraud, forgery, and counterfeiting and 25 percent of all embezzlements. In New York City recently, a black office worker was found to be robbing banks on his lunch hour. His coworkers had often remarked on his remarkable resemblance to the "Wanted" pictures they had seen posted in neighborhood banks.

This pattern is so pervasive that people become inured. Here, for example, is a chronicle of all the murders reported in the Daily News from a period of one week, chosen randomly by throwing a dart at a calendar (early May, as it happens).

- A 65-year-old black man was killed in Harlem when he was caught in the crossfire between two drug gangs.
- A 42-year-old black man in Brooklyn was stabbed and killed by his black girlfriend.
- A 54-year-old black man in the Bronx shot and killed a 37-year-old black vagrant when he found him vandalizing his car.
- A 17-year-old Hispanic man was charged with beating to death his girlfriend's 2-year-old son.
- An 11-year-old Hispanic girl was raped and killed in her apartment building by a 43-year-old black ex-convict who lived in the next-door apartment.
- A 32-year-old black female livery driver was shot and killed on the job by her Hispanic ex-boyfriend.
- A black Brooklyn teenager was fatally stabbed during a street argument.
- A white woman and two white men were shot execution-style in her apartment in Manhattan during a drug robbery. The woman, who once had a bit part in Dirty Dancing, had dealt marijuana for years. Two black ex-convicts were identified as the suspected killers.
- The fire department discovered the body of a black woman in a vacant lot.
- An 80-year-old white woman in Greenwich Village was stabbed to death in her apartment. A few days later, a 28-year-old black female drug addict was arrested. The woman had befriended the drug addict and often let her use her phone.
- A newborn black baby was found dead under the boardwalk at Conev Island. The mother was being sought.

During the same week, the FBI gunned down a 35-year-old Pakistani fugitive in a midtown hotel. The man was wanted for kidnapping a 17-year-old girl in Las Vegas and subsequently killing a man during a carjacking. Also, the daughter of Bronx borough president Fernando Ferrer complained that she had been racially profiled after being stopped for a traffic violation.

Why is racial profiling seen as such a critical issue among all this mayhem? The main reason, I think, is the tendency of any group to externalize evil. It is much more reassuring to perceive violence and evil coming from without than within. Thus, the killing of a single black man by a group of mostly white police officers is remembered years afterwards while the day-to-day mayhem goes virtually unnoticed.

Is there anything that can be done to stem this tide of violence? Continued law enforcement has already brought big dividends. It is an open question whether those dividends will continue in the face of a national crusade against racial profiling. Police are likelier to throw up their hands and tolerate greater disorder than they are to be aggressive and risk accusations of profiling.

But there is one place where the justice system does egregiously and visibly discriminate, and it is overdue for attention by crusaders targeting racial injustice.

Studies have shown that prosecutors, judges, and juries are six times less likely to impose capital punishment when the murder victim is black rather than white. This probably helps to explain why blacks are six times more likely than whites to be murder victims. It is also why black convicts are under represented on death row. Most of their murders are committed against other blacks.

During the 1930s, when similar, although less pervasive, violence engulfed Italian neighborhoods, cities often adopted a tacit policy not to lean too heavily on enforcing the law. "They only kill each other" was the byword. As long as killing was confined to other gangsters, the justice system turned a blind eye. Only when the violence spilled into the larger society was it punished. The same principle remains a constant temptation for police today, and the campaign against racial profiling will only encourage it. When blacks kill other blacks, the system is less responsive.

Enforcing the death penalty for black-on-black murder would be the best way to break the back of the cycle of violence in black communities. It would also be highly embarrassing. It would explode the myth that violence comes from outside the black community and that bigoted law enforcement or white-on-black crime is the principal problem. More than 85 percent of the additional people put on death row would be black.

It's a painful and difficult decision for liberals and their African-American political allies to face. It's certainly understandable why they prefer to go on hand-wringing over "racial profiling."

VICTIMS OF CRIME AND LENIENCY,
MONTGOMERY, ALABAMA,
July 31, 2001

Chairman Russell D. Feingold
Subcommittee on Constitution,
Federalism, and Property Rights
U.S. Senate
Washington, D.C. 20510

Ranking Member Strom Thurmond
Subcommittee on Constitution,
Federalism, and Property Rights
U.S. Senate
Washington, D.C. 20510

Dear Chairman Feingold and Ranking Member Thurmond:

I am the Executive Director of statewide victim's rights organization in Alabama. I have been apprised of S. 989—Racial Profiling and I am very disturbed over the content of this bill. We, too, abhor treating someone differently due to the color of their skin however, I am afraid this legislation will only create the very chasm it is intended to avoid.

VOCAL. (Victims of Grime and Leniency) has been counseling, supporting and legislating for crime victims since 1982. Crime is color-blind, yet we know a majority of crime victims unfortunately, are minorities. I fear that S. 989 is so restrictive that law enforcement will become intimidated, be fearful of unwarranted reprisals and we will become a society with no protection at all. We cannot keep tying the hands of law enforcement and expect protection at the same time. Racial Profiling is deplorable but it should be dealt with more effectively than this bill provides.

We ask that you prayerfully consider all crime victims as you hold this hearing and we hold you in our prayers as you weigh the pro's and con's of this legisiation.

Respectfully,

MIRIAM SHEHANE
Executive Director

Article by George F. Will, Washington Post, April 19, 2001

EXPOSING THE 'MYTH' OF RACIAL PROFILING

It is former senator Eugene McCarthy's axiom: Anything said three times in Washington becomes a fact. So it now is a fact, universally attested and detested, that racial profiling is a widespread police tactic. Everyone says so, especially since the disturbances in Cincinnati set off a riot of television chatter, many of the chatterers having no direct knowledge of that city, or of policing.

Even George W. Bush has made an obligatory genuflection at the altar of the conventional wisdom—"Racial profiling is wrong and we will end it in America"—and Attorney General John Ashcroft is encouraging the rapidly increasing trend of states requiring police to record racial data on traffic stops and searches. So who is Heather Mac Donald to cast decisive doubt on the prevalence, even the existence, of racial profiling?

She is the indispensable journalist. If you question that characterization, you have not read her just-published collection of essays, "The Burden of Bad Ideas: How Modern Intellectuals Misshape Our Society." Read it after you read her latest dissection of such an idea, "The Myth of Racial Profiling," in City Journal, published by the Manhattan Institute.

Mac Donald distinguishes, as anti-racial profiling crusaders rarely do, between "hard" and "soft" profiling. The latter uses race as one factor among others in estimating criminal suspiciousness. As when, Mac Donald says, police have intelligence that in the Northeast drug-shipping corridor many traffickers are Jamaicans favoring Nissan Pathfinders.

Charges of racial profiling usually arise from data about traffic stops, data that supposedly vindicate complaints that minorities are victimized merely because they are "driving while black." But data about "disproportionate" stops of minority drivers are worthless without additional information that would be necessary to substantiate the charge that "too many" minority drivers are being stopped, searched and arrested.

Most anti-profilers concede that most stops arise from an actual traffic Weekly Sections violation (e.g., the Pathfinder is speeding or has visible illegal defects, such as nonfunctioning lights). So, Mac Donald writes, it is pertinent to know whether disproportionate numbers of minorities drive recklessly or drive defective vehicles, or whether they drive at times when, or in places where, police are, for good law enforcement reasons, particularly attentive. And the validity of the data purporting to document "disproportion" depends on comparisons of the amount of driving done by different racial groups, so that stops per man-mile, rather than just stops per person, could be compared. Do minorities commit more of the kinds of traffic violations that most attract police attention? Data (about intoxication, and involvement in injury and fatality accidents) suggest so.

Mac Donald says that of course there is "soft" profiling in the sense that some vehicles are stopped because, in addition to some infraction, the driver and the kind of vehicle and the direction and the number and type of occupants fit the profile of a drug courier. Yet anti-profilers insist, as does Sen. Robert Torricelli from the corridor state of New Jersey, that there is no evidence "that certain ethnic or racial groups disproportionately commit crimes. They do not."

But of course they do. And once a traffic stop is made, any subsequent search of the vehicle is apt to be triggered by behavioral cues (nervousness, conflicting stories) on the part of the vehicle's occupants, cues having nothing to do with race or ethnicity.

In 1999, during hysteria about profiling, then-Gov. Christine Todd Whitman fired New Jersey's state police superintendent because he uttered a truism often confirmed by the Drug Enforcement Administration—that minority groups dominate cocaine and marijuana trafficking. Mac Donald reports that New Jersey's state police "no longer distribute a typical felony offender profile to their officers" because such profiles might contribute to what the state's attorney general calls "inappropriate stereotypes" about criminals. Here "inappropriate" is a synonym not for "inaccurate" but for "inconvenient."

It is an awkward fact, but it is a fact even though there may not be three Washingtonians rash enough to utter it: Felons are not evenly distributed across society's demographic groups. Many individuals and groups specialize in hurling accusations of racism, and police become vulnerable to such accusations when they concentrate their efforts where crime is.

If that accusation begins to control policing, public safety will suffer—especially the safety of minorities in violent and drug-infested neighborhoods. Those neighborhoods, where the primary complaint against the police usually is that they are too few in number and too tentative against predators, are not the neighborhoods where anti-profiling crusaders are apt to live.