

INTRADEPARTMENTAL CORRESPONDENCE

August 19, 2008
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TO: Board of Police Commissioners

FROM: Executive Director, Board of Police Commissioners

**SUBJECT: REVIEW OF PROCEDURES AND PROCESSES OF LAW
ENFORCEMENT AGENCIES RELATIVE TO ALLEGATIONS OF
RACIAL PROFILING, DISCRIMINATION AND RACIAL BIAS
INVESTIGATED AND ADJUDICATED BY A CIVILIAN OVERSIGHT
BODY**

RECOMMENDED ACTION

That the Board REVIEW and APPROVE the report of the Executive Director.

BACKGROUND

At the direction of the Executive Director, Board of Police Commissioners, this project was initiated to research what procedures and processes exist to investigate community allegations regarding racial profiling, discrimination and racial bias made against a law enforcement agency. Of particular interest were situations where these community allegations are reviewed, investigated and adjudicated by a civilian law enforcement oversight body or similar entity. Also reviewed were the processes used by the various agencies to investigate such allegations or complaints and their final determinations. The statistical data encompassed calendar year 2006 and/or 2007.

Seven law enforcement agencies within the State and eight¹ outside California were included in our review. These agencies were all chosen at random by the Executive Director. The law enforcement agencies within California were from San Francisco, Oakland, Richmond, Berkeley, San Diego (City and County) and Los Angeles County. The law enforcement agencies from other states included the cities of New York, New York; Philadelphia, Pennsylvania; Miami, Florida; Seattle, Washington; Houston, Texas; Detroit, Michigan; the New Jersey State Police; and, Cincinnati, Ohio. All of these law enforcement agencies had some form of civilian oversight board. In addition to this sample, the Inspector General also forwarded a prepared email request to the membership of the National Association for Civilian Oversight of Law Enforcement (NACOLE) requesting any information they could provide relative to our project. The County of Los Angeles, Office of Independent Review responded as part of NACOLE.

¹ The Police Departments from Detroit, Michigan and Houston, Texas were contacted; however, they did not respond to our inquiry nor did they provide any information.

FINDINGS

San Francisco Police Department – Office of Citizen Complaints

The City of San Francisco, California had a 2007 estimated population of 764,976. In 2006 the Census Bureau estimated that 44.6% of the population was White (non-Hispanic); Asian Americans made up about 33.3% of the population; 14% of the population was Hispanic (of any race); and, 7.2% was African American. San Francisco Police Department (SFPD) total staffing for 2007 was 2,646 personnel. Of that total, 2,296 were Sworn. The department demographics show that 85% are male and 15% are female. The racial composition of the department is 60% White; 13% Hispanic; 13% Asian; 10% African-American; 4% Hawaiian/Pacific Islander; and, 1% Native American.

The Office of Citizen Complaints (OCC) was created by an amendment to the San Francisco City Charter and was placed under the direct supervision of the Police Commission in 1983. Its purpose is to investigate complaints against San Francisco police officers. Civilians who have never been police officers in San Francisco staff the OCC.

When a complaint is made with the OCC, the following procedure is followed:

- The OCC investigates the complaint. If the OCC sustains the charges, they are forwarded to San Francisco Police Department (SFPD) Management Control Division (MCD).
- The MCD Lieutenant evaluates the case and makes recommendation to the Captain of the Risk Management Office (RMO).
- The case is forwarded to the Captain of RMO who evaluates and makes a recommendation to the Chief of Police.
- If, after reviewing the case and recommendations, the Chief agrees with the OCC that discipline is warranted, the Chief determines whether to hold a Chief's hearing or to file charges with Police Commission. (If the Chief disagrees with the OCC, the Police Department and the OCC begin discussions aimed at resolving their disagreement.)
- If the Chief opts for a Chief's hearing, MCD serves the named member with the notice of proposed discipline and
 - The member accepts proposed discipline (case is closed).
 - The member requests a hearing (case is open).
 - After the Chief's hearing, the Chief may decide that discipline is not warranted (case is closed) or may impose discipline (case is closed unless member appeals to the Police Commission).
 - If the member appeals to the Police Commission then the following may occur:
- If the Chief opts for a hearing before the Police Commission, MCD serves the named member with charges and
 - If the Commission sustains the charges and imposed discipline the case is closed unless the named member challenges the Commission's decision by writ to the Superior court.
 - If the Commission does not sustain the allegations, the case is closed.

In their statistical report for 2006 called "Status of OCC Complaints," there were 817 cases listed. The report provided a "synopsis" of each case. Racial profiling was indicated in four cases. None of the complaints regarding racial profiling were sustained. In other reports entitled "Findings and Allegations Closed," they listed "racial slurs" (RS) as an allegation type. Although the use of racial slurs does not necessarily prove racial profiling, the behavior could be seen an indicator. For the period January 1, 2006 through December 31, 2006, "RS" was listed as the allegation type in 17 cases. None of the 17 allegations was sustained. They were either listed as "No Finding/Withdrawn" or as "Not Sustained." The OCC Chief Investigator noted that one of their allegation types, "Conduct Reflecting Discredit," could also include charges of selective enforcement and gender bias. These charges could indicate some level of racial profiling. Unfortunately, these charges are neither listed nor tracked by the OCC as distinct allegation types. Our discussion revealed that San Francisco has not identified a pattern of racial profiling complaints like Los Angeles. Their complaints are more typically allegations of disparate treatment due to someone's perceived sexual orientation, sexual preference or transgender issues. The Chief Investigator also confirmed that the OCC does not have specific protocols for conducting their racial profiling investigations.

Oakland Police Department – Citizens' Police Review Board

In early 2008, the City of Oakland, California had an estimated population of approximately 420,183. The racial makeup of the city was 38.66% African American; 23.52% White; 21.19% of the population was Hispanic (or Latino of any race); 15.23% was Asian American; 11.66% Other; 4.98% two or more races; 0.66% was Native American; and, 0.50% was Pacific Islander. The Oakland Police Department has an authorized force of 803 personnel. However, as of December 2006 they had 725 active duty sworn personnel, which also included their command staff.

The Oakland City Council established the Citizens' Police Review Board (CPRB) on April 15, 1980, to review certain complaints of misconduct by police officers or park rangers, conduct fact-finding investigations and make advisory reports to the City Administrator. In July 1996, the City Council expanded the Board's original jurisdiction to include complaints involving the excessive use of force or communication of bias based upon an individual's legally protected status (race, gender, national origin, religion, sexual orientation or disability).

In 2002, the Oakland City Council further expanded the Board's jurisdiction and powers. The City Council granted the Board original jurisdiction over all complaints filed against Oakland police officers or park rangers. Additionally, the City Council granted the Board the option of holding evidentiary hearings using three-members to review confidential records from the Oakland Police Department in closed session.

The City Council further refined the amendments to the CPRB ordinance and legislated the following: (1) the CPRB staff may make recommendations to the City Administrator regarding cases that are in litigation, (2) CPRB investigations may take up to 180 days from the initial date

of filing as opposed to the previously legislated 60 days, and (3) OPD's Internal Affairs Division and the CPRB will use the same complaint form with sequential numbering.

After a complaint has been filed with the CPRB, the following process allows:

- Complaints are investigated by a civilian complaint investigator who prepares an investigative report for the Citizens' Police Review Board. The Board is a nine member advisory body. Members are appointed by the Mayor and confirmed by the City Council.
- The Board conducts hearings on some cases and may make written recommendations to the City Administrator for discipline of officers or rangers.
- The City Administrator decides whether to implement the recommendations of the Board, to implement them with modifications, or not to implement them.

In 2006, the CPRB received 77 total complaints, filed by 82 individuals. The CPRB does not use the term "racial profiling" in their list of allegation types. The Policy Analyst for the CPRB explained that the allegation type that would indicate racial profiling is called "Bias/Discrimination." In these cases the complainant is alleging that the reason for the officer's enforcement action against them was their race. For 2006, the CPRB investigated seven allegations regarding "Bias/Discrimination." The Board determined that all seven of the allegations were "Unfounded." The Policy Analyst also stated that CPRB does not have specific protocols for conducting investigation involving racial profiling.

Berkeley Police Department – Police Review Commission

According to the 2000 Census Berkeley, California had approximately 102,743 residents. Of that total, 55.2% were White; 16.3% Asian American; 13.3% African American; 9.7% Hispanic; and, 5.5% Other.

The Berkeley Police Department (BPD) currently has about 184 officers employed. Of that total, 58.7% are White; 15.7% Black; 15.7% Asian; 9.3% Hispanic; and, 0.5% American Indian.

The Police Review Commission (PRC) staff will first screen complaint forms for timeliness of complaint submission. Staff will determine whether to investigate the allegations of misconduct or any BPD policy issues. Police Review Commission staff will forward a list of allegations from the complaint to BPD to provide notice that a complaint has been filed against the subject officer(s).

Police Review Commission investigators interview the complainant, witnesses, and police officers and gather relevant evidence. The PRC investigator analyzes police reports, communication dispatch reports, photographs and any other physical or documentary evidence relevant to the complaint. Upon collection of all evidence, the Investigator will prepare a report and recommend whether the case should be closed or forwarded to a Board of Inquiry.

A Board of Inquiry is an evidentiary hearing of the complaint, consisting of three Commissioners, who review an investigation report and make a determination on the findings of

a case. The hearing provides an opportunity for the Board to question the complainant and police officers about their version of the events forming the complaint.

After reviewing the evidence and receiving witness testimony, the Board deliberates and determines findings based upon a "clear and convincing" standard of proof. The Commission could find that the allegations of misconduct against an officer were either sustained, not sustained, unfounded or exonerated. The Commission's findings are forwarded to the complainant, subject officer, City Manager and Chief of Police. The City Manager will agree or disagree with the Board's findings and, as the official responsible for the Police Department, will act on the findings as appropriate.

In 2006, 34 total complaints were filed with the Police Review Commission. The Commission has no allegation category for racial profiling. According to a PRC Investigator, racial profiling would be included in their "Discrimination" allegation. For the PRC, "Discrimination" includes all allegations concerning a favorable or unfavorable treatment of action by a police employee which exhibits partiality or prejudice based upon a person's race, sex, religion, political persuasion or appearance. The 34 complaints resulted in five (5) allegations of "Discrimination." In all five cases, no Hearings were conducted and none of the allegations were Sustained. The Berkeley Police Review Commission has no protocols for conducting racial profiling investigations.

Richmond Police Department – Police Commission

Based upon its 2000 Census demographic profile, Richmond, California has a population of approximately 99,216 people. Richmond's race and ethnic composition is 36% Black or African American; 27% Hispanic or Latino; 21% White; 12% Asian; 3% two or more Races; and 1% Other. According to the Richmond Police Department, their current deployed strength is 165 police officers. The Police Department is approximately 35% White; 35% Black or African American; 25% Hispanic or Latino; and, about 5% Asian.

The Richmond Police Commission was established to investigate citizen's complaints of excessive or unnecessary force and racially abusive treatment. They also handle appeals from Professional Standards investigators. If a citizen wishes to file a complaint against a Richmond police officer, it should be filed in writing within 45 days of the alleged misconduct. Complaints filed with the Police Commission must be in writing and signed by the person or their guardian making the complaint.

The Police Commission does not have original jurisdiction over non-force and other police misconduct complaints (such as being discourteous); it has jurisdiction through the appeal process. Appeals of Police Department Internal Affairs investigations must be filed within 10 days of the date the disposition letter is sent from the Chief of Police.

Complaints that are to be formally investigated by the Police Commission's Confidential Investigative and Appeals Officer receive prompt, complete and comprehensive investigations. The Commission reviews the investigative report and sends its findings, recommendations and

all complaints to the Chief of Police who may decide to conduct his own investigation. If the Chief does not accept the recommendations of the Police Commission, the matter will be transferred to the City Manager for the final disposition. Persons filing complaints will be notified, in writing, of the disposition of their complaint.

The Confidential Investigative and Appeals Officer for Richmond's Police Commission explained that they do not use the term "racial profiling" to refer to a specific allegation. Complaints regarding racial bias are listed as "Racially Abusive Treatment." They further stated that they have not had a complaint alleging Racially Abusive Treatment for over a year. He said that their Police Commission does not maintain statistical data on their investigations. They do not have specific protocols for conducting their racial profiling investigations.

The City of San Diego – Citizens' Review Board on Police Practices

According to the 2000 Census, the City of San Diego had a total population of over 1,223,400. Of that total, 49% were White; 25% Hispanic; 14% Asian; 8% were Black/African American; 3% Two or more races; and, 1% American Indian. The San Diego Police Department did not provide us with a demographic breakdown of their personnel.

The purpose of the Citizens' Review Board on Police Practices (CRB) is to empower an independent group to assure the public that complaints against San Diego police officers are investigated thoroughly, completely and fairly; and, to recommend and advocate for policies which promote fair and humane policing of the city. The Board reviews and evaluates serious complaints brought by the public against officers of the Police Department of the City of San Diego. It reviews all officer involved shootings and in-custody deaths; and, it reviews and evaluates the administration of discipline arising from sustained complaints.

When a complaint is received by the CRB, it is forwarded to the San Diego Police Department where it is reviewed by the Commanding Officer of Internal Affairs. Internal Affairs returns a copy of the citizen's complaint form to the complainant for review and approval. Once approval is received, the complaint is categorized and assigned for investigation. Complaints that are categorized as Category I Complaints (force, arrest, discrimination, criminal conduct and slurs) are investigated by Internal Affairs. Category II Complaints (procedure, courtesy, service and conduct) are assigned to a supervisor and investigated in the command where the involved officer(s) works.

In the Category I Complaints, the assigned investigator will contact the complainant to schedule a formal interview. An uninvolved support person may accompany the complainant to the interview. The investigator will then gather as much information as possible through Police Department records, interviews of civilian witnesses, police officers involved and any other sources available. Before a final determination is made by the investigator, the case is thoroughly reviewed by the investigators' supervisor in the Internal Affairs Unit.

At the completion of the Internal Affairs investigation, Category I Complaints are assigned to a three-person panel of the CRB for a thorough review and evaluation of the facts of the case. (The full Review Board is composed of 23 persons.)

These teams review cases in the Internal Affairs office. Upon completion of the review, a report is prepared that concludes with the team either agreeing or disagreeing with the Internal Affairs' findings.

If Internal Affairs and the CRB team disagree:

- The review teams meet with the Internal Affairs Commanding Officer and the Investigation Sergeant.
- The disagreement is discussed.
- The team asks for clarification and/or further investigation.
- 98% of disagreements are resolved at this level.

Finally, the full Citizens' Review Board receives the case for discussion and makes a recommendation to the Chief of Police regarding the alleged misconduct.

The complainant is then notified by separate letter of the Internal Affairs and Review Board findings. The Police Department strives to complete most cases in 90 to 120 days and the Review Board strives to complete its process within an additional 30 days.

At the end of the process, if a disagreement still exists between the CRB and the San Diego Police Department, the CRB Chair, the CRB Executive Director and the Assistant Chief of Police for Professional Standards will meet to discuss the issues. An independent investigation may be conducted at this point.

If the issues cannot be resolved, the CRB has the authority to independently refer a complaint investigation to the Grand Jury, District Attorney or any other governmental agency authorized by law for further investigation and review.

In Category II Complaints the assigned investigator will contact the complainant to schedule a formal interview. An uninvolved support person may accompany the complainant to the interview. The investigator will then gather as much information as possible through Police Department records, interviews of civilian witnesses, police officers involved and any other sources available. Before a final determination is made by the investigator, the case is thoroughly reviewed by the investigators' supervisor and the Internal Affairs Unit.

Category II Complaints are finalized at this point and the complainant is notified of the finding(s). The entire process usually takes 45 to 60 days.

For 2006, the "Statistical Breakdown of Complaint Cases" showed that there were 61 total complaint cases reviewed that resulted in 85 total Category I allegations. The Citizens' Review Board and the San Diego Police Department do not list Racial Profiling as one of their allegation

types. The Executive Director of the CRB advised that their allegation of "Discrimination" most closely matched our Racial Profiling allegation. There were 10 allegations of Discrimination for 2006. Of that total, one was found Not Sustained and 9 were Unfounded. According to the Executive Director, there are no specific protocols for investigating these complaints.

The County of San Diego – Citizens' Law Enforcement Review Board

According to 2006 population estimates, the county of San Diego had approximately 2,941,454 residents. Of this total, 51.7% were White (non-Hispanic); 30.1% Hispanic; 10.3% Asian; 5.5% Black; 1.0% American Indian; and, 0.5% Native Hawaiian and other Pacific Islanders.

The Sheriff's Department for San Diego County also includes custodial officers as well as sworn peace officers. The department has a total of 3,907 regular employees. Of that total, approximately 53.41% are White; 21.83% are Hispanic; 15.28% are Asian; 7.55% are Black; 1.10% are Native Hawaiian/Pacific Islander; and, 0.81% are American Indian/Alaska Native.

In November of 1990, the citizens of San Diego County voted to establish the Citizens' Law Enforcement Review Board. The Review Board is composed of 11 citizens appointed by the Board of Supervisors. The Review Board was established for the purpose of receiving and investigating complaints of misconduct by peace officers and custodial officers employed by the Sheriff's Department or the Probation Department. The Review Board is also able to investigate any deaths, which occurred while in the custody of, or in connection with, actions of peace officers or custodial officers employed by the Sheriff's Department or the Probation Department. The Review Board advises the Board of Supervisors, the Sheriff and the Chief Probation Officer on matters related to the handling of citizens' complaints or deaths, or departmental policies and practices.

Citizen complaints filed with the Review Board are transmitted to the Sheriff or the Chief Probation Officer. The complaints are then referred to the Executive Officer for screening and investigation. Each complaint will be initially screened by staff and classified in one of five categories. A "Category I" is a complaint against a peace officer or custodial officer which requires an immediate and thorough investigation. A "Category II" is a complaint which does not warrant an immediate and full investigation and/or is appropriate for deferral. A "Category III" is essentially a request for information. A "Category IV" is a complaint that is not within the jurisdiction of the Review Board. A "Category V" is a complaint that may be referred to the Review Board for Summary Dismissal. The classification of each complaint must be reviewed and approved by the Review Board before significant further action is taken by staff. The Executive Officer will periodically advise the Review Board as the progress and status of each complaint. The Executive Officer may also periodically advise the complainant and the subject officer(s) as to the status of a complaint.

At the conclusion of the investigation, the Review Board investigator will complete an appropriate written report summarizing what investigation was conducted and what information was disclosed by the investigation. The report will also contain a procedural recommendation by the Executive Officer to the Review Board as to what further action should be taken by the

Review Board, such as whether an investigative hearing before a three-member Hearing Panel is appropriate, or before the full Review Board, or whether the case is appropriate for Summary Dismissal, or any other appropriate action or disposition. The Investigative Report will be submitted to the Chair of the Review Board who may attach his or her own recommendation and submit the entire report to the Review Board, either orally or in writing, or both. After receipt of the Investigative Report, the Review Board will take whatever further action it deems appropriate for disposition of the Complaint. The Executive Officer explained that the Review Board's final decision is advisory only.

The Review Board's 2006 Annual Report shows that there were 108 total complaints with 280 allegations. The Executive Officer said that they have no specific allegation for Racial Profiling. They do however have "Discrimination Allegations." This allegation includes discrimination based on National Origin, Race, Religion, Sex/Gender and Other. The Discrimination Allegation best matches our Racial Profiling. For 2006, there were seven total Discrimination Allegations. The Executive Officer explained that their complaint data does not indicate how each allegation was adjudicated. Instead, it gives the findings by case number and the complainant's last name but it does not indicate what the individuals' complaint actually was. Although there were seven allegations of Discrimination, The Executive Officer did not believe that any of them were sustained. They have no specific protocols for investigating these types of complaints.

County of Los Angeles – Office of Independent Review

The 2006 U. S. Census Bureau data shows that Los Angeles County had an estimated population of 9,948,081. Of that total: 47% were Hispanic (or Latino origin); 29% were White (not Hispanic); 13.1% were Asian; 9.6% were Black; 1.0% were American Indian and Alaska Natives; and, 0.3% were Native Hawaiian and Other Pacific Islanders. The County Sheriff's Department has approximately 8,000 sworn peace officers and a total of 16,000 employees.

The Office of Independent Review (OIR) is the civilian oversight group that was created by the Los Angeles County Board of Supervisors and began its work in 2001. The OIR monitors the Los Angeles County Sheriff's Department (LASD) and provides legal advice to ensure that allegations of officer misconduct involving LASD are investigated in a thorough, fair and effective way.

Based on a structure that came largely from the current Sheriff, Lee Baca, OIR consists of six attorneys with backgrounds in criminal law and civil rights issues. These six attorneys of OIR work with LASD on a daily basis but not for LASD. The Office of Independent Review is specifically designed to be an independent entity. It has the freedom to arrive at its own conclusions and, if necessary, to challenge the department regarding specific practices or incidents. OIR has full access to relevant documents, meetings and personnel within LASD. It has a close working relationship with LASD's Internal Affairs Bureau and Internal Criminal Investigations Bureau and is able to participate in ongoing investigations as needed in order to promote their effectiveness. OIR also looks at broader LASD policies and practices and makes recommendations where appropriate to enhance both officer performance and the safeguarding of individual rights.

The Office of Independent Review is notified when internal affairs receives a request for an investigation. At times, OIR is aware of these investigation requests before they are formally made because OIR participated in the shooting review, force review or criminal investigation that precipitated the request. In other instances, OIR is aware of the request for an investigation because OIR has actually caused LASD to initiate the investigation based on information it has received through civil claims and lawsuits or public and private attorneys. At the start of an investigation, the OIR attorney may confer with the investigator to learn the known circumstances of the case and to discuss investigative strategy and the most urgent sources of evidence.

During the pendency of the investigation, the OIR attorney meets with investigators as needed to discuss the scope and focus of the investigation and any legal problems encountered.

The Office of Independent Review obtains a copy of the investigation file upon its completion and reviews it for thoroughness and fairness. If OIR identifies any issues regarding the completeness of the investigation, it will request further investigation. If OIR identifies any issues of fairness in the investigation, OIR will either attempt to address them through the current investigation or through a systemic change to LASD training, policy or practice. When the investigation is complete, the OIR attorney meets with the assigned member of the Advocacy Unit to discuss which potential policy violations should be charged and the evidence that supports each charge.

Once the charges have been finalized, the OIR attorney meets with the first-level decision maker, usually the unit Captain, to present OIR's opinion as to whether the charges against the LASD personnel should be Founded, Unfounded, Unresolved or Exonerated. For investigations where the OIR attorney believes at least some of the charges should be founded, the OIR attorney also formulates a recommended discipline or discipline range.

The Office of Independent Review relies on a frank discussion with the first-level decision maker to produce an appropriate resolution of the investigation. They have found that this in-depth consultative approach has, to date, produced a consensus in virtually every case. If, however, OIR and the first line decision-maker cannot reach an agreement as to the ultimate conclusion on a case, OIR has the option to press its position with the Division Chief, who must approve the conclusion or with the Undersheriff or ultimately with the Sheriff.

In our review of their Quarterly Reports, it was noted that their allegations were not categorized according to type. Their allegations were merely a description of the particular incident or the activity. The Deputy Chief Attorney for OIR explained that this was done intentionally so that the average person would easily be able to understand what the allegations meant. He also said that the cases listed in their reports were administrative cases specifically selected for the report. He explained that the type of cases or allegations that the Commission was inquiring about (racial profiling) were almost always handled at the unit level and would never reach their Quarterly Reports. He also estimated that about 55% of all cases are done at the unit level and will not appear in their Quarterly Report. The Deputy Chief Attorney said that racial profiling

was not a major issue for them and they did not maintain any particular statistics on such cases. He also said they had no special protocols for investigating such cases.

Miami, Florida – Civilian Investigative Panel

The City of Miami has an estimated population of 362,470 persons. Miami's demographics show that 65.8% of the population is Latino; 22.3% is Black; and, 11.8% of the population is White. The Miami Police Department has approximately 1,100 sworn peace officers and 350 non-sworn personnel. The sworn personnel breakdown is 82% male and 18% female. The department is 54% Hispanic; 27% African-American; and, 19% White.

The City of Miami's Civilian Investigative Panel (CIP) is a 13 member panel whose mission is to provide the community with independent and impartial oversight of the Miami Police Department through monitoring and analysis of police practices, policies and procedures, investigation into allegations of misconduct and extensive community outreach.

The overall goal of the CIP is to ensure independent civilian oversight of sworn personnel in the Miami Police Department (MPD) and make recommendations specific to policies, procedures and training. The core responsibility of the CIP investigative staff and independent investigators is to conduct fair and thorough investigations into allegations of police misconduct and make recommendations where appropriate as it relates to the nature and quality of the MPD internal investigation and/or policy or procedural issues arising out of or relating to an investigation.

All complaints and closed Internal Affairs (IA) cases are preliminarily reviewed by CIP staff and a determination is made as to whether the CIP will conduct an independent investigation. If, after consultation between the Chief Investigator and Independent Counsel, it is determined that an investigation is warranted, the case is assigned to one of the independent investigators. Once an investigation is complete, it is reviewed by CIP staff and submitted to the Complaint Subcommittee with a recommendation. The Complaint Subcommittee reviews the IA case/complaint, any investigative reports, any supporting documentation and testimony from complainants, witnesses or officers if needed. The Complaint Subcommittee then forwards their recommendation to the full panel. When the findings and recommendations are approved by the CIP, they are submitted to the Police Chief and City Manager in writing. The CIP recommendations are advisory only.

The Civilian Investigative Panel Annual Report for Fiscal Year 2006 showed a total of 515 "Closed Cases Allegations." Among the individual allegations listed was Racial Profiling. For Fiscal Year 2006, there was only one allegation of Racial Profiling. The report did not indicate the finding for this allegation. In further discussions with the Chief Investigator for CIP, he stated that the one allegation was unfounded because no such allegation had been sustained since he has been with CIP. It was his opinion that racial profiling was more of a perceived problem for some people but there were no real statistics to support that perception. They had no specific protocols for investigating racial profiling allegations.

Philadelphia, Pennsylvania – Police Advisory Commission

According to the U. S. Census for 2000, the city of Philadelphia had an estimated population of 1,517,550. Of that total number 43.2 % were Black; 42.5% were White (Non-Hispanic); 8.5% were Hispanic; 4.8% were Other race; 2.2% were Two or more races; 1.2% were Chinese; 0.9% were Other Asian; 0.7% were American Indian; 0.8% were Asian Indian; and, 0.8% were Vietnamese.

Currently, the Philadelphia Police Department employs over 6,600 total officers. The department is approximately 70% male and 30% female. Of their total officers, 55.6% are White; 36.4% are African-American; 6.5% are Hispanic; and, 1.5% are other races.

The Police Advisory Commission is the official civilian oversight agency of the City of Philadelphia for the Philadelphia Police Department. The general mission of the Commission is to improve the relationship between the police department and the community. The Commission, in its diversity of composition and in its functioning, is intended to represent the external point of view of the Philadelphia citizenry. The Commission is composed of six members and two investigators.

The Deputy Director explained that the Police Advisory Commission actually focuses on reviewing only three types of complaints. These complaints include: Abuse of Authority; Abuse of Authority/Verbal Abuse; and, Physical Abuse. The Commission reviews those complaints sent directly to them and they also review or audit some of the complaints received by Internal Affairs. He said that they simply do not have the staff or the budget to do more.

The Deputy Director explained that they do not list racial profiling complaints as a separate category. They see it more as a sub-category. He said that they found racial profiling allegations are usually part of some larger issue. For the fiscal year 2004, the Police Advisory Commission received a total of 172 complaints. Of the total complaints filed, the Commission accepted 99 complaints. None of the complaint allegations included racial profiling. They have no specific protocols for investigating racial profiling allegations.

New York, New York – Civilian Complaint Review Board

According to the 2000 United States Census, the demographic figures for the City of New York indicated that 35% of the population was White; 27.0% were Latino; 24.5% were Black; 9.8% were Asian; and, 3.7% of the population was listed as Others. The total population of the city was 8,008,278 persons.

In the 26th status report published by the Civilian Complaint Review Board (CCRB) of New York City for the year 2006, the race of officers that were subject to a complaint(s) was compared to the New York City Police Department demographics. The data indicated that demographics of the subject officers were very similar to the demographics of the department (See Attachment 1).

The New York City Civilian Complaint Review Board (CCRB) is an independent and civilian mayoral agency. It is empowered to receive, investigate, hear, make findings and recommend action on complaints against New York City police officers which allege the use of excessive or unnecessary force, abuse of authority, discourtesy, or the use of offensive language. The board's investigative staff, which is composed entirely of civilian employees, conducts investigations in an impartial fashion. The board forwards its findings to the Police Commissioner.

Within 24 hours of being assigned to the complaint, a CCRB investigator will attempt to contact the complainant. In order to get the most accurate and thorough description of the events on record, the investigator will conduct an in-person interview. After speaking with the complainant, the investigator will contact witnesses, starting with those names that have been provided by the complainant. Investigators are generally required to interview witness and subject officers as soon as possible after identifying them and interviewing the complainant and/or alleged victim(s). Investigators regularly visit the sites of incidents in order to locate other possible witnesses who might be able to provide information helpful to a successful investigation.

The CCRB has subpoena power and are able to obtain records from commercial establishments and medical facilities. The CCRB can also obtain all relevant documentary evidence from the police department, some of it immediately through on-site databases and some of it through document requests.

When the investigation is complete, it is forwarded to the board. A panel of three members of the board will read the case, review all of the evidence and vote on the disposition of every allegation raised by the complaint. If any allegations are substantiated, the case will be forwarded to the Police Commissioner, who has the final say in disciplinary matters.

The Director of communications for the CCRB explained that they do not have an allegation category for "Racial Profiling." The CCRB does not even ask complainants about the issue of racial profiling. The Director said that the term is never mentioned unless the complainant actually uses it to describe the incident. He explained that the CCRB does not investigate for racial profiling or bias policing. Their focus is the appropriateness of the police action in the given circumstances and whether or not they (the officers) had proper cause for their action. When CCRB staff was asked about the origins of this approach, they were unsure as to how it actually came about. They did state that this focus was shared by both the police department and the Board. Board staff also stated that it had always been the CCRB's position that "there was no good reason to do a bad police action." The Director advised that the CCRB has several types of allegations under their "Abuse of Authority Allegation" that may be viewed as possible indicators of racial profiling. The CCRB had recently added these items as distinct allegations. These allegations included "Frisk," "Search," "Frisk and/or search," and "Question and/or stop." The Director felt that the "Question and/or stop" allegation was the best indicator of possible racial profiling for the purposes of this research. He referred to one particular table in their 2006 status report that gave the disposition of Abuse of Authority Allegations for the period 2002 to 2006 (See Attachment 2). The table indicated that 10.4% (351) allegations of Question and/or

stop were Substantiated. It also indicated that 18.3% (317) allegations of Frisk and/or search were also Substantiated.

The Director stated that the CCRB does have specific protocols for conducting their investigations.

Seattle, Washington – Office of Professional Accountability

In 2000, the City of Seattle has a total population of 563,374. The racial makeup of the city was 67.1% White; 16.6% Asian; 9.7% African American; Hispanic or Latino of any race was 6.3% of the population; 4.46% from two or more races; 2.38% from other races; 1.0% Native American; and, 0.5% Pacific Islander.

The Seattle Police Department has approximately 1,302 sworn personnel. For those officers assigned to patrol duties, the approximate racial makeup is 76.7% White; 7.7% African American; 7.1% Asian; 5% Hispanic; and 1.5% American Indian.

In 1999, the Seattle City Council established the Office of Professional Accountability (OPA) within the Seattle Police Department. Complaints of police conduct are investigated by the Investigation Section of the OPA. The OPA Director oversees the intake, classification and investigation of complaints, certifies investigative findings and makes recommendations on disposition and discipline to the Chief of Police.

The OPA Director also reports to the Mayor and the City Council on OPA activity, issues concerning the professional standards of the Department and recommendations on strategies and policies to improve complaint gathering and investigative procedures.

Every complaint is documented and reviewed by the Captain of the Investigation Section and the Director of the OPA. Complaints requiring investigation will be investigated by police sergeants who work in the Investigation Section of the OPA or by other sergeants working under their direction. The Investigation Section will forward its investigation and recommended findings for review by the Director of the OPA. The Director may concur with recommended findings, direct additional investigation or recommend a different finding to the Chief of Police.

The Associate Director of the OPA explained that the Seattle Police Department does have a policy addressing unbiased policing. He added that the Department and the OPA had published several special reports over the past few years regarding the issue. They also provided a copy of the Department's protocol for receiving and investigating complaints of biased policing (See Attachment 10).

The Associate Director explained that their 2006 statistical data showed a total of 1,132 complaints. These complaints are classified by category and result in various types of investigations. The investigation types include Preliminary Investigation Reports (PIR), Supervisory Referrals, Line Investigations and Internal Investigations. The PIR's are complaints that do not involve allegations of misconduct but are generally referred to the named employee's

supervisor for consideration. Of the total complaints for 2006, 46 involved allegations of “biased policing.” Excluding the PIR’s, there were 18 complaints that alleged some type of misconduct. All of these allegations were found to be Not Sustained.

Cincinnati, Ohio – Citizen Complaint Authority

In 2000, the U.S. Census Bureau reported that Cincinnati had a total population 331,285. Of that total, 52.97% were Caucasian; 42.92% were African-American; and 4.11% were Other Races. In December 2006, the Cincinnati Police Department reported that they had 1,085 sworn personnel employed. Of that total, 731 (67%) were Caucasian; 338 (31%) were African American; and, 16 (2%) were classified as “other ethnicity.”

In response to repeated lawsuits and the public’s demand for a Department of Justice (DOJ) investigation, the Mayor of Cincinnati requested that the DOJ review the Cincinnati Police Department’s (CPD) use of force policy. The resulting DOJ investigations eventually lead to the DOJ Memorandum of Understanding and the Collaborative Agreement with the City of Cincinnati. The Citizen Complaint Authority (CCA) was established in 2003 as a result of the DOJ Memorandum Understanding and the Collaborative Agreement. The CCA has three components:

- A Board of seven citizens appointed by the Mayor and approved by the City Council,
- A full-time Director with support staff, and
- A team of professional investigators.

The mission of the Citizen Complaint Authority is to investigate allegations of misconduct by police officers including, but not limited to, shots fired, death in custody and use of force. The CCA shall review and resolve all citizen complaints in a fair, impartial, efficient and timely manner. Finally, the CCA shall act independently consistent with its duties and responsibilities, with ultimate goal of addressing citizens concerns and improving citizens perceptions of quality police service in the City of Cincinnati.

All complaints within CCA jurisdiction will be investigated and be assigned to an investigator within 48 business hours. The investigator will begin by contacting the complainant, the witnesses, and the involved officers and by collecting evidence. An investigative report will be prepared and assembled including a summary of statements and/or evidence obtained. The complete investigation will be forwarded to the Director of the CCA for his review. The Director then submits the final report to the board for a review hearing. The complainant and the involved officers will receive a copy of the completed investigation and the board’s review hearing date. The board hearing is open to the public and affords the opportunity for involved parties to address any concerns or make comments regarding the investigation.

Each allegation contained in the investigative report will have a recommended finding. The board will vote to approve or disapprove the findings and recommendations. The board may also make additional comments, recommendations and changes regarding the investigation. The

board may request a complaint be returned to the CCA for further investigation. In this instance, the complaint will be resubmitted to the board for review on a later date.

The findings and recommendations are then submitted to the City Manager. The City Manager will agree, disagree, or agree in part with any of the findings and recommendations. The complainant will be notified when a final disposition has been reached.

The Director of the CCA explained that the Cincinnati Police Department and his agency do not have a complaint or allegation type called "racial profiling." The Director said that if they received a racial profiling complaint, it would be listed as "Discrimination/Profiling." He felt that this terminology was a more accurate and inclusive description of the allegation. The Director also said that they did not have specific protocols for conducting these investigations. He felt that specific protocols for investigating racial profiling complaints were unnecessary for them. The Director said that they know how to do complete and thorough investigations and they do not need "specific protocols." He believes their standard "Investigative Guidelines" are more than sufficient.

For 2006, the CCA investigated eight (8) allegations of Discrimination/Profiling. All eight allegations were Not Sustained.

The New Jersey State Police – Office of State Police Affairs

In December 1999, the State of New Jersey and the United States Department of Justice entered into a Consent Decree as a remedy for alleged racial profiling by members of the New Jersey State Police. For more than seven years, both the Department of Justice and the State Police operated under the supervision of the United States District Court for the District of New Jersey and an Independent Monitoring Team (IMT), which periodically evaluated the State Police's compliance with the Consent Decree. In June 2006, the IMT reported that the State Police had been in substantial compliance with the Consent Decree for two consecutive years.

On August 23, 2006, the Governor signed Executive Order No. 29, which created the New Jersey Advisory Committee on Police Standards and appointed the citizens who serve on the Committee (See Attachment 9). The Governor directed the Committee to make recommendations on the following issues:

- Whether and under what circumstances the State should join in a motion with the Department of Justice to dismiss the consent Decree;
- How to ensure that racial profiling is not engaged in or tolerated in the future if the Consent Decree is lifted; and
- How the systems developed by the State Police under the Consent Decree could benefit local police departments.

Because of their substantial history involving racial profiling allegations, the New Jersey State Police was also contacted and their statistical information included in this research. According to the United States Census Bureau, New Jersey's estimated total population for 2006 was 8,724,560. In 2005, the estimated racial demographics of the population was 64.02% White

(non-Hispanic); 15.11% Hispanic; 13.74% Black (non-Hispanic); 7.70% Asian; 0.66% AIAN (American Indian or Alaskan Native); and, 0.15% NHPI (Native Hawaiian or Pacific Islander).

The New Jersey State Police has 3,080 sworn personnel and 1,695 professional staff members. As of 2007, the demographics of the agency was 97% male; 3% female; 85% White; 8% African-American/Black; 5% Hispanic; 1% Asian; and, 1% Native American.

The New Jersey State Police, Office of Professional Standards, developed the "Model Investigative Plan: Racial Profiling," effective June 15, 2001. This plan is to be utilized by the investigator in developing an individualized plan for each complaint investigation (See Attachment 6).

In November 2007 the Sixteenth Progress Report/Status Summary of the Consent Decree noted the following regarding the investigation of racial profiling complaints conducted by the New Jersey State Police:


"The Committee (Advisory Committee on Police Standards) was concerned to learn that between 1997 and mid-2006, OPS (Office of Professional Standards) had found no substantiated cases of and disciplined no Trooper for racial profiling or disparate treatment. The Committee has very serious concerns that the lack of any substantiated complaints of racial profiling does not mean that there have been no incidents of racially-motivated or unprofessional behavior directed towards minority motorists." "The absence of any substantiated complaints or discipline imposed did not derive from a lack of complaints. According to OPS, there were 817 allegations of racial profiling or disparate treatment in 666 cases between 1997 and mid-2006." "There are two explanations for the absence of any substantiated complaint of racial profiling. First, it is difficult to determine a Trooper's motivation in a racial profiling investigation. The second reason could be that investigators may not bring sufficient skepticism to evaluating the conduct of their fellow Troopers, a perspective supported by some evidence in the record. Assuming that all Troopers are acting in an appropriate manner is not conducive to an impartial and thorough investigation of the facts."

Conclusions


Originally, fifteen separate civilian oversight agencies from fourteen different locations were contacted. Two of the civilian oversight agencies, Houston, TX and Detroit, MI did not respond to our request for information. From the data and responses that were received, it was clear that the number of complaints regarding racial profiling were not a statistically significant issue for most departments. Three agencies (San Francisco, CA; Miami, FL and New Jersey) used the term "Racial Profiling;" and, two (Miami, FL and New Jersey) listed "Racial Profiling" as an allegation type.

Although most of the police departments and their oversight bodies did not specifically use the term "Racial Profiling," they did have terms and allegation types that could indicate possible


racial profiling. These included terms such as “Racial Slurs,” “Bias/Discrimination,” “Discrimination,” “Racially Abusive Treatment,” “Biased Policing” and “Discrimination/Profiling.” Even with the different terminology, the actual number of complaints in the various categories was still very low in comparison with this Department. Additionally, the final outcome of these complaints was found to be quite consistent across most departments and their oversight bodies. Virtually all the complaints were found to be Not Sustained. The one exception to this was the New York Police Department who were able to sustain or “Substantiate” some of their complaint types. However, they do not take complaints or investigate complaints in terms of racial profiling. The focus of their investigations is the appropriateness of the officers’ actions in a given situation (See Attachment 3).




The research that was conducted for this report determined that the lack of sustained allegations of racial profiling, discrimination, or bias policing complaints is an apparent universal law enforcement issue, regardless if the investigation is completed and or adjudicated by a law enforcement agency or civilian oversight body. This is not to be interpreted as a finding that racial profiling, discrimination, or bias policing does not occur; however, absent an admission by an accused law enforcement officer or other substantial evidence, it is difficult to sustain these types of complaints.



This finding conflicts with a recent New York Times article² and CBS News poll, which stated that “over 40% of blacks said they believed they had been stopped by the police because of their race, the same figure as eight years ago; 7% of whites said the same thing” (See Attachment 4).



The Department has been utilizing the “Racial Profiling Investigation Protocol” and “Racial Profiling Investigation Check List,” both approved July 1, 2008, for racial profiling complaint investigations (See Attachment 5). Within the next few months Digital In-Car Video System cameras will be installed in all black and white police vehicles in Operations South Bureau as the first phase of a city-wide project. This will provide an additional resource to be utilized in the adjudication of complaints that allege racial profiling as to the actions immediately preceding a law enforcement contact and what activity occurs once the contact is made. Four of the law enforcement agencies we contacted (New York Police Department, Seattle Police Department, Cincinnati Police Department and New Jersey State Police) are currently using In-Car Video Systems and they utilize the information obtained from them in their various complaint investigations.



In light of the audits that have been completed by Audit Division, Office of the Inspector General, United States Department of Justice, and the Independent Monitor of completed racial profiling complaint investigations it is critical that the Department improve the quality, thoroughness, completeness and accuracy of these investigations. While it is unknown what impact the improvement in investigations will have on the adjudication of the complaints, it will certainly demonstrate that no investigative effort has been left undone and provide the Police Commission with confidence in the investigative efforts.

² The New York Times: Obama isn’t closing racial divide; Blacks, whites hold vastly different views of the state of race relations; By Adam Nagourney and Megan Thee; July 15, 2008.

Attached you will find a number of documents that were utilized in the preparation of this report for your review (See Attachments 7 and 8).

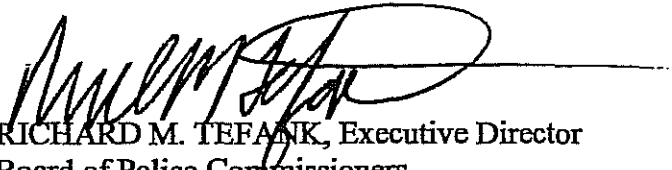
RECOMMENDATIONS:

Quarterly was adopted by Commission.

1. The Police Commission direct the Department to respond monthly with a report providing information on complaints of racial profiling received and adjudicated by Bureau and Area.
2. The Inspector General prepare an audit of racial profiling complaints that have been investigated and adjudicated since training has been provided to all Internal Affairs Investigators on the use of and utilization of the Racial Profiling Investigation Protocol and Racial Profiling Investigation Check List. This audit to assess the quality, thoroughness, completeness and accuracy of these investigations.
3. Direct the Department to include in the investigative protocols and check list a review of the Digital In-Car Video System camera if available.
4. Direct the Department to review the New Jersey State Police "Model Investigative Plan: Racial Profiling" for any investigative strategies or protocols that may be applicable for use by the Department.

If you have any questions or need further information please contact me at (213) 485-3531.

Respectfully,



RICHARD M. TEFANK, Executive Director
Board of Police Commissioners

Recommendations were adopted by the Commission on Aug 19, 2008.

Attachments:

1. Table 9: Race of Subject Officers Compared to New York City Police Department Demographics 2002-2006
2. Table 26: Disposition of Abuse of Authority Allegations 2002-2006
3. Summary of Findings Chart
4. The New York Times: Obama Isn't Closing Racial Divide by Adam Nagourney and Megan Thee
5. Professional Standards Bureau: Racial Profiling Investigation Protocol and Racial Profiling Investigation Check List (July 1, 2008)
6. New Jersey State Police, Office of Professional Standards, Model Investigative Plan: Racial Profiling (June 15, 2001)

- 7. Rand Corporation: Testing for Racial Profiling in Traffic Stops From Behind a Veil of Darkness**
- 8. New Jersey Attorney General Report: Selected Highlights of the Interim Report of the State Police Review Team Regarding Allegations of Racial Profiling**
- 9. State of New Jersey: Advisory Committee on Police Standards; Executive Order**
- 10. Seattle Police Department, Investigation Section, Office of Professional Accountability (September 2003)**

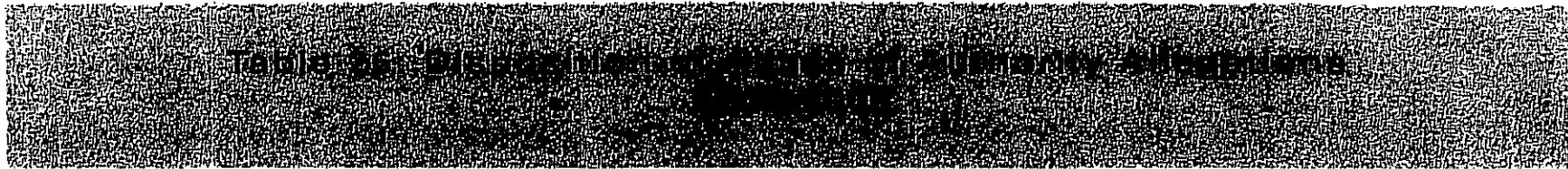
ATTACHMENT 1

Table 9: Payroll Subject Statistics Summary by New York City Police Department District

	3,282	64.8%		3,662	63.5%		3,878	61.7%
	847	18.7%		1,183	20.5%		1,290	20.5%
	7	0.1%		18	0.3%		23	0.4%
	2,108			2,635			3,094	

	3,757	57.4%		4,734	56.5%
	1,553	23.7%		2,026	24.2%
	18	0.3%		22	0.3%
	4,124			6,501	

ATTACHMENT 2



Type of Abuse of Authority Allegation

76	13.3%	271	47.5%	118	20.3%	27	4.7%	71	12.4%	10	1.8%
317	18.3%	870	38.7%	372	21.5%	122	7.0%	197	11.4%	54	3.1%
351	10.4%	2,229	68.0%	409	12.1%	60	1.8%	245	7.3%	81	2.4%
82	8.1%	650	64.2%	180	15.8%	10	1.0%	75	7.4%	38	3.8%
135	5.8%	1,597	70.1%	276	12.1%	108	4.7%	98	4.3%	63	2.8%
103	6.7%	167	10.8%	521	33.7%	518	33.5%	184	11.9%	55	3.6%
9	3.4%	112	42.6%	69	26.2%	45	17.1%	22	8.4%	6	2.3%
20	9.8%	83	40.7%	72	35.3%	18	8.8%	8	3.9%	3	1.5%
32	13.4%	13	5.4%	77	32.2%	51	21.3%	53	22.2%	13	5.4%
88	25.5%	135	39.1%	88	25.5%	14	4.1%	5	1.4%	15	4.3%
34	7.0%	24	4.9%	140	28.6%	258	52.4%	24	4.9%	11	2.2%
1	0	4	0	12	0	14	0	8	0	1	0

* Beginning in 2005, the CCRB captured "frisk" and "search" as distinct allegations.

**The CCRB began to capture the allegation "refusal to show search warrant" on April 1, 2004.

ATTACHMENT 3

SUMMARY OF FINDINGS

AGENCY	COMPLAINT CATEGORY OF RACIAL PROFILING	NUMBER OF COMPLAINTS	SUSTAINED COMPLAINTS	INVESTIGATIVE PROTOCOLS
SFPD	Yes	4	0	No
OPD	Bias/Discrim.	7	0	No
BPD	Discrimination	5	0	No
RPD	Racially Abusive	0	0	No
SDPD	Discrimination	10	0	No
SDSD	Discrimination	7	0	No
LASD	No	0	0	No
MPD	Yes	1	0	No
PPD	Abuse of Auth.	0	0	No
NYPD	NA*	NA*	NA*	Yes
SPD	Biased Policing	46	0	Yes
CPD	Discrim./Profiling	8	0	No
NJSP	Yes	817 ('97-'06)	0	Yes
LAPD	Yes	234 ('05)	0	Yes ¹
LAPD	Yes	261 ('06)	0	Yes ²

(*The CCRB of New York City only investigates the appropriateness of the police action.)

¹ The Department's investigative protocols were adopted in 2007.

² The Department's investigative protocols were adopted in 2007.

ATTACHMENT 4



NYT: Obama isn't closing racial divide

Blacks, whites hold vastly different views of the state of race relations

By Adam Nagourney and Megan Thee

The New York Times

Updated 8:36 p.m. PT, Tues., July 15, 2008

Americans are sharply divided by race heading into the first election in which an African-American will be a major-party presidential nominee, with blacks and whites holding vastly different views of Senator Barack Obama, the state of race relations and how black Americans are treated by society, according to the latest New York Times/CBS News poll.

The results of the poll, conducted against the backdrop of a campaign in which race has been a constant if not always overt issue, suggested that Mr. Obama's candidacy, while generating high levels of enthusiasm among black voters, is not seen by them as evidence of significant improvement in race relations.

After years of growing political polarization, much of the divide in American politics is partisan. But Americans' perceptions of the fall presidential election between Mr. Obama, Democrat of Illinois, and Senator John McCain, Republican of Arizona, also underlined the racial discord that the poll found. More than 80 percent of black voters said they had a favorable opinion of Mr. Obama; about 30 percent of white voters said they had a favorable opinion of him.

Nearly 60 percent of black respondents said race relations were generally bad, compared with 34 percent of whites. Four in 10 blacks say that there has been no progress in recent years in eliminating racial discrimination; fewer than 2 in 10 whites say the same thing. And about one-quarter of white respondents said they thought that too much had been made of racial barriers facing black people, while one-half of black respondents said not enough had been made of racial impediments faced by blacks.

The survey suggests that even as the nation crosses a racial threshold when it comes to politics — Mr. Obama, a Democrat, is the son of a black father from Kenya and a white mother from Kansas — many of the racial patterns in society remain unchanged in recent years.

Indeed, the poll showed markedly little change in the racial components of people's daily lives since 2000, when The Times examined race relations in an extensive series of articles called "How Race Is Lived in America."

As it was eight years ago, few Americans have regular contact with people of other races, and few say their own workplaces or their own neighborhoods are integrated. In this latest poll, over 40 percent of blacks said they believed they had been stopped by the police because of their race, the same figure as eight years ago; 7 percent of whites said the same thing.

Nearly 70 percent of blacks said they had encountered a specific instance of discrimination based on their race, compared with 62 percent in 2000; 26 percent of whites said they had been the victim of racial discrimination. (Over 50 percent of Hispanics said they had been the victim of racial discrimination.)

And when asked whether blacks or whites had a better chance of getting ahead in today's society, 64 percent of black respondents said that whites did. That figure was slightly higher even than the 57 percent of blacks who said so in a 2000 poll by The Times. And the number of blacks who described racial conditions as generally bad in this survey was almost identical to poll responses in 2000 and 1990.

"Basically it's the same old problem, the desire for power," Macie Mitchell, a Pennsylvania Democrat from Erie County, who is black, said in a follow-up interview after participating in the poll. "People get so obsessed with power and don't want to share it. There are people who are not used to blacks being on top."

White perceptions, by contrast, improved markedly from 1990 to 2000, but have remained steady since. This month's poll found that 55 percent of whites said race relations were good, almost double the figure for blacks.

The nationwide telephone poll was conducted July 7-14 with 1,796 adults, and has a margin of sampling error of plus or minus three percentage points. In an effort to measure views of different races, the survey included larger-than-usual minority samples — 297 blacks and 246 Hispanics — with a margin of sampling error of six percentage points for each

subgroup.

Black and white Americans agree that America is ready to elect a black president, but disagree on almost every other question about race in the poll.

Black voters were far more likely than whites to say that Mr. Obama cares about the needs and problems of people like them, and more likely to describe him as patriotic. Whites were more likely than blacks to say that Mr. Obama says what he thinks people want to hear, rather than what he truly believes. And about half of black voters said race relations would improve in an Obama administration, compared with 29 percent of whites.

About 40 percent of blacks said that Mr. McCain, if elected president, would favor whites over blacks should he win the election.

There was even racial dissension over Mr. Obama's wife, Michelle : She was viewed favorably by 58 percent of black voters, compared with 24 percent of white voters.

Among black voters, who are overwhelmingly Democrats, Mr. Obama draws support from 89 percent, compared with 2 percent for Mr. McCain. Among whites, Mr. Obama has 37 percent of the vote, compared with 46 percent for Mr. McCain.

After a Democratic primary season in which Mr. Obama had difficulty competing for Hispanic votes against Senator Hillary Rodham Clinton , Mr. Obama leads Mr. McCain among Hispanic voters in the likely general election matchup by 62 to 23 percent. Mr. Obama is viewed favorably by more than half of Hispanic Americans, compared with Mr. McCain, whose favorability rating is just under one-quarter. By significant margins, these voters believe that Mr. Obama will do a better job of dealing with immigration ; Mr. McCain has been trying to distance himself from Republicans who have advocated a tough policy on permitting illegal immigrants to stay in the country.

Over all, Mr. Obama leads Mr. McCain among all registered voters by 45 percent to 39 percent.

White voters, much more so than black voters, are divided in their political loyalties. Mr. Obama draws significant support among white Democrats. Yet still, among just Democrats, blacks were more apt than whites in the poll to express positive views of Mr. Obama across a range of questions. For example, black Democrats were 24 points more likely than white Democrats to have a favorable opinion of Mr. Obama.

"I don't like some of his policies, like on energy," said Bob Beidelman, 69, a white Democrat from York, Pa., about Mr. Obama. "Also I don't like statements his wife made. She seems like a spoiled brat to me."

He added: "I'm one of those white people who clings to guns and the Bible, and those things that Barack said kind of turned me off," he said. "This isn't a black and white thing. If a conservative African-American like former Congressman J. C. Watts was running, I'd have bumper stickers plastered all over my car supporting him."

The survey found extensive excitement among African-Americans about the prospect of Mr. Obama's candidacy, a factor that could prove important in pushing voter turnout. The poll found that 72 percent of black voters said they expected Mr. Obama to win.

The high levels of enthusiasm for Mr. Obama among black Americans suggested that there was less of a divide among them about his candidacy than suggested by occasional tension among black leaders. Last week, Mr. Obama was criticized by the Rev. Jesse Jackson as "talking down to black people" by going before black audiences and urging parents to take more responsibility for their children.

"He's got all these enthusiastic young people working for him," said James Wilson, 75, a property manager from Philadelphia who is black. "I'm a person who would never give money and they called on the phone and got me to give."

The poll found that Mr. McCain is yoked to the legacy of President Bush — majorities believe that Mr. McCain, as president, will continue Mr. Bush's policies in Iraq and on the economy. Mr. Bush's approval rating on the economy is as low as it has been in his presidency, 20 percent; and even while there has been an increase in the number of Americans who think the war is going well, there has been no change in the significantly large number of people who think it was a mistake to have invaded.

Kevin Sack, Dalia Sussman and Marina Stefan contributed reporting.

Article, Poll finds Obama isn't closing divide on race, first appeared in The New York Times.

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ATTACHMENT 5

Professional Standards Bureau

Racial Profiling Investigation Protocol

July 1, 2008

Definition of Racial Profiling:

Any police activity that relies on the race, ethnicity, or national origin rather than the behavior of an individual or information that leads police to a particular individual who has been identified as being, or having been, engaged in criminal activity.

“Racial Profiling” at its core concerns the invidious use of race or ethnicity as a criterion in conducting stops, searches, and other law enforcement investigative procedures. It is premised on the assumption that any particular individual of one race or ethnicity is more likely to engage in misconduct than any particular individual of another race or ethnicity.¹

In order to improve upon the quality of Racial Profiling investigations, a review was conducted of current complaints initiated by citizens alleging racial profiling. Following this review, the protocols set forth below were recommended for implementation, where practicable.

In addition to all current protocols utilized by Internal Affairs investigators conducting personnel complaint investigations, the investigator assigned a case containing allegations involving racial profiling shall:

Other than Self-Initiated Activities


- Interview the complainant or review the taped interview of the complainant and assess the viability of the accusation of racial profiling. Determine specifically what behaviors on the part of the officers the complainant believed supports that the complainant was racially profiled.
- Determine if outside initiated information was a factor in the detention (i.e. a radio call, citizen flagdown, etc.).
- If outside initiated information caused the detention, determine if the detention was reasonable (i.e., the complainant, in fact matched the description in the radio call.) Determine what factors the officer relied upon in concluding that the suspect matched the description of the call.
- Determine if the officer completed any documentation related to the stop, and include this documentation as addenda. If there are no other extenuating circumstances and the reason for the detention, search or other law enforcement activity is reasonable, legal and justified, no further investigation is necessary.

¹ International Chiefs of Police Publication, Protecting Civil Rights: A Leadership Guide for State, Local, and Tribal Law Enforcement, September, 2006



Self-Initiated Activities

- If the detention results from self-initiated activities, gather and review all related documents pertinent to the investigation.
- In addition to the complainant, interview all witnesses and canvass the location if practicable.
- Ensure all involved officers are interviewed:

- 
- Ask the officer(s) the reason for the stop, search or detention;
 - Obtain details specific to "officer safety," "uncooperative," and/or "high crime area verbiage;"
 - Ask the officer(s) if they knew the race or ethnicity of the subject prior to the stop or detention;
 - Ask the officer(s) if race or ethnicity was a factor in the stop or detention. If the answer is "yes," have the officer(s) explain;
 - If there was a search associated with the stop or detention, ask the officer(s) to articulate the reasons for the search;
 - Determine the length of detention, if the duration appeared unreasonably extended, ask the officers(s) to explain why the detention was extended.
 - Where applicable, include the lighting conditions, distance when the officer(s) made the observations, and determine if vehicle windows were tinted;
 - Identify inconsistencies in statements and attempt to resolve them;
 - Ask follow-up questions to obtain all pertinent information; and
 - Consider examining the officer's work product, if applicable, as a potential indicator of racial profiling

EXAMPLE: Where a citizen complains that they and four other people committed the same traffic violation and all were observed by the officer. All of the other four were Caucasian and the complainant is a minority. It would be prudent under such facts to audit the officer's citations, arrest reports, RFC's, Field Interview Cards and any other work product for a substantial period of time from the date of the complained of incident. The area wherein the officer works or worked should also be part of the investigating officer's evaluation under these circumstances.

- Use any other investigative tools necessary to complete the investigation.



Other Considerations to Determine Investigative Strategy

- 1) Where Racial Profiling is the only allegation and can be disproved from the complainant's own statement, such as "I know I ran the red light but if you don't cancel this ticket I will complain I was racially profiled," and where no other evidence exists.
- 2) The Complainant cannot articulate any behavior on the part of the officer that can be construed as racial profiling and there is probable cause for the detention, search or other law enforcement activity. The Investigating Officer shall determine whether or not officer interviews are necessary to a determination of whether probable cause existed and whether the detention was reasonable.

REVIEW:

All completed personnel complaint investigations containing an allegation of racial profiling shall be reviewed by either the Commanding Officer, Criminal Investigation Division, or the Commanding Officer, Administrative Investigation Division, Professional Standards Bureau, before distribution to the concerned Commanding Officer for adjudication

**Professional Standards Bureau
Internal Affairs Group
Racial Profiling Investigation Check List
July 1, 2008**



This form shall be completed and included in all racial profiling investigations as mandated by Professional Standards Bureau Notice, dated February 15, 2007, titled *Racial Profiling Investigations*.

Primary Investigator: _____ Serial No.: _____ CF No.: _____

Were all involved officers interviewed?

YES NO — EXPLAIN _____

Were all involved officers asked the reason for the stop/detention?

(Include this information in the investigation)

YES NO — EXPLAIN _____

Were all involved officers asked if they knew the race or ethnicity of the subject prior to the stop/detention?

(Include this information in the investigation)

YES NO — EXPLAIN _____

Were all involved officers asked if the race or ethnicity was a factor in the stop/detention of the subject?

(Include this information in the investigation)

YES NO — EXPLAIN _____

If there was a search associated with the stop/detention, were all involved officers asked to articulate the reasons for the search?

(Include this information in the investigation)

YES NO — EXPLAIN _____

Was all information regarding lighting conditions, distance when the officers made the observations, tinted vehicle windows, etc., included in the investigation?

YES NO — EXPLAIN _____

Was the length of the detention reasonable and if the detention appeared unreasonably extended, was there justification and a rationale explored?

YES NO — EXPLAIN _____

Was the Professional Standards Bureau Racial Profiling Investigation Protocol reviewed by the investigator and included as a supplemental document to the investigation?

YES NO — EXPLAIN _____

Was the Professional Standards Bureau Notice, dated February 15, 2007, relative to Racial Profiling Investigations, reviewed by the investigator and included as a supplemental document to the investigation?

YES NO — EXPLAIN _____

ATTACHMENT 6

NEW JERSEY STATE POLICE

OFFICE OF PROFESSIONAL STANDARDS

MODEL INVESTIGATIVE PLAN:
RACIAL PROFILING

Case No. _____

Investigator: _____

IAIB Liason: _____

THIS MODEL PLAN IS TO BE UTILIZED BY THE INVESTIGATOR AND IAIB LIASON IN DEVELOPING AN INDIVIDUALIZED INVESTIGATIVE PLAN FOR THE ABOVE CASE. THIS MAY BE ACCOMPLISHED BY MARKING UP THIS DOCUMENT AND UTILIZING IN CONJUNCTION WITH A STANDARD FORM INVESTIGATIVE PLAN. THIS PLAN SHALL NOT BECOME PART OF THE INVESTIGATION BUT SHALL BE MAINTAINED IN THE HANGING FILE.

I. Introduction:

This investigative plan is designed for use aiding the investigator in completing a thorough investigation into an allegation that a New Jersey State Trooper committed an act of Racial Profiling or Race/ethnicity Based Disparate Treatment.

A. Definition, Background, Goals and Purpose

Racial Profiling is defined as:

Any action taken by a state trooper during a traffic stop that is based upon racial or ethnic stereotypes and that has the effect of treating minority motorists differently than non minority motorists.

Racial profiling is defined for the purposes of this investigation in conformance with SOP F-55, that is the reliance to any degree on a person's race or ethnicity in deciding whether to stop a vehicle or undertake any law enforcement procedure.

Once a racial profiling complaint has been lodged, a thorough analysis of the entire incident is necessary.

B. Background

Preliminarily, the investigator must be familiar with and cognizant of the findings and recommendation of the Attorney General's Interim Report in order to conduct investigations consistent with the concepts contained therein relating to violations of the 14th Amendment. Gloucester County Superior Court's opinion and analysis of stop data in the Soto decision. By way of example, information and analysis compiled during the course of the Soto litigation and relied upon by Judge Francis suggested that troopers who enjoyed a wider ambit of discretion, by virtue of the nature of their duty assignment, stopped and ticketed minority motorists more often. In support of this hypothesis the following findings were cited:

"...the Radar unit, which uses radar equipped vans and chase cars and exercises comparatively little discretion; (2) the Tactical Patrol Unit, which focuses on motor vehicle enforcement in particular areas and exercises somewhat greater discretion; and (3) the Patrol Unit..."

Applicable Excerpts from the Attorney General's Interim Report:

Correlation of Discretion and Likelihood of Stopping Minority Motorists.

Information and analysis compiled by the Public Defender's Office during the course of the Soto litigation and relied upon by Judge Francis suggests that troopers who enjoyed a wider ambit of discretion, by virtue of the nature of their duty assignment, stopped and ticketed minority motorists more often. Specifically, the Public Defender's statistical expert compared the tickets issued on 35 randomly-selected days by three different State Police units: (1) the Radar Unit, which uses radar-equipped vans and chase cars and exercises comparatively little discretion; (2) the Tactical Patrol Unit, which focuses on motor vehicle enforcement in particular areas and exercises somewhat greater discretion; and, (3) the Patrol Unit, which is responsible for general law enforcement and exercises the most discretion. Between Exits 1 and 7A of the Turnpike, the Radar Unit was found to have issued 18% of its tickets to African-Americans; the Tactical Patrol Unit issued 23.8% of its tickets to African-Americans, and the Patrol Unit issued 34.2% of its tickets to African-Americans.

Tickets issued south of Exit 3 yielded similar results: the Radar Unit issued 19.4% of its tickets to African-Americans, the Tactical Patrol Unit issued none of its tickets to African-Americans, and the Patrol Unit issued 43.8% of its tickets to African-Americans.

We are concerned by what may be a pattern that when state troopers are permitted more discretion by virtue of their duty assignment, they tended during the time periods examined to ticket African-Americans more often. This analysis is consistent with the notion that officers who had more time to devote to drug interdiction may have been more likely to rely upon racial or ethnic stereotypes than officers whose principal or overriding concern was to enforce specific motor vehicle violations or to respond to calls for service. This phenomenon highlights the need to find appropriate means to channel officer discretion to ensure that minority and non-minority motorists are treated in an even-handed fashion.

Significance of Arrest Statistics.

There has been much confusion concerning the implications of the arrest data, which appears to be comparable to the highway arrest statistics compiled by other states along the I-95 corridor. Viewed in artificial isolation, arrest rates cannot provide conclusive proof of racial profiling or discriminatory practices. Nor are they evidence, as has been suggested by some, that minority citizens are more likely than whites to be engaged in criminal activity.

Specifically, it has been argued that the fact that the vast majority of stops that produced arrests also led to convictions somehow demonstrates that State Police did not engage in selective enforcement on the theory that these arrest figures are not "disproportionate," but rather accurately reflect the extent to which these motorists were engaged in criminal activity. This argument is untenable for many of the reasons spelled out more fully in Part IV, § G (demonstrating the circular, tautological nature of using proactive arrest numbers to determine crime trends).

For one thing, it is a well-settled principle of law that an unlawful search is not made good by what it fortuitously turns up. Thus, a defendant's factual guilt (as evidenced by his subsequent conviction on the charges stemming from the arrest) is legally irrelevant to the question whether the arresting officer had inappropriately relied upon race, ethnicity, or national origin in initiating the stop or in conducting the investigation that resulted in the arrest (unless, of course, this specific issue was raised in the case, and a court found after a fact-sensitive hearing that the officer had not engaged in such practices).

More fundamentally, arrest and conviction rates do not address the critical issue at hand, that is, whether State Police members targeted minorities, using more aggressive investigative tactics that could be expected to lead to a higher percentage of "hits." Needless to say, if an officer is not looking for drugs, he or she is less likely to find them. The fact that the arrest rates for whites was comparatively low does not mean that white motorists are less likely to be transporting drugs, but rather that they were less likely to be suspected of being drug traffickers in the first place and, thus, less likely to be subjected to probing investigative tactics designed to confirm suspicions of criminal activity such as, notably, being asked to consent to a search.

Significance of the Proportion of Searches That Result in an Arrest or Seizure.

As noted above, most of the consent searches that we considered did not result in a "positive" finding, meaning that they failed to reveal evidence of a crime. (See footnote 4 and accompanying text, supra.) Furthermore, the positive find rate revealed in the data provided to us is somewhat misleading, since a positive result is recorded if the search led to any arrest or seizure of contraband without considering the seriousness of the charge or the type, quantity, or value of contraband that was discovered. Based upon anecdotal reports, most arrests are for less serious offenses, and "major" seizures of significant drug shipments are correspondingly rare.

Identification Bureau Reports
Consent to Search Forms
Weekly Activity Reports
Overtime/Compensatory Pay Reports
Fuel Records
EZ Pass Records
Toll Records
Authority Records, Troops D and E

Radio Tapes

Sufficient portions of the tape should be monitored to reveal the totality of circumstances. The call in of the stop and the clearing of the stop and all transmissions in between are critical in most cases and must be transcribed and evaluated. If these are not completely captured on the MVR, they must be obtained and copied from radio tape.

Mobile Video Recorder Tape

- Obtain the
- a) tape of incident from principal's troop car
 - b) any other tape from any other vehicle involved. (All vehicles must be identified in invest;

have copied by the Forensic Photography Unit, and return the original to the station. Must be Investigation attachments.

Review of MVR:

If the complaint is disparate treatment or selective enforcement relating in any way to the reason for the stop, the MVR shall not be dispositive in and of itself to prove or disprove the allegation. A detailed assessment of the trooper's pre-stop and discretionary action must be undertaken.

In any case where an MVR recording is not available, a detailed explanation as to why must be included in the report.

In any case where the MVR recording appears to have been damaged or recorded improperly, all maintenance requests for the specific MVR must be collected, reviewed and included in the investigation. If any tape has a problem, the problem and its cause must be a focus of the investigation.

External Reports and Records

The investigator should examine the records and documents of agencies and organizations that may possess relevant information, such as, but not limited to:

Reports and Audio tapes of phone and radio calls from other Police Departments

Hospital Records (Subpoena or release required)

Attending Physicians' Reports (Subpoena or release required)

Jail Records

Court Transcripts, Court Records** (It is required that in cases where summonses are issued or arrests made which are alleged to be the result of racial profiling or disparate treatment, that any statements made by the complainant or trooper and any witnesses in court under oath be collected and analyzed against statements and complaint. Also, it is critical to determine whether or not a person who claims the violation did not occur either pled guilty or was found guilty; however, this does not control, it is only a fact to be considered.)

SBI or FBI Records by Specific approval, Bureau Chief, IAIB

Consumer Credit Bureau, etc. (Obtain through IAIB and only if relevant to the investigation)

Every IAIB Investigation must address whether or not a video surveillance recording made from any private location or private security system is available and obtain and review same. Today, many commercial establishments have video systems. A canvas of those establishments will be necessary if reasonably situated in relation to the incident. The report must indicate whether or not a canvas was undertaken, why not, and the results if it was.

All reports relevant to the investigation should be gathered and preserved in an expeditious manner.

Looking for the following:

The date and time the stop was made;

The place where the stop occurred;

Whether the trooper was in assigned patrol area;

Whether trooper was assigned any specific detail, ie sup or DWI;

The race or ethnicity of the subject of the stop;

The gender of the subject of the stop;

The reasons for initiating the stop;

The actions taken by the officer during and after the stop; and

The duration of the encounter.

Any discrepancies in reports must be carefully reviewed to either be explained or to ensure that the mistakes are not deliberate efforts to cover improper conduct.

Disposition of Stop/Action/Encounter/Enforcement:

The disposition must be made part of the investigation. (ATS etc.)

If the complainant appears in court, a transcript of complainants and the trooper's testimony at each and every appearance must be obtained to be compared with statements of each in investigation.

If member fails to appear, or if court dismisses case based on discrimination argument or alleged improper actions of the trooper, must be inquired into as part of investigation.

If complainant or trooper testifies differently from statements, must be re-interviewed for an explanation.

If complaint is that one of the enumerated police procedures in F55, F3 etc., were made based on the race of the occupant, the investigator must focus the investigation on why the principal undertook the specific procedure. An MV stop report would be required and must be obtained and reviewed. Again discretionary, compared to non-discretionary procedures should be noted and evaluated. The basis for the procedure and or level of risk asserted by trooper must be analyzed.

It may be necessary to view 5 stops prior to the incident complained of and 5 stops after incident of majority stops under similar conditions, and 5 stops prior to and post of minority motorists to determine whether the member is performing differently in any pattern.

Analysis of other Violations/Police Procedures

It may be necessary if the motorist is stopped for highly discretionary violations such as but not limited to weaving within the lanes (during the day), obstructed windshield, license plate light, dirty plate, etc., to do an analysis by race of other stops for similar violations to determine if there is any disparity in the use of these discretionary, usually non-hazardous violations. This also applies to highly discretionary police procedures such as getting a driver pout of a vehicle for the trooper's safety.

Again, "what if anything is this trooper doing when dealing with a minority is different than when dealing with non-minorities." Start with 5 stops, either side of the incident. If necessary, expand in either direction until a clear pattern or no pattern is discernible.

Analysis of Stop Data

Ad hoc CAD queries will be obtained and made a part of the investigation. Numbers alone will not be used to substantiate any cases. Nor will numbers alone be used to close and clear a case. Until a reliable statistical method is developed, the investigator will review the data for any significant statistics based on race. If the statistics in any way appear to present a pattern or give rise to concern, they will be reviewed with the Bureau Chief, IAIB, to determine what steps to take.

In any case, the statistics will also be analyzed by the reviewers to also determine if further inquiry or analysis is required.

Preliminary Identification of the Basis of the Profiling Complaint

Ideally, the complainant will have spoken to a member of the Intake Unit who will have accurately determined what specific action is alleged to have constituted discriminatory conduct. If the complaint is based on a notice of claim or a letter, these documents will need to be reviewed to determine whether the alleged profiling act is clearly spelled out. This is critical because the investigative plan may be modified based on the specificity of the conduct alleged to constitute profiling. The type of complaint will impact on the data needed to be collected and analyzed and the types and patterns of interviews to be conducted.

The key questions are:

Is the complained of actions of the officer related to the selection of the vehicle to stop?

In this case, a main focus of the investigation will be on the pre-stop conduct of the trooper and the citizen as well as statistical analysis. The MVR, while helpful will not be dispositive unless a complete tracking history discloses a hazardous violation.

Are the complained of actions related to conduct of the trooper after the vehicle has been stopped?

In this situation, the focus will be on whether the trooper had a basis to take the actions complained of and the MVR will be stronger evidence of what transpired.

Was it attitude?

Was it asking you questions during stop? Which ones?

Requesting police procedures (consent decree)

Enforcement or summons only issued due to race or ethnicity?

III. Conducting Interviews

A. Complainant Interview

1. The complainant interview is very important to the relationship between the Division and the public. This is most likely the first contact the complainant will have with the agency after filing a complaint. Unlike the contact that caused this complaint this interview will be a positive experience. This interview and the ensuing investigation will determine the future relationship between the complainant and the State Police.
2. In most cases the first interview to be conducted by the investigator is of the complainant. This interview will be attempted in all instances where the complainant is identified. If the complaint was received anonymously an attempt should be made to identify any witnesses to the incident under investigation. The complainant interview will be the first step in fleshing out the totality of the allegation and the facts the complainant is relying on to substantiate his or her claim.
3. The complainant should be contacted as soon as possible by the investigator and an interview should be set up at the convenience of the complainant. The interview should be conducted at a time and location which is acceptable to the complainant. It is suggested that the interview be conducted in a location other than a State Police road station or headquarters. The complainant's residence, a local police department or a government facility are all acceptable locations for the interview. The complainant should be advised to bring any documentation, evidence and names of witnesses to the interview. This interview should be conducted in a professional manner and in the presence of a witness from the investigator's command.
4. The interview can be conducted in a variety of methods. A tape recording of the interview provides an accurate account of the complainant's statement. A formal typed statement which is signed by the complainant to verify the accuracy of the statement can also be used to secure an accurate account of the incident. If the complainant can not be interviewed in person, a taped statement via telephone should be obtained. In the event the complainant will not submit to a formal statement, an interview of the principal should be conducted and a summary of the interview will be documented in the internal investigation report.

5. Prior to conducting the interview of the complainant the investigator should gather and review all available documentation (referred to in Section II of this investigative plan) to prepare for the interview. The purpose of the interview is to document the allegation(s) and to discern the complainant's basis for lodging the complaint. The complainant may allege that the trooper utilized race as a basis for his or her actions but provide little or no corroborating information. The investigator must guard against concluding that there is therefore no basis for the complainant to have formed this perception. Keep in mind that the complainant's perception may very well be completely bona fide. The investigator must exhaust all investigative avenues even if the only impetus for the investigation is the complainant's bare perception.

6. The following information and evidence should be elicited from the complainant during the interview:
 - a. The pre-stop actions of the officer conducting the stop or contact. (If the complainant admits that the officer was justified in making the stop, and is complaining about conduct after the stop, these questions can be asked as background. However, if the allegation is selective enforcement, that the trooper picked out the vehicle because the occupant was a minority, the following questions are critical and should be a main focus of the investigation.)
 - Where was the officer positioned, stationary or moving, when did complainant first notice the officer.
 - In what manner the trooper was operating his/her vehicle;
 - The traffic volume in the area of the complainant's vehicle;
 - The type of vehicle the complainant was operating;
 - The number and race of additional occupants in complainant's vehicle;
 - The weather and lighting conditions in the area of the stop;
 - The position of the police vehicle prior to the stop, i.e. was it in front of the complainants vehicle, to the side or behind;

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- ~~Whether the complainant admits committing a violation;~~
- b. Actions of the officer at the scene of the stop.
 - Complete description of the dialogue between complainant, passengers, and trooper.
 - Position of the officer's troop car while conducting the stop.
 - Attitude and demeanor of the officer.
 - Whether a search of any kind was requested or conducted by the trooper.
 - Whether complainant was informed of the nature of the violation(s).
 - Document what enforcement action was taken by the trooper;
 - whether enforcement action was take regarding the violation that caused the stop.
- c. Identify those actions or events occurring at the scene of the stop which lead the complainant to believe that the trooper acted based on the complainant's race.
- d. Determine whether the complainant believes that the trooper could have observed the race of the driver or passengers prior to the stop.
 - Position of police vehicle in relation to complainant vehicle.
 - Whether the complainant's vehicle had tinted windows or any other condition which would have blocked observation into the vehicle; which windows are tinted; whether the vehicle is available for a

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photograph.

- Whether the complainant was able to determine the trooper's race prior to being stopped.
- Lighting and weather conditions.
- e. Identify why the complainant feels as though the treatment they received was due to their race/ethnicity
 - Statements made by the officer.
 - Past contact with The New Jersey State Police or other police agencies.
 - Determine the complainant's own definition of racial profiling.
 - Determine whether multiple vehicles were stopped and if so, what the race of the other motorists was.
- f. In the discretion of the Investigator it may be prudent to review the MVR tape with the complainant if one exists. This is at the discretion of the investigator (citizens do not have a right to review the tape).
The review will be completed at a police agency. (In the event of malfunction or damage to the VCR or tape).
 1. Some complainant's may change their perspective when the tape is reviewed.
 2. There could be an explanation for an action taken by the officer that the complainant was not aware of. (Certain police procedures or duties).
 3. The investigator should proceed with caution if utilizing the tape in a way that discredits the accuracy of the complainant's statement. The investigator must document and report on any material discrepancies in the final investigation report. (Two people with different perspectives can have radically different interpretations of what is on a single piece of tape.)

B. Witness Interviews:

This portion of the investigative plan is devoted to the interviewing and taking of statement from witnesses. There are two basic types of witnesses the investigator will be dealing with; The **Civilian Witness** and the **Enlisted or Sworn Member**. The two are similar by most standards but there is one inherent difference, the Enlisted member is compelled to answer any question proposed to him by the investigator or face discipline or termination. As in any basic investigation, the investigator must answer the six primary investigative questions of Who, What, When, Where, Why and How when dealing with any witness.

1. INTERVIEWING OF CIVILIAN WITNESS:

(All passengers must be interviewed.)

- a. The interview or statement should first start with a preamble, indicating what the complaint is, who the Complainant is, who the Trooper under investigation is, who will be conducting the interview, naming all witnesses present, date, time, and location of the interview and the case number. The interview/statement should strictly be voluntary on the part of the civilian witness and taken in a formal manner, either typed or taped in order to properly memorialize it.
- b. The witness interviews should track all relevant questions asked of the complainant and answers should be compared and even discussed with the witness further in the case of clarification or disagreement.
- c. In addition to the aforementioned questions, the following general questions are suggested of witnesses:
 - What is your relationship with the complainant?
 - Where were you when (sitting/standing) when the incident was occurring?
 - How close were you when the incident was taking place?
 - What did you see?
 - Did you hear what was being said and by whom?
 - How long did this (incident or action) last?
 - Did the Trooper say anything to you?
 - What was the Trooper's demeanor like?

- Questions on time of day, traffic patterns and other related information

2. Hearsay or Third Party Witness:

Was the witness present for the incident under investigation or how was the information supplied and by whom? Does the information supplied by this witness differ from other witnesses? The investigator should be cognizant of other witnesses statements, analyze and compare it to the statement supplied by this witness. The following questions are some examples of questions to ask this witness:

- How did you hear about this investigation?
- Who told you this (information) ?
- When were you told this and how ?
- Did anyone else tell you about this (incident) and when ?
- Who told you first or... When did you first learn of this ?

3. Peripheral Witness:

With this type of witness, the investigator must consider the source of information coming from the witness. Did this witness see, hear anything important to the investigation, or is he/she just supplying information already known to the investigator. The information supplied by this witness is still valuable, and can be used to corroborate or refute information supplied by other witnesses. The statement can also be used to obtain a sequence of events (time line, chain of events) which will be helpful in the investigation. Once again, questioning will center around proximity and time. As with any witness set the stage and let the witness tell his/her story, being careful not to spike their thoughts or plant ideas that they feel they have to confirm. After they tell you what happened then ask the following if pertinent :

- Where were you when this (action / incident) occurred ?
- Were you there ?
- How long after (action / incident) did you arrive ?
- What did you see ?

- — What happened first ?
- Who told you this ?
- How do you know ?
- Do you know if(actions of the participants) ?
- Did you hear anything while you were there ?

4. Hostile, Biased or Reluctant Witness for Complainant/Victim or Trooper:

This type of witness centers around motivation. Does the witness show any animosity towards you, persons or groups (police) involved or does this witness have a separate agenda he or she wants aired. The investigator must take into consideration how this witness came about, was the witness located by the investigator, or did he/she come forth on their own and why. Is the witness reluctant to get involved and why. Does this witness have information which would taint or distort the information supplied by the complainant and possibly clear the Trooper or do they just not want to get involved? The investigator is only to record the facts and not argue with or conclude with discrediting witness unless reviewed with the IAIB Bureau Chief. The following are some examples on questions to propose to this type of witness:

- Have you ever been with (complainant) when he/she was stopped before?
- Why was he/she stopped and by whom?
- Did he/she commit the violations they were accused of ?
- Have you ever been stopped by the State Police before and why ?
- Were you ever stopped because of your race ?
- Why do you feel the Trooper was (wrong or right) in his actions ?
- Do you believe the Trooper only (issued summons / arrested) the complainant because of his/her race, and why?
- Why didn't you call or notify the authorities ?

Is the witness related to the complainant or being loyal out of friendship? Will the this witness embellish his/her statement in order to add validity to the complainants statement? The investigator has to take into account this relationship and question it ? The following are questions for this type of witness:

- How do you know the complainant and for how long ?
- What's your relationship with the complainant ?

In conclusion, the investigator must enter into each interview objectively and remember that any information supplied by a civilian witness is only as good as the questions asked. The investigator should invest as much time and effort into the line of questioning of these witnesses as he does with the complainant or principal.

B. INTERVIEWING OF ENLISTED OR SWORN MEMBER WITNESS

The interviewing of an Enlisted differs from that of the Civilian witness. The line of questioning doesn't change, however the manner in which the questions are answered does. In any internal investigation, the Enlisted is compelled to answer all questioning, honestly accurately, and in its totality. Any deviation from this will result in sanction against the member being questioned. The member being questioned as a witness is not entitled to a bargaining unit representative (Weingarten Representative) when being questioned about the actions of the Principal. If the line of questioning will indicate that the member being questioned will be implicated in any wrong doing, the questioning and interview should be terminated, and the member allowed to confer with a Weingarten Representative.

1. Witness

The interview or statement should first start with a preamble, indicating what the complaint is, who the Complainant is, who the Trooper under investigation is, who will be conducting the interview, naming all witnesses present, date, time, and location of the interview and the case number. The interview/statement should be taken in a formal manner, either typed or audio/video taped in order to properly memorize it.

In addition to asking the member about specifics concerning the current complaint and his and the actions of all others involved; the member can and should be questioned about past practices and patterns of the Principal and his opinions on such:

- How long have you known Trooper (Principal) ?

- Trooper...based on your observations, if any, has Trooper (the Principal) stopped a disproportionate number of minorities?
- Have you observed Trooper... to have taken a harder or different enforcement action while dealing with minorities ?
- Have you patrolled with Trooper before ?
- While patrolling with Trooper.... who would drive?
- Who would determine what vehicles to stop and for what violations?
- Do you know how he determines which vehicles to stop ?
- Did Trooper.... issue, cite for violations which you would consider minor or discretionary?
- Has Trooper... issued a summons for a violation which you would have issued a warning or taken no enforcement action ?
- Have other members noticed this type of action being conducted by Trooper....?
- Has Trooper... ever done anything in the past while dealing with minorities which concerned you?
- Has Trooper... used racial epithets in front of you in the past ?

2. Principal Interview

Once all of the foregoing steps in the investigation have been completed, the customary last step would be to interview the Principal(s) in the allegation. Following a thorough review of all of the information which has been turned up thus far, sufficient time should be spent scripting the interview. The Principal should be instructed to arrange ahead of time for the presence of a Weingarten Representative if so desired. The Principal should be informed of the purpose of the investigation and the fact that the Division considers racial profiling a serious matter.

The following questions are suggested where applicable to be included in the Principal interview.

Were you in a stationary position when you first observed the complainant's vehicle? (If not, then go to the questions which follow below at **):

If so, please describe your position in relation to the roadway, i.e., how far from the roadway, facing traffic, traffic approaching from your rear?

How did you select that position to monitor traffic?

Was this location within your assigned area at the time of the stop?

Have you monitored traffic from that spot in the past?

Do other members of the station monitor traffic from that location?

What were the lighting conditions at that time?

Were there other violators present when you first observed this violator?

If so, how did you decide to stop this particular vehicle?

When did you first note the speed, violation, etc.?

Is this a violation that you routinely stop vehicles for?

If not, what other circumstances are necessary to trigger your decision to stop a vehicle for this violation?

Were these circumstances present in this instance?

Did you utilize your spotlight prior to departing your stationary position? If so, why?

If so, did you learn the race of the occupants as the result of the use of the spotlight?

When did you first note the complainant's race?

Were there additional occupants in the complainant's vehicle?

What was the race of the occupants?

What role did the race of the complainant (and/or occupants) play in your decision to stop the complainant's vehicle?

What role did the race of the complainant and/or occupants play in your decision to

(specify actions taken at the scene of the stop which appear to depart from a normal course of operation).

The complainant claims that you said, acted, treated him in such a way which he perceived was based in some way on his race. Is he correct?

Would you have treated a similarly situated white person in this manner?

Did you search the vehicle?

Did you ask to search the vehicle?

You engaged in conversation with the complainant, asking where is he going, coming from, any contraband, are these routine questions?



Does it come as a surprise to you that this particular complainant feels that you racially profiled him/her ?

Did the complainant mention race or his suspicion that you profiled him at the scene of the stop?

You have been apprized of those actions and/or statements which the complainant relies on to conclude that you allowed his race to alter your actions. In retrospect, is there anything you might have done differently on this stop that you believe might have improved the complainant's perception of your motives?

****If the stop was as the result of moving patrol:**

Was this a moving radar violation?

How often do you conduct moving radar?

Was this a speeding pace, DWI, other moving violation, other equipment violation?

If so, what drew your attention to this particular vehicle?

All above mentioned questions apply as well.

Review/Confront with Complainant questions and answers.

Review MVR for Troopers explanation of incident, tape and actions.

Review any reports and documents relating to or about the incident

IV. Analysis of Facts and Information Uncovered

A. Inferring Motivation from Objective Factors in Disparate Treatment/Racial Profiling Cases.

1. Under McDonnell - Douglas (employment law formula), where there is no direct evidence of improper motivation (i.e., base action on race or ethnicity):
2. Three (3) step procedure of shifting evidentiary obligations.
 - a. Present evidence that complainant/victim.
 - (1) belongs to minority/ethnic group (based on troopers objective perception); and
 - (2) The complainant/victim was subject to discretionary police procedure or action; and
 - (3) The actions of the trooper were more unreasonable, than reasonable, or not reasonably necessary, or an abuse of discretion.
3. If the above requirements are met or elements are present; a presumption of improper motivation arise, ("presumed these acts, if otherwise unexplained, are more likely than not based on a consideration of impermissible factors).
4. Burden shifts to the trooper to articulate legitimate, non-discriminatory reason for the actions taken.
 - a. A vague imprecise reason is little more than a denial.
 - b. Subjective Justification of Actions
 - (1) subjective justification for the exercise of discretion is suspect as a mechanism to disguise improper motivation.
 - (2) subjective justification, when objective standards are possible - usually lack legitimacy.
 - (3) some subjective reasons will be legitimate.

- c. When objective criteria are available and could have been utilized, or where vague conclusions could have been reduced to more precise objective elements, articulation of unnecessary subjective reasons raises inferences that the reasons were not legitimate.
- d. Where objective measurement and evaluation is virtually impossible because of the lack of VIABLE NORMS, and the reasons articulated have been clearly and uniformly defined and applied in the most precise and objective means practicable, a subjective conclusion will be legitimate.

5. Evidence of Pretext and Burden of Persuasion.

- a. If:
 - (1) direct evidence of past or present prejudice toward complainant/victim's class; or
 - (2) Statistical data may show general disparate impact by race; or
 - (3) The articulated reason given by the officer has not been uniformly applied in past (ex. type, severity of violation alleged as basis for stop unusual), then
- b. Reasons not advanced at time decision was made suggest afterthought to avoid implication of improper motive. This tends to show reasons offered are not worthy of belief - lack of credibility.

B. Analysis

- 1. In the event a conclusive determination based on direct evidence substantiating or clearing the allegation is not established, the investigator must evaluate all of the facts and information obtained.
- 2. Inferences
 - a. If the trooper has followed all proper procedures; was in assigned area, completed reports properly, acted reasonably regarding the action complained of, treated complainant consistently compared with similar non-minority interactions, or has credible, coherent and reasonable explanations as to any deviations, there is an inference that the trooper acted without improper motivation. Further, in this

- case, the burden is on the complaining party and the investigator to prove otherwise.
 - b. If the trooper failed to follow certain procedures, or the trooper's actions do not appear reasonable based on the situation, or the trooper's conduct is not consistent with similar non-minority interactions, there is an inference that the troopers conduct may be based on improper motive and the burden can be said to have shift to the trooper to provide justification. If the explanations are subjective, conflict with explanation given at time of incident, or the explanation given was not uniformly applied in the past, an inference of improper motive may result.
 - c. Improper procedures and rule violations directly relating to consent decree issues designed to prevent profiling (ex. fail to call in stop) will give rise to the strongest presumptions. Procedures not relevant to the core issues should not even be considered in this analysis (ex. failure to wear hat). The investigator must consider this analysis in light of the material contained in Section I, A, B and C of this document. These improper procedures and rule violations should be analyzed quantitatively and qualitatively.
3. Analysis of relevant SOP's

Relevant SOP's should be reviewed and include but are not limited to:

F-55
F-19
F-3
C-22
B-9
B-10

ATTACHMENT 7



INFRASTRUCTURE, SAFETY, AND ENVIRONMENT

THE ARTS
CHILD POLICY
CIVIL JUSTICE
EDUCATION
ENERGY AND ENVIRONMENT
HEALTH AND HEALTH CARE
INTERNATIONAL AFFAIRS
NATIONAL SECURITY
POPULATION AND AGING
PUBLIC SAFETY
SCIENCE AND TECHNOLOGY
SUBSTANCE ABUSE
TERRORISM AND
HOMELAND SECURITY
TRANSPORTATION AND
INFRASTRUCTURE
WORKFORCE AND WORKPLACE

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Testing for Racial Profiling in Traffic Stops From Behind a Veil of Darkness

Jeffrey GROGGER and Greg RIDGEWAY

The key problem in testing for racial profiling in traffic stops is estimating the risk set, or "benchmark," against which to compare the race distribution of stopped drivers. To date, the two most common approaches have been to use residential population data or to conduct traffic surveys in which observers tally the race distribution of drivers at a certain location. It is widely recognized that residential population data provide poor estimates of the population at risk of a traffic stop; at the same time, traffic surveys have limitations and are more costly to carry out than the alternative that we propose herein. In this article we propose a test for racial profiling that does not require explicit, external estimates of the risk set. Rather, our approach makes use of what we call the "veil of darkness" hypothesis, which asserts that police are less likely to know the race of a motorist before making a stop after dark than they are during daylight. If we assume that racial differences in traffic patterns, driving behavior, and exposure to law enforcement do not vary between daylight and darkness, then we can test for racial profiling by comparing the race distribution of stops made during daylight to the race distribution of stops made after dark. We propose a means of weakening this assumption by restricting the sample to stops made during the evening hours and controlling for clock time while estimating daylight/darkness contrasts in the race distribution of stopped drivers. We provide conditions under which our estimates are robust to a substantial nonreporting problem present in our data and in many other studies of racial profiling. We propose an approach to assess the sensitivity of our results to departures from our maintained assumptions. Finally, we apply our method to data from Oakland, California and find that in this example the data yield little evidence of racial profiling in traffic stops.

KEY WORDS: Benchmarking; Racial profiling.

1. INTRODUCTION

Racial profiling is a significant social problem. Some 42% of African-Americans say that police have stopped them just because of their race, 59% of the U.S. public believes that the practice is widespread, and 81% disapprove of it (Gallup 1999).

Public concern over racial profiling has resulted in massive, costly data collection. At least 26 states have passed legislation to deal with racial profiling and require all agencies to collect race data for all traffic stops (Northeastern University 2005). Another 110 agencies in states without mandatory data collection have implemented their own data collection programs. Some collect such data voluntarily, whereas others, such as the Cincinnati and Los Angeles Police Departments, collect data on an ongoing basis as a result of legal settlements.

Despite all of the data collection, there remains considerable uncertainty as to how those data should be used to test for racial profiling. Many researchers suggest that a difference between the racial distribution of persons stopped by police and the racial distribution of the population at risk of being stopped would constitute evidence of the existence of racial profiling (San Jose Police Department 2002; Kadane and Terrin 1997; Smith and Alpert 2002; MacDonald 2001; Dominitz 2003; General Accounting Office 2000; Zingraff et al. 2000). This implicit definition reveals the key empirical problem in testing for racial profiling: measuring the risk set, or the "benchmark," against which to compare the racial distribution of traffic stops.

Measuring the risk set explicitly poses a number of problems. First, the race distribution of drivers within a jurisdiction may differ from the race distribution of the residential population, because car ownership and travel patterns may vary by race. They also may differ because part of the driving population originates outside of the jurisdiction. Furthermore, the race distribution of the at-risk population may differ even from that

of the driving population if drivers of different races differ in their driving behavior, that is, if they commit traffic offenses at different rates. Finally, the at-risk population may vary due to differences in exposure to police, even when controlling for driving behavior.

The benchmarking problem has generally been dealt with in one of three ways: Analysts have used benchmarks based on residential populations or driver's license records, despite their limitations; have conducted traffic surveys, using observers to tally the race distribution of drivers or traffic violators at a certain location; or have ignored data on stops altogether, looking for racial disparities in other measures of police behavior. We discuss these approaches in more detail (see also Fridell 2004).

Our main goal in this article is to propose an alternative approach to testing for racial profiling in traffic stops that does not require explicit external estimates of the race distribution of the population at risk of being stopped. An important advantage of our approach is that it is inexpensive to implement, even on the ongoing basis often required by court settlements, because the benchmark that we propose can be constructed from traffic stop data themselves. We present the assumptions under which our approach yields a valid test, discuss how some of those assumptions may be relaxed, and provide some calculations to assess the sensitivity of the test to violations of those assumptions.

Our approach is based on a simple assumption: During the night, police have greater difficulty observing the race of a suspect before they actually make a stop. We refer to this as the "veil of darkness" hypothesis. The implication of the veil of darkness hypothesis is that the race distribution of drivers stopped during the day should differ from the race distribution of drivers stopped at night if officers engage in racial profiling. Thus if travel patterns, driving behavior, and exposure to police are similar between night and day, then we can test for racial profiling by comparing the race distribution of drivers stopped during the day to the race distribution of drivers stopped during the night.

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The assumption that travel patterns are similar in the day and the night may be restrictive, because the time of employment is known to vary by race (Hamermesh 1996). To deal with this issue, we make use of natural variation in hours of daylight over the year. In the winter, it is dark by early evening, whereas in the summer it stays light much later. Limiting much of our analysis to stops occurring during the intertwilight period (i.e. between roughly 5 and 9 PM), we can test for differences in the race distribution of traffic stops between night and day, while controlling implicitly for racial variation in travel patterns by time of day. As we argue, limiting the sample period and using time-of-day controls may also equalize differences in risk arising due to differences in driving behavior and police exposure. Neighborhood controls may equalize any differences that remain.

In the next section we provide more detail on previous analyses of racial profiling. In Section 3 we discuss our data, and in Section 4 we formalize and extend our analytical approach. One important extension deals with a serious nonreporting problem that is common in the literature. We present the assumptions under which our approach yields valid qualitative tests. In Section 5 we present our main results based on traffic stop data from Oakland, California. We follow our main results with a sensitivity analysis that helps quantify the extent by which some of our assumptions would have to fail to reverse our qualitative conclusions. We conclude with a discussion of limitations and potential extensions of our approach in Section 6.

2. PREVIOUS RESEARCH ON RACIAL PROFILING

Our aim is to determine whether Oakland patrol officers engage in racial profiling when selecting particular vehicles to stop. Our notion of racial profiling derives from the definition used in the California Peace Officer Standards & Training (POST) program on racial profiling: "The 14th Amendment is also violated when law enforcement officers use a person's race as a factor in forming suspicion of an individual, unless race was provided as a specific descriptor of a specific person in a specific crime" (Peace Officer Standards & Training Program 2002, p. 2). California's definition of racial profiling is similar to that of the U.S. Justice Department, which intervenes in many racial profiling cases (Ramirez, McDevitt, and Farrell 2000).

This notion of racial profiling should be viewed as distinct from a practice that can be termed "neighborhood profiling," in which police commanders deploy patrol officers to minority neighborhoods in greater proportion than warranted on the basis of legitimate law enforcement objectives. Although a few studies have analyzed the spatial distribution of police patrols, the extent of neighborhood profiling per se appears to have received little if any study (Klinger 1997; Alpert and Dunham 1998). Most studies of racial profiling, like ours, seek to determine whether patrol officers are more likely to stop minority drivers than white drivers from the at-risk population.

To estimate the race distribution of the at-risk population, several studies have used secondary data. A number have used census-based estimates of the race distribution of residential populations (e.g., Steward 2004; Weiss and Grumet-Morris 2005). This approach has serious limitations that have been recognized by both researchers and the courts (San Jose Police Department 2002; Dominitz 2003; Smith and Alpert 2002;

Chavez v. Illinois State Police). As mentioned earlier, out-of-area drivers and differences in car ownership and travel patterns may result in differences between the residential population and the at-risk population. Furthermore, if there are racial differences in driving behavior, then the racial distribution of the at-risk population may differ from the racial distribution of the driving population, because the U.S. Supreme Court has upheld the legality of traffic stops made pursuant even to trivial violations of the law (Harris 1999). Finally, differences in police exposure can cause differences between residential and at-risk populations. Police argue that they deploy patrols in neighborhoods in proportion to calls for service. Because in many communities a disproportionate number of calls for service come from minority neighborhoods, minority neighborhoods have a greater law enforcement presence. As a result, police may observe minority drivers more frequently (McMahon, Garner, Davis, and Kraus 2002; San Jose Police Department 2002).

Given the limitations of census data, several analysts have used other sources of secondary data. Zingraff et al. (2000) used the race distribution of licensed drivers rather than the residential population to estimate the race distribution of drivers at risk of being stopped. Although this approach accounts for racial differences in the rate at which the population holds driver's licenses, it does not account for out-of-jurisdiction drivers or for potential racial differences in travel patterns, driving behavior, or exposure to police. Alpert, Smith, and Dunham (2003) used data on the location of traffic accidents and the race of the not-at-fault drivers to estimate the race distribution of the at-risk population. Although this approach may measure the race distribution of drivers on the road, it does not account for potential racial differences in driving behavior. Other analysts have studied the race distribution of drivers flagged by photographic stoplight enforcement (Montgomery County Police Department 2002) and by aerial patrols (McConnell and Scheidegger 2001). Again, although these methods may provide reasonable estimates of the race distribution of the driving population, one can question whether they capture race differences in other aspects of stop risk, such as driving behavior and police exposure.

An alternative to using secondary data to estimate the race distribution of the at-risk population is to collect primary data through traffic surveys. Such surveys use observers to tally the race distribution of drivers and in some cases the race distribution of drivers committing certain traffic offenses. For example, Lamberth (1994) used observers to estimate the race distribution of all drivers and of drivers exceeding the speed limit by at least 5 mph on a stretch of the New Jersey Turnpike where motorists had lodged allegations of racial profiling against police.

The advantage of traffic surveys is that they provide plausibly valid estimates of the race distribution of drivers at a specific set of locations. However, traffic surveys have disadvantages as well. The first is their expense. By one estimate, carrying out such a survey requires 800 person-hours of labor (Pritchard 2001). Another problem is that the surveys' validity may suffer in multiethnic environments, where the ethnicity of a driver may be difficult to discern with precision during an observation period that may last only a few seconds. Finally, traffic surveys generally measure only a limited set of traffic offenses, which may influence estimates of racial differences in driving behavior. For example, Lamberth (1994) reported that virtually all

drivers, regardless of race, exceeded the speed limit by at least 5 mph. However, in a separate traffic study conducted on the same stretch of the New Jersey Turnpike that Lamberth studied, Lange, Blackman, and Johnson (2001) found that black drivers were more likely than non-blacks to exceed speeds of 80 mph. Thus the extent to which traffic surveys capture racial differences in driving behavior depends on the specific traffic offenses tallied by the survey.

A final vein of research has ignored traffic stop data altogether, focusing on other measures of police behavior, such as the rate at which stopped drivers are searched or the rate at which searches yield contraband, referred to as the "hit rate." For example, Ridgeway (2006) used a propensity score technique to assess differences in stop duration, citation rates, and search rates. A practical virtue of focusing on poststop outcomes is that the risk sets are readily measured; the population at risk of being searched consists of drivers who are stopped, and the population at risk of being found with contraband consists of drivers who are searched. Beyond mere practicality, the emphasis on hit rates stems from an economic model of police behavior. Knowles, Persico, and Todd (2001) showed that in an environment in which police seek to maximize arrests, the equality of hit rates by race implies that police do not intentionally discriminate. However, the model implicitly assumes that police place no weight on the rate at which innocent motorists are detained. In contrast, much of American criminal law (starting with the Fourth Amendment) stresses the protection of the rights of the innocent. Because the rate at which innocents are wrongly detained is a function of the stop rate (Dominitz 2003), analyses that exclude stop rates omit this important consideration.

Our aim in this article is to assess whether there is race bias in traffic stops. In the next section we discuss the stop data to which we apply the approach that we spell out in Section 4.

3. OAKLAND'S TRAFFIC STOP DATA

The genesis for the data that we analyze were complaints by motorists and advocates that the Oakland Police Department (OPD) had engaged in racial profiling, discriminating in particular against black drivers (Oakland Police Department 2004). An early analysis of the OPD's stop data using the census benchmark method indicated that 56% of drivers stopped by the OPD were black, whereas blacks composed only 35% of the city's residential population. Although OPD started collecting stop data voluntarily, it later entered a settlement agreement with the U.S. Justice Department requiring that they collect such data on an ongoing basis (Allen et al. v. City of Oakland et al. 2003, sec. VI.B). Similar to the consent decrees involving other police departments, the Oakland litigation required regular monitoring of the stop data so as to detect trends in potentially discriminatory police behavior.

Under the terms of the agreement, Oakland police must record information on every stop that they initiate anywhere within the city limits of Oakland. Note that this implicitly excludes freeway stops, because freeways fall under the jurisdiction of the California Highway Patrol. Police officers must complete a report including items such as the reason for the stop, the time and location of the stop, and the race/ethnicity

of the person stopped. These data are then entered into an electronic database, which the OPD made available for our analysis. Here we focus on motor vehicle stops.

The data that we analyzed included all reported vehicle stops carried out between June 15 and December 30, 2003, amounting to a total of 7,607 stops. Officers most frequently stop vehicles for nondangerous moving violations (48%) and dangerous moving violations (27%), although the danger distinction is subjective. Mechanical and registration violations were the reason for most of the remaining stops (20%), but some drivers were also stopped for criminal investigations (5%).

Vehicle stops are concentrated in the city's downtown (28%) and an area known as the Flatlands (25%). The Flatlands, in which 80% of the residents are black, is Oakland's high-crime area. The area contributes disproportionately to Oakland's homicide rate, which at 28 homicides per 100,000 residents in 2003 was more than 4 times the national average and greater than the homicide rates of Los Angeles and Chicago. Only 5% of the OPD's stops occur in the low crime, affluent Oakland hills, a predominantly white and Asian community.

Despite the terms of the court settlement, there is evidence of a substantial nonreporting problem in the data. An audit of the stop reports led the OPD's Independent Monitoring Team to estimate that as many as 70% of all motor vehicle stops were not reported in the early phases of this study (Burges, Evans, Gruber, and Lopez 2004, p. 41). Court-ordered oversight and increased sanctions for noncompliance raised the number of completed stop forms, especially in October and November.

Such sizeable nonreporting problems seem fairly common in the literature. Kadane and Terrin (1997) noted that either race data were missing or no report was available for about 69% of the drivers stopped during the course of data collection for Lamberth's (1994) New Jersey Turnpike study. The General Accounting Office (2000) reported that the driver's race was missing from about 50% of the stops carried out during a racial profiling study in Philadelphia; Smith and Alpert (2002) reported that data were missing for 36% of the stops made in the course of a Richmond, Virginia study; and Steward (2004) reported that 34% of Texas law enforcement agencies failed to collect stop data mandated by recent state legislation.

Clearly, nonreporting problems are an issue that must be considered in testing for racial profiling. In the next section we provide conditions under which the veil of darkness approach yields valid tests despite the presence of substantial nonreporting. These conditions are weaker than might be expected; for example, we do not need to assume that the rate of nonreporting is independent of race. After we present our main analyses, we return to the nonreporting issue by assessing the extent to which the assumptions that we do require would have to be violated to overturn our qualitative conclusions.

4. METHODS

We begin by discussing an idealized approach that provides not only a test for racial profiling, but also a quantitative measure of its extent. The idealized approach is infeasible because it requires knowledge of visibility of race, which is a function not only of daylight and darkness, but also of such unobservable factors as daytime glare, nighttime street lighting, and the angle

from which the police view oncoming traffic. Although the idealized test is infeasible, it demonstrates the important features of our approach.

The idealized approach also serves to highlight an important feature of the feasible test, which is based on observable daylight and darkness rather than on unobservable visibility. Because darkness serves as a proxy for visibility, our feasible veil of darkness test does not provide a quantitative measure of the extent of racial profiling. This is because the magnitude of our test statistic is a function both of the difference in the race distribution of stopped drivers between daylight and darkness and of the relationship between darkness and visibility. Nevertheless, we show that the feasible veil of darkness test is a consistent test for the presence of racial profiling.

We initially impose the restrictive assumption that relative risk is constant; that is, the race distribution of drivers at risk of being stopped is the same during daylight and darkness. We then show how limiting the sample to the intertwillight period and controlling flexibly for time of day through a regression model accounts for potential differences in relative risk arising due to differences in travel times. We argue further that the approach provides implicit controls for potential differences in relative risk that may arise due to differences in driving behavior and police exposure. Finally, we note that the nonreporting problem cannot be dealt with explicitly using the regression model. To deal with nonreporting, we first state the necessary conditions for our approach to yield a valid test, then provide a sensitivity analysis to assess the extent to which those conditions would have to fail to reverse our qualitative conclusions.

4.1 An Idealized Test for Racial Profiling

We begin with an idealized and restrictive form of the test. Let S be a binary random variable indicating whether officers stop a vehicle. Let the binary random variables B and \bar{B} denote the event that a person is black and non-black and at risk of being stopped. To be at risk, the person must be driving a vehicle, be exposed to police, and be committing a traffic offense that would lead police to stop the vehicle if observed. Herein we often use the terms "black driver" and "non-black driver" as shorthand to refer to drivers in the at-risk population who are black and non-black.

Ideally, we would test whether the visibility of race influences officers' decisions to stop particular vehicles. Visibility refers to whether the officer can see the driver's race before making a stop. Although visibility may vary continuously as a function of daylight and other conditions, for simplicity we let V denote the event that race is visible and let \bar{V} denote the event that race is invisible. The idealized test would be based on K_{ideal} in (1),

$$\frac{P(S|V, B)}{P(S|V, \bar{B})} = K_{ideal} \frac{P(S|\bar{V}, B)}{P(S|\bar{V}, \bar{B})}. \quad (1)$$

The left side of (1) is the relative risk of a black driver being stopped when race is visible, and the ratio on the right side of (1) is the relative risk of a black driver being stopped when race is not visible. In the absence of racial profiling, K_{ideal} would equal 1, so that the relative risk of being stopped would not depend on whether race was visible. In the presence

of racial profiling, K_{ideal} provides a natural quantitative measure of its extent.

Of course, none of the quantities in (1) would be estimable even if V were observed. However, applying Bayes' rule and rearranging yields

$$K_{ideal} = \frac{P(B|S, V)P(\bar{B}|\bar{S}, \bar{V})}{P(\bar{B}|S, V)P(B|\bar{S}, \bar{V})} \times \frac{P(B|\bar{V})P(\bar{B}|V)}{P(\bar{B}|\bar{V})P(B|V)}. \quad (2)$$

The first term on the right side of (2) is an odds ratio measuring the association between visibility and the race of stopped drivers. If visibility were observed, then this term could be estimated from traffic stop data. The second term is the relative risk ratio; that is, the ratio of the relative risk of a black driver being stopped when race is not visible to the relative risk of a black driver being stopped when race is visible. If the relative risk were independent of visibility, then this second term would equal 1. If in addition visibility were observable, then an estimate of the extent of racial profiling, and a test of the null hypothesis of no racial profiling, could be based on the first term in (2).

4.2 The Feasible Veil of Darkness Test

Because no direct measures of visibility are available, we substitute daylight/darkness as a proxy measure for V . Let $d = 1$ represent a stop occurring in darkness and let $d = 0$ represent a stop occurring in daylight. Then, substituting $d = 0$ for V and $d = 1$ for \bar{V} in (2) yields

$$K' = \frac{P(B|S, d=0)P(\bar{B}|\bar{S}, d=1)}{P(\bar{B}|S, d=0)P(B|\bar{S}, d=1)} \times \frac{P(B|d=1)P(\bar{B}|d=0)}{P(\bar{B}|d=1)P(B|d=0)}. \quad (3)$$

Equation (3) is analogous to (2) but is based on observable daylight/darkness rather than on unobservable visibility. The first term in (3) is an odds ratio, the odds of being black and stopped during daylight to the odds of being black and stopped during darkness. The second term is the relative risk ratio, defined in terms of daylight and darkness rather than of visibility. Assuming momentarily that the relative risk is constant (i.e., independent of daylight and darkness) yields the veil of darkness parameter K_{vod} , on which we base our test,

$$K_{vod} = \frac{P(B|S, d=0)P(\bar{B}|\bar{S}, d=1)}{P(\bar{B}|S, d=0)P(B|\bar{S}, d=1)}. \quad (4)$$

Proposition 1 shows that although K_{vod} does not in general equal K_{ideal} , it will exceed 1 if there is racial profiling.

Proposition 1: The veil of darkness test. If the following assumptions hold:

1. $K_{ideal} > 1$
(there is a racial bias against black drivers);
2. $P(V|d=0) > P(V|d=1)$
(darkness has a race blinding effect);
3. $\frac{P(\bar{B}|d=0)P(B|d=1)}{P(B|d=0)P(\bar{B}|d=1)} = 1$
(the relative risk is constant: the racial mix of the at-risk population does not change between daylight and darkness),

then $1 < K_{vod} \leq K_{ideal}$.

For the proof see the Appendix.

Proposition 1 reveals two important properties of our test. First, it shows implicitly that the feasible test, unlike the idealized test, does not provide an estimate of the quantitative extent of racial profiling. As shown in the Appendix, we would have to know that $P(V|d = 0) = 1$ and $P(V|d = 1) = 0$ to quantify the extent of racial profiling as defined by K_{ideal} . The intuition is simple: Whereas a qualitative test requires only a restriction on the sign of the difference between $P(V|d = 0)$ and $P(V|d = 1)$, a quantitative measure requires a restriction on the actual magnitudes.

At the same time, Proposition 1 provides conditions under which K_{vod} can be used to test the null hypothesis of no racial profiling. Although such a qualitative test may be less informative than a quantitative measure, it is nevertheless an object of considerable importance. Many interest groups and law enforcement agencies have adopted a "zero-tolerance" position on racial profiling, suggesting that they would seek or take remedial action for any value of $K_{ideal} > 1$ (Williams 2000; U.S. Department of Transportation 2000; American Civil Liberties Union 2003; Dworkowitz 2004; Schwab 2004). Language from the consent decree between the Los Angeles Police Department and the U.S. Justice Department underscores the importance of testing for the null of no racial profiling. According to this decree, "LAPD officers may not use race, color, ethnicity, or national origin (to any extent or degree) in conducting stops or detentions..." [emphasis ours] (Los Angeles Police Department 2000).

The assumptions underlying Proposition 1 merit some discussion. Assumption 1 obviously requires that racial profiling be present. Assumption 2 requires that visibility be lower during darkness than during daylight. This does not require complete race-blindness in darkness nor complete race-visibility during daylight, however. The test would be most powerful, and we would have $K_{vod} = K_{ideal}$, if d and V were perfectly correlated, but in general this will not be the case.

Some evidence from the literature supports the sign restriction required by assumption 2. For example, Lamberth (2003) described a traffic survey in which the driver's race could be identified in 95% of the vehicles but for which nighttime observations required auxiliary lighting. Greenwald (2001) canceled plans for evening surveys after his observer could identify the race of only 6% of the drivers viewed around dusk. In general, $P(V|d)$ is unknown, but provided that visibility is lower after dark, assumption 2 should hold.

Assumption 3 requires that relative risks be constant. Put differently, it requires that the race distribution of the at-risk population not change between daylight and dark. Because this assumption is not likely to hold in general, we relax it in the next section by controlling for clock time and limiting the sample to stops carried out during the intertwillight period.

4.3 Generalizing the Test

For a number of reasons, the assumption of constant relative risk is restrictive. One reason for this is that temporal travel patterns may vary by race due to differences in hours of work. If so, then the race distribution of the at-risk population may vary by time of day. Racial differences in police exposure or driving behavior could also cause the relative risks to vary. The

test also needs to address the nonreporting problem discussed in Section 3.

To relax the assumption that the relative risks are constant, we introduce clock time t into the analysis. We generalize the simple test from Section 4.2 by basing our test for racial profiling on a test of $K(t)$ in the relation

$$\frac{P(S|B, t, d = 0)}{P(S|\bar{B}, t, d = 0)} = K(t) \frac{P(S|B, t, d = 1)}{P(S|\bar{B}, t, d = 1)} \tag{5}$$

In the absence of racial profiling, we should find that $K(t) = 1$ for all t . In the presence of racial profiling, we should find $K(t) > 1$, that is, that blacks are at greater relative risk of being stopped during the daylight than during the dark, when (by hypothesis) racial profiling is more difficult.

We proceed as before by applying Bayes' rule to each of the four probability terms in (5), then solving for the logarithm of $K(t)$ to obtain

$$\begin{aligned} \log K(t) &= \log \frac{P(S|B, t, d = 0) P(S|\bar{B}, t, d = 1)}{P(S|\bar{B}, t, d = 0) P(S|B, t, d = 1)} \\ &= \log \frac{P(B|S, t, d = 0) P(\bar{B}|S, t, d = 1)}{P(\bar{B}|S, t, d = 0) P(B|S, t, d = 1)} \\ &\quad \times \frac{P(\bar{B}|t, d = 0) P(B|t, d = 1)}{P(B|t, d = 0) P(\bar{B}|t, d = 1)} \end{aligned} \tag{6}$$

To analyze nonreporting, let R be a binary random variable indicating whether the officer reported the stop. We introduce nonreporting in the expression for $\log K(t)$ by means of the probability relation

$$P(B|S, t, d) = \frac{P(B|R, S, t, d)P(R|S, t, d)}{P(R|B, S, t, d)} \tag{7}$$

Substituting (7) into (6), collecting similar terms, and making use of the fact that $P(\bar{B}|R, S, t, d) = 1 - P(B|R, S, t, d)$, we obtain

$$\begin{aligned} \log K(t) &= \log \frac{P(B|R, S, t, d = 0)}{1 - P(B|R, S, t, d = 0)} - \log \frac{P(B|R, S, t, d = 1)}{1 - P(B|R, S, t, d = 1)} \\ &\quad + \log \frac{P(\bar{B}|t, d = 0) P(B|t, d = 1)}{P(B|t, d = 0) P(\bar{B}|t, d = 1)} \\ &\quad + \log \frac{P(R|\bar{B}, S, t, d = 0) P(R|B, S, t, d = 1)}{P(R|\bar{B}, S, t, d = 1) P(R|B, S, t, d = 0)} \end{aligned} \tag{8}$$

Equation (8) is the key to the analysis that follows. The probabilities in the first line condition only on reported stops, exactly the data that we observe. We can estimate this line from the observed data using logistic regression in which the dependent variable is a race indicator (black/non-black) with d (the darkness indicator) and t (clock time) as covariates. The logistic regression model estimates the regression $f(d, t)$ from the observed data as

$$\log \frac{P(B|R, S, t, d)}{1 - P(B|R, S, t, d)} = f(t, d). \tag{9}$$

The second line of (8) is then simply $f(t, 0) - f(t, 1)$. If the effect of darkness is additive, then this difference is simply the coefficient on the darkness variable times -1 .

The third line of (8) measures how the mix of black and white drivers in the at-risk population changes depending on darkness and clock time. If the race distribution of the at-risk population is independent of darkness, then, conditional on clock time, this term vanishes. This is weaker than the assumption of constant relative risk in Proposition 1. Here we discuss the circumstances that may satisfy this weaker condition.

First note that to condition on clock time while estimating daylight/darkness contrasts in the race distribution of stopped drivers, we must limit the sample to stops made at times when it is daylight during certain times of year and dark at other times. In Oakland, the latest occurrence of the end of civil twilight, which we use to define "dark," falls on June 22 at 9:06 PM, and the earliest occurrence falls on December 5 at 5:19 PM. For the remainder of the analysis, we limit the sample to stops occurring between 5:19 and 9:06 PM, which we refer to as the intertwilight period. Restricting the sample in this way allows us to construct contrasts by dark and daylight while controlling for clock time.

Figure 1 represents this idea visually. The horizontal axis indicates the clock time and the vertical axis indicates hours since dark. Throughout the analysis, we omit stops carried out during the roughly 30-minute period between sunset and the end of civil twilight, because that period is difficult to classify as either daylight or dark. The solid points indicate stops of black drivers, and the open circles represent stops of non-black drivers. At any time between 5:19 and 9:06 PM, some stops are made when it is dark (gray shading) and some are made when it is light (no shading). The diagonal bands are a result of the natural variation in daylight hours over the course of the study period. In particular, the large diagonal gap is a result of the shift from Pacific Daylight Time to Pacific Standard Time at the end of October. This shift is especially useful for our comparison because it creates extremes in visibility for fixed clock times.

Within the intertwilight period, we can construct contrasts by daylight and darkness in the fraction of stopped drivers who are black, controlling flexibly for time of day. For example, the vertical lines mark a period around 6:30 PM, within which we can assess whether darkness influences the race of drivers stopped.

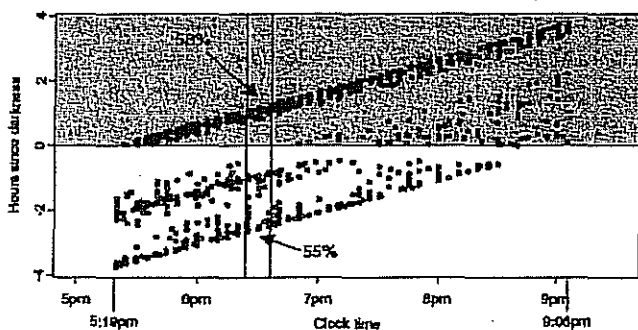


Figure 1. Plot of Stops by Clock Time and Darkness. The solid points indicate black drivers, and the open circles represent non-black drivers. The shaded region indicates those stops occurring after the end of civil twilight. The large diagonal gap is a result of the shift from Pacific Daylight Time to Pacific Standard Time. The figure excludes stops occurring between sunset and the end of civil twilight. The vertical lines near 6:30 PM mark the example region discussed in the text.

During daylight hours, 55% of the stops involved black drivers; after dark, this figure increased to 58%. The full regression analysis will combine such comparisons across the intertwilight period. Note that, although we could potentially include stops carried out during the morning intertwilight period as well as during the evening intertwilight period depicted, we exclude the morning stops simply because they are rare.

Conditioning on clock time makes the assumption that the relative risk is constant between daylight and dark more plausible; see the third line of (8). Recall that the random variable B denotes the event that a black motorist is driving, committing a traffic offense, and observed by police. If travel patterns vary between the races due to variation in commuting times, and commuting times are determined by work hours, it may be reasonable to assume that the drivers who are on the road at 6:30 PM are the same regardless of whether it is daylight or dark. If so, then travel patterns are independent of daylight, conditional on time of day. As for the driving behavior of individuals, differences may arise due to composition effects; drivers on the road at 8 PM may differ on average from those on the road at 6 PM, because the former include a higher proportion of drivers en route to entertainment venues, whereas the latter include a higher proportion of those on their way home from work. Such differences represent time effects rather than daylight effects, so controlling for clock time should equalize them. In a similar vein, in Oakland it is the clock, rather than darkness, that dictates police shifts and allocations. Thus the distribution of police at 6:30 PM should be the same whether or not 6:30 PM occurs after dark. To further control for possible differences in police exposure arising due to differences in patrol intensity by location, we include neighborhood controls in one of the models that we report on later. More generally, the sensitivity test that we carry out in Section 5.3 will help to assess the extent to which our key assumption—that the relative risks are independent of daylight conditional on time of day—would have to be violated to reverse our conclusions.

The fourth line of (8) reveals the condition that reporting rates must satisfy for the regression to yield a valid test. The two ratios in this term measure how much reporting rates change between daylight versus darkness by race, given clock time. If reporting rates vary by race but race-specific reporting rates do not vary between day and night (conditional on clock time), then these two terms vanish. It is important to note that equal reporting rates by race are not needed. Compared with the New Jersey traffic study, where equal reporting rates by race would have been necessary to identify the extent of racial profiling (Kadane and Terrin 1997), our requirement is weaker. Note, however, that if there is a substantial number of officers who are not reporting stops and engaging in racial profiling, then the reporting rate for black drivers during the day is likely to be smaller than the reporting rate for black drivers at night. Newer data collection procedures and audits, such as those implemented by Canter (2004), may increase reporting rates to the point that the probabilities in the nonreporting term are near 1. After presenting our main results in the next section, we return to the nonreporting issue, asking to what extent racial reporting ratios would have to differ between day and night for the conclusions from our main analysis to be reversed.

4.4 Factors Affecting the Veil of Darkness

Anything that reduces the difference between $P(V|d = 0)$ and $P(V|d = 1)$ may reduce the power of the veil of darkness test. Most obviously, this includes street lighting. Bright street lighting would increase visibility during darkness, reducing the difference between $P(V|d = 0)$ and $P(V|d = 1)$ and shrinking K_{vod} toward 1. However, it would not affect the sign consistency of $\log K_{\text{vod}}$ unless it completely eliminated the difference between $P(V|d = 0)$ and $P(V|d = 1)$.

A related problem involves what might called "car profiling." Officers may focus on the characteristics of a vehicle to infer the race of the driver in the vehicle. If car characteristics are correlated with the race of the driver and are visible during darkness, then car profiling has essentially the same effect as bright street lighting, reducing the difference between $P(V|d = 0)$ and $P(V|d = 1)$. As before, this does not bias the test, but does reduce the test's power to reject the null of no racial profiling.

Both of these problems can be mitigated by additional data collection. For example, city engineering departments may have data on street lighting; such information could be merged with traffic stop data and incorporated into the regression model. Similarly, data on car characteristics could be collected as part of the traffic stop protocol and included in the regression. In future analyses, a seemingly small amount of additional data collection could raise the power of the veil of darkness test.

5. RESULTS

5.1 Comparing Stops During Daylight and Dark

The simple approach described in Section 4.2 can be implemented with the full sample of data. In the full sample, we define daylight as extending from sunrise to sunset and define dark as extending from the end of civil twilight in the evening until the beginning of civil twilight the following morning.

Column 1 of Table 1 displays statistics and sample sizes from our full sample. Of the 7,607 stops at our disposal, we omitted 329 that were made pursuant to a criminal investigation, where the use of race as an identifying factor is explicitly allowed. Another 549 observations were lacking race or time information, 155 were missing the reason for the stop, and another 72 were missing for other reasons unknown to us. Deleting these stops leaves 6,563 usable observations.

The first column of Table 1 presents the fraction of blacks among drivers stopped in the full sample. Among drivers stopped during daylight, 49% were black; among drivers stopped when it was dark, 65% were black. Under the restrictive conditions discussed in Section 4.1, we can test for racial profiling by comparing these two numbers. If anything, this comparison suggests "reverse" racial profiling, because it shows that

non-black drivers are disproportionately stopped during daylight when visibility is high. Whether this reflects police behavior or the effect of an important omitted variable, such as racial differences in travel patterns, cannot be said.

The second column of Table 1 presents the percentage of blacks among drivers stopped in the intertwilight sample. Among drivers stopped during daylight, 52% were black; among drivers stopped when it was dark, 57% were black. Restricting the sample to the intertwilight period reduces the contrast between day and night. The intertwilight sample provides little evidence of racial profiling.

5.2 Regression Results

We first consider a simple model that assumes that racial profiling is constant over time. This model takes the form

$$\log \frac{P(B|d, t)}{1 - P(B|d, t)} = \beta_0 + \beta_1 d + \gamma_1^T ns_6(t), \tag{10}$$

where $ns_6(t)$ denotes a natural spline basis in clock time with 6 degrees of freedom, γ_1 is a column vector of six parameters, and the superscript "T" denotes transposition. The natural spline allows the model considerable flexibility in adjusting for clock time while enforcing some smoothness to preserve degrees of freedom. For this model, the racial profiling effect is a constant, $\log K(t) = -\beta_1$.

Table 2 presents the estimates of $\log K$ from the intertwilight sample. The estimate in the first row makes no adjustment for clock time and essentially uses only the numbers presented in second column of Table 1 [i.e., $-.19 \approx \log(.52/.48 \times .43/.57)$]. The estimate in the second row adjusts for clock time. The estimate is negative, which constitutes evidence against racial profiling and is consistent with officers stopping black drivers slightly less frequently during daylight than during darkness. Estimation of $\log K$ is imprecise, because the coefficient is smaller in absolute value than its standard error. Adding time-of-day controls has little effect on the evidence of racial profiling.

We also estimate a model that allows for the extent of racial profiling to vary with clock time. This model takes the form

$$\log \frac{P(B|t, d)}{1 - P(B|t, d)} = \beta_0 + \beta_1 d + \gamma_1^T ns_6(t) + \gamma_2^T d \times ns_6(t). \tag{11}$$

For this model, $\log K(t) = -\beta_1 - \gamma_2^T ns_6(t)$. Figure 2 plots the estimate by clock time. The shaded area indicates ± 2 pointwise standard errors. Like the previous simpler model, this model yields little evidence of racial profiling; $\log K(t)$ first peaks just before 7 PM but is still well within sampling variability of the horizontal line at 0. It trends upward again after 8:00 PM, but the paucity of stops at that time during daylight causes large standard error estimates.

Table 1. Percent Black Among Stopped Drivers, by Daylight

	Full sample	Intertwilight sample
Total	55% (n = 6,563)	55% (n = 1,130)
Daylight (d = 0)	49% (n = 4,041)	52% (n = 392)
Dark (d = 1)	65% (n = 2,522)	57% (n = 738)

Table 2. Regression Estimates of the Racial Profiling Effect

Adjustments	log K	Standard error
None	-.19	.13
Clock time	-.11	.14
Clock time and neighborhood	-.12	.14

NOTE: In addition to the indicator variable for darkness, the clock time-adjusted models include a natural spline in clock time with 6 degrees of freedom. The third model also includes a set of patrol-area indicators.

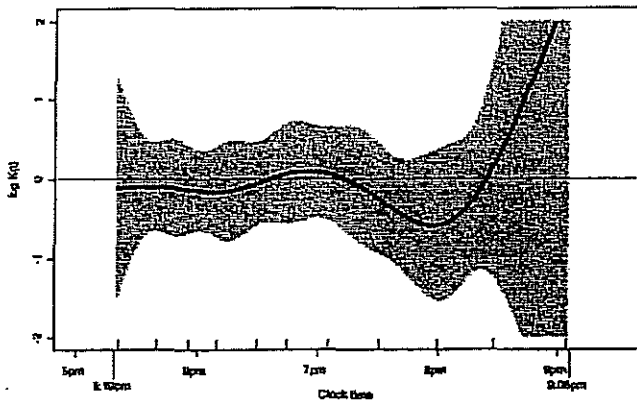


Figure 2. Estimate of $\log K(t)$. The curve is the best estimate of $K(t)$, with the shaded area indicating ± 2 pointwise standard errors. The horizontal line indicates the $K(t)$ that we would expect under no racial profiling. The inward tickmarks along the x-axis indicate the deciles of the observed stop times.

Finally, we estimated a version of (10) to which we added an indicator variable for each patrol area in the city. These indicator variables provide additional controls for differential exposure to law enforcement between blacks and non-blacks arising from differences in patrol intensity across neighborhoods. The OPD has divided the city into 35 community policing beats that we aggregated into 6 regions. The third row of Table 2 reports the resulting estimate of $\log K(t)$. Controlling for neighborhood with an additive model still yields no evidence of racial profiling at the citywide level. We can refine this one step further with the data available to us by including a darkness \times neighborhood interaction term. This will allow us to estimate a racial profiling effect for each neighborhood, as shown in Table 3. We continue to estimate an additive effect of clock time that does not vary by neighborhood.

With the exception of the Hills and West Oakland, the standard errors exceed the estimate of $\log K$. The Hills lie along the eastern border of the city and are predominantly white; West Oakland lies just south of the city's downtown core and is more than 80% non-white. In both areas, $\log K$ is negative, again implying that, if anything, officers are less likely to stop black drivers during daylight.

5.3 Sensitivity Analysis

Although the foregoing results above suggest that there is no racial profiling in traffic stops, those results hinge on assumptions concerning risk ratios and reporting rates. In the second row of Table 2, we estimated $-\beta_1$ to be $-.11$. Under the assumptions maintained earlier,—namely, that differences in reporting ratios do not vary between day and night, and likewise

Table 3. Regression Estimates of the Racial Profiling Effect by Neighborhood

Neighborhood	$\log K$ (neighborhood)	Standard error
Downtown	.12	.26
East Oakland	-.04	.29
Midtown Oakland	-.10	.32
West Oakland	-.51	.29
North Oakland	.67	.72
Hills	-1.07	.90

that risk ratios do not vary between day and night in a manner independent of clock time— $\log K = -\beta_1$, because the last two lines of (8) equal 0. But if our assumptions are violated, then the nuisance terms in the last two lines of (8) may be different from 0, in which case $\log K$ would differ from $-\beta_1$. If the sum of those nuisance terms differed from 0 to such an extent that the lower end of the confidence interval exceeded 0, then we would question our conclusion regarding the absence of racial profiling. Although we cannot estimate the nuisance terms directly, in this section we illustrate the magnitude that these terms would have to achieve to overturn our main conclusion.

The lower bound for a 95% confidence interval for $-\beta_1$ is $-.38$. This implies that if the sum of the nuisance terms exceeded .38, then this would shift the estimate for $\log K$ sufficiently for the data to suggest the presence of racial profiling. We focus first on the risk ratio term [the third line in (8)], assuming for the moment that the reporting ratio term [the fourth line in (8)] equals 0.

We consider the circumstances under which

$$\frac{P(\bar{B}|t, d=0)}{P(B|t, d=0)} = \exp(.38) = 1.46. \tag{12}$$

To assess this magnitude, assume that at 6:30 PM on days when 6:30 PM occurs during daylight, black and non-black drivers are at equal risk for being stopped, that is, $P(B|t, d=0) = .50$. In this case an odds ratio of 1.46 implies that at 6:30 PM on dark days, black drivers compose 59% of the at-risk population. The proportion of black drivers would have to increase by 19% between the days on which it was light at 6:30 PM and days on which it was dark at 6:30 PM.

Focusing next on the reporting term, and assuming that the risk ratio term is 0, if the reporting term exceeds 1.46, then we likewise have evidence for racial profiling,

$$\frac{P(R|\bar{B}, S, t, d=1)}{P(R|\bar{B}, S, t, d=0)} = \exp(.38) = 1.46. \tag{13}$$

Assume that reporting rates for non-black drivers vary by t but not by d , so that the denominator of (13) is 1. For the reporting term to exceed 1.46, stops involving black drivers would have to be 46% more likely to be reported at night than during the day (e.g., 30% during daylight and 44% in darkness), requiring a substantial fraction of the nonreporting police force to be engaging in racial profiling. We can rearrange the left side of (13) to consider another black/non-black comparison. If stops involving black drivers were twice as likely to be reported during the day as stops involving non-black drivers, then officers would have to report black drivers nearly three times as often as non-black drivers at night to invalidate the "no racial profiling" conclusion.

The sensitivity analysis has considered deviating from the assumptions about the exposure term being 0 and the reporting term being 0, but has not considered both violations simultaneously. If the risk ratio in (12) were 1.21 and simultaneously the reporting ratio in (13) were 1.21, then we would begin to have evidence of racial profiling.

6. CONCLUSIONS

The key problem in testing for racial profiling in traffic stops is estimating the risk set against which to compare the race distribution of stopped drivers. Previous analyses have relied on external estimates of the risk set constructed from either secondary data or traffic surveys. The validity of estimates from secondary data has been questioned. The approach we have proposed here does not require external estimates of the risk set, but it does require certain assumptions. In the case of the Oakland data, our approach yields little evidence of racial profiling, and our sensitivity analysis suggests that the departures from our maintained assumptions would have to be substantial to overturn our conclusions.

A few points concerning limitations are in order. We have noted that our estimates are valid if, controlling for clock time, racial differences in risk sets do not vary between day and night. Implicitly, we have assumed that there is no seasonality in day-night risk differentials. In areas with substantial tourist inflows, this assumption may be violated. To mitigate this risk, one could focus the analysis on those stops that occurred near the switch to and from Daylight Saving Time, ensuring that all stops occurred in the same season.

The method also may be sensitive to violations associated with both driver's race and darkness, such as having a headlight out. Generally such violations represent only a small fraction of the stops. If they are cause for concern, then they may be removed from the analysis. Our analyses were insensitive to the inclusion or exclusion of such stops. A further caveat is that the results are limited to the intertwillight period. Our approach cannot speak directly to the question of racial profiling during other hours.

Because we make assumptions only about the qualitative relationship between darkness and visibility, we can compute only a qualitative test, rather than a quantitative measure of the extent of racial profiling. The test is consistent, but its power is reduced by anything that reduces the correlation between visibility and darkness. In the case of two important examples, street lighting and car characteristics, additional data collection could boost the power of the test to detect racial profiling.

Our approach is designed to assess the extent of racial profiling in traffic stops only. Other studies have noted racial disparities in poststop outcomes, such as stop duration and search rates (Ridgeway 2006). Data on a full set of poststop outcomes are needed to provide a comprehensive assessment of racial profiling. Finally, we stress that our empirical results apply only to Oakland and say nothing about the presence or absence of racial profiling in other jurisdictions.

APPENDIX: PROOF OF PROPOSITION 1

From (4), we have

$$K_{\text{vod}} = \frac{P(B|S, d=0)P(\bar{B}|S, d=1)}{P(\bar{B}|S, d=0)P(B|S, d=1)} = \frac{P(S|B, d=0)P(B|d=0)}{P(S|B, d=1)P(B|d=1)} \times \frac{P(S|\bar{B}, d=1)P(\bar{B}|d=1)}{P(S|\bar{B}, d=0)P(\bar{B}|d=0)} \quad (A.1)$$

Assumption 3 yields

$$K_{\text{vod}} = \frac{P(S|B, d=0) P(S|\bar{B}, d=1)}{P(S|B, d=1) P(S|\bar{B}, d=0)} \quad (A.2)$$

Note that darkness only influences the probability of stop through visibility, so that

$$P(S|B, d=1) = P(S|V, B, d=1)P(V|B, d=1) + P(S|\bar{V}, B, d=1)P(\bar{V}|B, d=1) = P(S|V, B)P(V|d=1) + P(S|\bar{V}, B)P(\bar{V}|d=1). \quad (A.3)$$

The second equality in (A.3) uses the fact that S is independent of d given V and B . Let $\alpha_0 = P(V|d=0)$ and $\alpha_1 = P(V|d=1)$. Substituting the relation in (A.3) into (A.2), we have

$$K_{\text{vod}} = \frac{P(S|V, B)\alpha_0 + P(S|\bar{V}, B)(1 - \alpha_0)}{P(S|V, B)\alpha_1 + P(S|\bar{V}, B)(1 - \alpha_1)} \times \frac{P(S|V, \bar{B})\alpha_1 + P(S|\bar{V}, \bar{B})(1 - \alpha_1)}{P(S|V, \bar{B})\alpha_0 + P(S|\bar{V}, \bar{B})(1 - \alpha_0)} \quad (A.4)$$

Therefore, K_{vod} depends on a nonlinear function of the four stop probabilities and the two visibility probabilities. Note that if there is no veil of darkness, then $\alpha_1 = \alpha_0$ (darkness is uncorrelated with visibility) and $K_{\text{vod}} = 1$ regardless of the value of K_{ideal} and the extent of racial bias. On the other hand, if the veil of darkness is perfect, then $\alpha_1 = 0$ and $\alpha_0 = 1$ (darkness completely hides race and daylight completely reveals it) and $K_{\text{vod}} = K_{\text{ideal}}$. When $\alpha_1 < \alpha_0$, from assumption 2,

$$\frac{\partial}{\partial \alpha_1} \log K_{\text{vod}} = \left(1 - \frac{P(S|V, B) P(S|\bar{V}, \bar{B})}{P(S|\bar{V}, B) P(S|V, \bar{B})} \right) \times P(S|V, \bar{B})P(S|\bar{V}, B) \times \left((P(S|V, \bar{B})\alpha_1 + P(S|\bar{V}, \bar{B})(1 - \alpha_1)) \times (P(S|V, B)\alpha_1 + P(S|\bar{V}, B)(1 - \alpha_1)) \right)^{-1} \quad (A.5)$$

The first term in (A.5) is $1 - K_{\text{ideal}}$, which, by assumption 1, is negative. The second term is positive, implying that K_{vod} is strictly decreasing in α_1 . At α_1 's extremes, we know that K_{vod} can equal K_{ideal} and 1. Because K_{vod} is strictly decreasing in α_1 , we have $1 < K_{\text{vod}} \leq K_{\text{ideal}}$.

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ATTACHMENT 8

HOT ISSUE

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New Jersey Attorney General issues a lengthy and controversial Report on racial profiling by state troopers (April 1999).

STATE OF NEW JERSEY
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SELECTED HIGHLIGHTS OF THE INTERIM REPORT OF THE STATE POLICE REVIEW TEAM REGARDING ALLEGATIONS OF RACIAL PROFILING

Released: April 20, 1999

This Interim Report is limited to the examination of the practice commonly referred to as racial profiling. The Report specifically focuses on activities of state troopers assigned to patrol the New Jersey Turnpike, which is considered to be a major drug corridor. This circumstance provides the incentive and opportunity for the State Police to use drug interdiction tactics that appear to be closely linked to the national racial profiling controversy. [Report p. 2]

Although this is only an Interim Report and is not the final material that will be developed on this subject, it represents a major step, signaling a recognition of the problem and proposing significant changes in State Police practices and procedures. [Report p. 3]

The Review Team believes that the great majority of state troopers are honest, dedicated professionals who are committed to enforcing the laws fairly and impartially. The Review Team has determined that the State Police has not issued or embraced an official policy to engage in racial profiling or any other discriminatory enforcement practices. In fact, the State Police has undertaken a number of steps to prohibit racial profiling, including issuing Standard Operating Procedures banning such practices; providing in-service training programs and bulletins; requiring state troopers to have reasonable suspicion before requesting permission to search thereby imposing a prerequisite to consent searches that goes beyond the requirements of state or federal caselaw; and prohibiting the patrol tactic of searching the occupants of motor vehicles at night before deciding whether to initiate a stop. [Report, pp. 3-4]

Despite these official policies and preventative steps, the Interim Report concludes that the problem of racial profiling is real and that minority motorists have been treated differently than non-minority motorists during the course of traffic stops on the New Jersey Turnpike. The problem is more complex and subtle than has generally been reported. [Report p. 4]

The Interim Report recognizes that to a large extent, conclusions concerning the nature and scope of the problem will depend on the definitions that are used.

The Review Team has chosen to define the problem of disparate treatment to include the reliance by a state trooper on a person's race, ethnicity, or national origin in conjunction with other factors in selecting vehicles to be stopped from among the universe of vehicles being operated in violation of the law or in making any discretionary decision during the course of a traffic stop, such as ordering the driver or passengers to step out; subjecting the occupants to questions that are not directly related to the motor vehicle violation that gave rise to the stop; summoning a drug-detection canine to the scene; or requesting permission to conduct a consent search of the vehicle and its contents. [Report p. 5]

The Interim Report reveals two interrelated problems that may be influenced by the goal of interdicting illicit drugs: {1} willful misconduct by a small number of State Police members, and {2} more common instances of possible de facto discrimination by officers who may be influenced by stereotypes and thus may tend to treat minority motorists differently during the course of routine traffic stops, subjecting minority motorists more routinely to investigative tactics and techniques that are designed to ferret out illicit drugs and weapons. [Report p. 7]

The issues and problems addressed in the Interim Report are not limited to the New Jersey State Police. Because this Interim Report embraces a broad definition of the problem of racial profiling and disparate treatment, the specific remedial action steps described in this Interim Report are offered as a guide to other state and local jurisdictions where the racial profiling controversy has surfaced. This Interim Report goes further than any other jurisdiction to date in facing up to this national problem and in proposing the establishment of multi-faceted systems to ensure that laws are enforced impartially by State Police members assigned to patrol duties. [Report p. 9]

The Review Team recommends that a clear policy for the New Jersey State Police be announced providing that race, ethnicity, and national origin may not be considered at all by State Police members in selecting vehicles to be stopped and in exercising police discretion during the course of a traffic stop, other than in determining whether a person matches the general description of one or more known suspects. This proposed policy goes beyond the requirements of federal law. [Report, pp. 12, 52-56]

The Interim Report describes the sequence of steps that may occur during a typical traffic stop on the New Jersey Turnpike. This is done to demonstrate the decision points that can arise during a traffic stop where a state trooper must exercise reasoned discretion. [Report, pp. 13-22]

The interim Report describes compiled statistics for stops, arrests, and consent searches conducted by State Police members assigned to patrol the New Jersey Turnpike.

These data show that 59.4% of stops that were examined involved whites, slightly more than one out of every four [27.0%] stops involved a black person, 6.9% involved a Hispanic individual, 3.9% involved an Asian person, and 2.8% were identified as other. [Report, pp. 25-26]

The data reveal that very few stops [0.7%] result in the search of a motor vehicle. The available data indicate that the overwhelming majority of these searches [77.2%] involved black or Hispanic persons. Specifically, 21.4% of these searches involved a white person, more than one-half [53.1%] involved a black person, and one of every four [24.1%] involved a Hispanic person. [Report, pp. 26-27]

32.5% of arrests involved white persons, 61.7% involved African-Americans, and 5.8% involved persons of other races. [Report, pp. 29-30]

Based upon the foregoing statistical information, the Review Team made several observations:

Minority motorists were disproportionately subject to consent searches. The data concerning consent searches were deemed to be especially instructive because the decision by a trooper to ask for permission to conduct a search is a discretionary one. Given the concerns engendered by this data, the Review Team proposed that the State Police undertake a case-by-case review of every consent search that was conducted on the Turnpike in 1997 and 1998 to determine whether the searches were conducted in accordance with all applicable State Police Standard Operating Procedures and the requirements of law. [Report, pp. 30-31]

The Review Team expressed concern about the extent of missing information concerning the racial characteristics of detained motorists in previously-kept manual records. This situation has already been addressed to a large extent through remedial efforts taken by the State Police. [Report, pp. 31-32]

The Review Team expressed concern with the lack of automation and the inherent problems associated with the existing manual system for recording information, which makes it difficult for supervisors throughout the chain of command to monitor the activities of officers assigned to patrol. The State Police has already begun to implement the Computer-Aided Dispatch/Records Management System that will help to rectify this problem. [Report, pp. 32-33]

The Review Team expressed concern that where state troopers were afforded more discretion by virtue of their duty assignment, they tended to focus more on minority motorists. This analysis is consistent with the notion that officers who had more time to devote to drug interdiction were more likely to rely upon racial or ethnic stereotypes than those officers whose principal concern was to enforce specific motor vehicle laws or to respond to calls for service. [Report, pp. 33-34]

The Review Team noted that the significance of the stop statistics could not be determined in the absence of a reliable study of the racial and ethnic characteristics of the persons who travel on the Turnpike to serve as a benchmark. The Review Team therefore proposes to undertake a Turnpike population survey in consultation with the Civil Rights Division of the United States Department of Justice. [Report, pp. 34-35]

The Interim Report concludes that arrest statistics should not be cited for the proposition that minorities are more likely than whites to be engaged in drug trafficking activities. The fact that the arrest rates for whites is comparatively low does not mean that white motorists are less likely to be transporting drugs, but rather that they are less likely to be suspected of being drug traffickers in the first place and, thus, less likely to be subjected to probing investigative tactics designed to confirm suspicions of criminal activity such as, notably, being asked to consent to a search. [Report, pp. 35-36]

The Interim Report discusses a number of conditions that might foster disparate treatment of minorities, recognizing that one need not be a racist to be influenced by stereotypes that might lead an officer to treat minority motorists differently during the course of a traffic stop. The Interim Report concludes that the potential for the disparate treatment of minorities during traffic stops may be the product of an accumulation of circumstances that created and reinforced the message that the best way to catch drug traffickers is to focus on minorities, which may have undermined other messages in both official and unofficial policies prohibiting any form of disparate treatment. These circumstances include:

- » Ambiguities and misunderstandings about the law;
- » Ambiguities, imprecision, and omissions in Standard Operating Procedures;
- » Conflicting, subtle messages in otherwise bona fide drug-interdiction and gang-recognition training programs; tautological use of statistics to tacitly validate pre-existing stereotypes; » Formal and informal reward systems that encourage troopers to be aggressive in searching for illicit drugs, thereby providing practical incentives to act upon these stereotypes;
- » The inherent difficulties in supervising the day-to-day activities of troopers assigned to patrol; and,
- » The procedures used to identify and remediate problems and to investigate allegations of disparate treatment. [Report, pp. 37-44]

The Interim Report includes a detailed discussion of law and policy on racial profiling and the disparate treatment of minorities. This portion of the Report describes the negative effects of stereotyping on minority communities, which can leave persons of color with a sense of powerlessness, hostility, and anger directed toward the law enforcement community.

Notably, the Interim Report concludes that disparate treatment of minorities reinforces a sense of mistrust, leaving minority citizens less willing to serve as jurors, less likely to report crime, and less appreciative of the efforts of the vast majority of the law enforcement officers who serve the public with honesty and integrity. [Report, pp. 45-48]) The Interim Report explains in detail the critical distinction between legitimate crime trend analysis and inappropriate racial profiling, recognizing that sophisticated, race-neutral crime analysis is sorely needed if police agencies are to remain responsive to emerging new threats and enforcement opportunities. [Report, pp. 49-52]

The Interim Report recognizes that while the phenomenon of racial profiling and other forms of

disparate treatment of minorities is real and not just a matter of perception, perceptions concerning the magnitude and impact of the problem are important, and that these perceptions vary widely in that minority and non-minority citizens in this State have markedly different views regarding the nature and scope of the problem. [Report, pp. 56-59] The Interim Report recognizes that the racial profiling controversy is by no means limited to the New Jersey State Police, but rather is a truly national problem, as reflected in the number of bills pending in Congress and state legislatures across the country. [Report, pp. 60-65]

The Interim Report describes at length why it would be inappropriate as a matter of policy for officers on patrol to rely upon crime trend analysis that, at first blush, suggest that racial or ethnic characteristics could serve as reliable risk factors in predicting and responding to criminal activity.

The Report explains that many of the arrest and conviction numbers relied upon by some police executives across the nation are tautological and, thus, inherently misleading. Notably, these arrest statistics only refer to persons who were found to be involved in criminal activity and do not show the number of persons who were detained or investigated who, as it turned out, were not found to be trafficking drugs or carrying weapons. In fact, when one considers all of the stops conducted by State Police, searches are quite rare, and searches that reveal evidence of crime are rarer still. To the extent that law enforcement agencies arrest minority motorists more frequently based on stereotypes, these events, in turn, generate statistics that confirm higher crime rates among minorities which, in turn, reinforces the underpinnings of the very stereotypes that gave rise to the initial arrests. [Report, pp. 6-5]

The Interim Report recognizes that one of the glaring problems with many forms of profiling is that the characteristics that are typically compiled tend to describe a very large category of presumably innocent motorists. Consequently, these profile characteristics may be no better in terms of predicting criminal behavior than allowing individual officers to rely on inchoate and unparticularized hunches, which is clearly not permitted under Fourth Amendment caselaw. To prove this point, the Interim Report discusses certain kinds of intelligence information provided by the Federal Government to show that this information may provide very little help to state troopers patrolling the Turnpike in identifying major drug couriers from among the universe of innocent motorists. [Report, pp. 72-75]

The Interim Report concludes that while there is no doubt that federal, state, and local intelligence reports reliably indicate that a large number of minority narcotics and weapons offenders are traveling between urban areas in and through New Jersey, so too are innocent minority motorists engaged in such travels and in far, far greater numbers. [Report p. 72]

The Interim Report describes in detail the legal and policy difficulties in relying on suspected gang membership or other types of group associations to establish suspicion of criminal activity. The Interim Report makes clear that while police officers are permitted under the law to consider, for example, gang membership in determining whether there is reasonable, articulable suspicion to initiate a stop or to conduct a protective frisk for weapons, an officer should not be permitted to use the person's race, ethnicity, or national origin in first determining the likelihood that a person is, in fact, a member of any such criminal organization. While many gangs tend to be exclusionary and are

comprised of persons of similar racial or ethnic characteristics, the fact remains that the percentage of young minority males who are members of street gangs is so small that no officer could reasonably suspect that a motorist is a member of any such gang based upon the person's race or ethnicity.

To do otherwise would be to practice a form of legal bootstrapping, drawing inferences from a fact that has not yet been established. For this reason, the Report recommends that State Police be trained as to the objective criteria and indicia of criminal group associations, so that a state trooper would be prepared to articulate why he or she reasonably suspected that a person is a gang member, going beyond the mere fact that the person was not excluded from the possibility of being a member of a particular criminal organization by virtue of his race or ethnic background. [Report, pp. 75-80]

The Interim Report recognizes that the findings of the Review Team may be cited by some defendants who will seek to overturn or preclude their convictions by claiming selective enforcement. While the Review Team cannot prevent defendants from raising these issues in future motions to suppress, it recommends that the State be prepared to fully and fairly litigate the question whether any particular defendant was a victim of unconstitutional conduct warranting the suppression of evidence. The county prosecutors will be asked to examine closely any case involving a State Police member in which the defendant claims selective enforcement, and prosecutors will be asked to recommend to the Division of Criminal Justice how these cases should be handled, considering the individual facts and circumstances of each case. [Report, pp. 80-82]

The Interim Report makes clear that the Review Team is by no means suggesting an abandonment or repudiation of New Jersey's drug enforcement efforts and suggests that the enforcement of our drug laws must remain an urgent priority of the State Police and law enforcement agencies.

The Interim Report explains the necessity for taking decisive steps to ensure strict compliance with all search and seizure and equal protection rules, and the need to make clear to the New Jersey State Police and all other law enforcement agencies of the need to embrace the notion that the so-called war on drugs must be waged with - not against - the communities that the New Jersey State Police and other law enforcement agencies are sworn to protect. [Report, pp. 82-85]

The Interim Report recognizes that highway interdiction constitutes only one small facet of this State's efforts to address the so-called supply side of the drug problem and recommends that a revised drug enforcement strategy closely examine these issues so as to ensure that drug enforcement resources and efforts are focused so as to have the greatest possible impact of the problem while at the same time ensuring that the tactics employed by the New Jersey State Police do not alienate minority communities, since this would only deny other law enforcement agencies opportunities to enlist support of these communities and thereby to gain access to information necessary to identify, apprehend, and successfully prosecute those drug profiteers who prey upon minority communities. [Report p. 85]

The Interim Report recommends a series of detailed remedial steps that should be initiated to ensure that all routine traffic stops made by the State Police are conducted in an impartial, even-handed manner. Some of the policies and procedures described in these action steps are new, while others

represent a reaffirmation or clarification of existing State Police policies and practices. The Review Team expects that all well-intentioned troopers will understand that procedures of the type recommended in the Interim Report will serve many purposes and will actually help to protect constitutionally-compliant officers, insulating them from unfair and unfounded allegations of selective enforcement. Notably, the Interim Report would establish a comprehensive and multi-faceted early warning system - that would serve not only to detect potential problems, but that would serve to deter violations from occurring in the first place. [Report, pp. 86-90]

The Interim Report recognizes that ultimately, the cornerstone of this comprehensive system is to enhance professionalism through enhanced accountability

The comprehensive system proposed in the Interim Report would send a strong message that racial profiling and other forms of disparate treatment of minorities will not be tolerated but, as importantly, will provide an opportunity to demonstrate conclusively that the overwhelming majority of state troopers are, indeed, dedicated professionals who perform their sworn duties with integrity and honor. [Report, pp. 90-91]

The Interim Report spells out the goals and objectives of this comprehensive early warning system. [Report, pp. 91-92]

The Interim Report recommends the following specific action steps:

» Recommends that the Attorney General issue an updated statewide drug enforcement strategy to ensure the most efficient, effective, and coordinated use of resources by focusing drug enforcement efforts on carefully-identified impact cases and by making certain that the drug enforcement tactics used by one agency do not unwittingly interfere with or undermine the enforcement efforts of other agencies.

The updated strategy would evaluate the effectiveness of the use of highway interdiction tactics as part of New Jersey's comprehensive drug enforcement efforts and would review the effectiveness of the use by state troopers of the consent-to-search doctrine. [Report, pp. 92-94]

» Recommends that the Department of Law and Public Safety publish on a quarterly basis aggregate statistics detailing by State Police station the proportion of minority and non-minority citizens who are subject to various actions taken by State Police members during the course of traffic stops. [Report p. 94]

» Recommends the establishment of a comprehensive and automated early warning system and enhancement of the computerization of records to ensure the prompt identification of individual troopers whose performance suggests a need for further review by supervisory personnel. [Report, pp. 94-96]

» Recommends the development of a comprehensive new Standard Operating Procedure spelling out all of the steps and criteria to be used by State Police members in initiating and conducting traffic

stops. [Report, pp. 96-100]

- » Recommends the development of a comprehensive new Standard Operating Procedure spelling out the procedures and criteria for requesting permission to search and in conducting consent searches. [Report, pp. 100-102]
- » Recommends that in light of the concerns raised by the consent search data examined by the Review Team, the State Police conduct a case-by-case review of all consent searches made by State Police members assigned to the Turnpike in 1997-1998 to determine whether all reporting requirements and Standard Operating Procedures were complied with. [Report p. 102]
- » Recommends that the State Police enhance and modify their training programs to make certain that the policies regarding racial profiling and the disparate treatment of minorities proposed in this Interim Report are understood by all State Police troopers who are assigned
- » Recommends that the State Police develop specific criteria for summoning drug-detection canines or equipment to the scene of a traffic stop that would recognize the psychological impact on persons who are subjected to this procedure and that would ensure that canines are dispatched quickly so as not to violate the rule that requires that investigative detentions be brief. [Report p. 104]
- » Recommends that a policy be instituted that would require a state trooper assigned to patrol duties to inform the dispatcher when feasible of the trooper's intention to conduct a probable cause search. [Report p. 104-105]
- » Recommends that the State Police establish specific criteria explaining when and under what circumstances a State Police member should make a custodial arrest rather than issue a summons. [Report p. 105]
- » Recommends that the Division of Criminal Justice and the county prosecutors make available deputy attorneys general and assistant prosecutors to serve as police legal advisors on a 24-hour, 7-day per week basis to answer search and seizure, custodial interrogation, and other legal questions raised by State Police members assigned to patrol duties. [Report p. 106]
- » Recommends that the Director of the Division of Criminal Justice in consultation with the county prosecutors establish a comprehensive reporting system whereby the State Police are notified whenever evidence seized during the course of a patrol stop by a State Police member is suppressed by a court or would likely be suppressed by a court were the matter to be prosecuted. [Report, pp. 106-107]
- » Recommends that the State Police develop an inventory and impoundment policy explaining when and under what circumstances State Police members may inspect the contents of a disabled vehicle. [Report, pp. 107-108]
- » Recommends interim procedures concerning the handling of internal affairs investigations of

selective enforcement allegations, requiring that all allegations of discriminatory practices by State Police members be reported to the Review Team and further requiring that no internal investigation into selective enforcement allegations be concluded until the results have been reviewed by the Division of Criminal Justice. [Report, pp. 108-109]

› Recommends that the Division of Criminal Justice, in consultation with the county prosecutors, develop uniform procedures and criteria for handling selective enforcement litigation involving State Police members. [Report p. 109]

› Recommends the development of a legislative initiative to create new official misconduct offenses to deal specifically with the use of police authority to knowingly or purposely violate a citizen's civil rights.

› Recommends that the Attorney General's Office in consultation with the Civil Rights Division of the United States Department of Justice undertake a population survey of the persons who travel on the New Jersey Turnpike to serve as a benchmark that will be integrated into the early warning system that can be used to trigger heightened scrutiny and supervision of the exercise of police discretion where an automated audit suggests that an individual trooper or group of troopers have stopped a disproportionate percentage of minority motorists. [Report, pp. 110-112]

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ATTACHMENT 9

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ADVISORY COMMITTEE ON POLICE STANDARDS[Home](#)[Home](#) > [Executive Order](#)[Executive Order](#)**Executive Order**[Committee Members](#)[Consent Decree](#)[Racial Profiling Policy](#)[Skills Assessment](#)[State Police Document Archives](#)

WHEREAS, on December 30, 1999, the State of New Jersey and the United States Department of Justice entered into a consent decree concerning the practice of racial profiling by the New Jersey State Police. The consent decree embraced many of the recommendations previously made by the State Police Review Team, which had found that the problem of racial profiling on portions of the New Jersey Turnpike was "real, not imagined"; and

WHEREAS, compliance with the consent decree has been overseen by a team of independent monitors who were appointed by and who answer directly to the United States District Court for the District of New Jersey; and

WHEREAS, on June 27, 2006, the independent federal monitors issued a report to the United States District Court, finding that the New Jersey State Police have achieved 100% compliance with all of the requirements in the consent decree and have gone beyond the requirements of the consent decree. The federal monitors concluded that there has been no indication of racial profiling in State Police traffic stops, and the monitors lauded the progress that has been made in implementing systemic reforms, crediting the State Police supervisory and management review process; and

WHEREAS, in July 2005, based on the documented success of the New Jersey State Police in addressing the racial profiling issue, and with the intention of having State Police policies and procedures serve as a model for all law enforcement agencies, the Attorney General issued a law enforcement directive defining and prohibiting the practice of "racially influenced policing," and directing that this nondiscrimination policy apply to all law enforcement agencies and departments throughout the State of New Jersey; and

WHEREAS, the independent monitors have determined that the State Police have been in compliance with the requirements of the consent decree for more than the two years necessary to authorize the termination of the consent decree, and the United States Department of Justice has sought the State's concurrence in filing a joint motion to terminate the consent decree in recognition of the commitment and achievement of the men and women of the New Jersey State Police; and

WHEREAS, it is appropriate to take actions to ensure that the

commitment by the State Police to nondiscriminatory policing that has been recognized by the independent monitors and the Civil Rights Division of the United States Department of Justice is permanently institutionalized and continues as part of the agency's culture of professionalism and public service; and

WHEREAS, in evaluating whether to terminate the consent decree, it is appropriate to solicit input from New Jersey citizens, and especially representatives from the minority communities most directly affected by the practice of racial profiling, to ensure public confidence that racial profiling will not be practiced or tolerated in the future;

NOW, THEREFORE, I, JON S. CORZINE, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby established an Advisory Committee on Police Standards.
2. The Advisory Committee shall recommend to the Governor whether and under what circumstances the State of New Jersey should join with the United States Department of Justice in filing a motion to the United States District Court to terminate the consent decree.
3. The Advisory Committee shall make recommendations on how to ensure that the practice of racial profiling is not engaged in or tolerated in the future in the event that the consent decree is terminated by the United States District Court. The Advisory Committee shall consider, for example, whether it would be appropriate to retain outside auditors or consultants to continue to independently examine State Police data and mobile video recordings of motor vehicle stops, employing a review methodology similar to the one presently used by the independent federal monitors who have acted under the auspices of the United States District Court.
4. The Advisory Committee shall provide recommendations to the Attorney General and the Governor on how the programs developed by the New Jersey State Police can assist other law enforcement agencies throughout the State in preventing all forms of racial profiling.
5. The Advisory Committee shall conduct one or more public hearings in order to provide an opportunity for the federal monitors, representatives of the New Jersey State Police, New Jersey citizens and others to provide relevant testimony. The Advisory Committee shall also provide the means for citizens and others to submit comments by mail and by the internet.
6. The Advisory Committee shall be comprised of twenty- one (21) members who will be appointed by and serve at the pleasure of the

Governor. Membership of the Committee shall include the Attorney General. The remaining members shall be appointed by the Governor based on their experience and expertise in matters concerning law, criminal justice, and the principles of equal protection and non-discrimination in the enforcement of the laws.

7. The Governor shall appoint the Chair of the Advisory Committee. Vacancies on the Advisory Committee shall be filled in the same manner as the original appointment.

8. The Advisory Committee shall organize and meet as soon as possible after the appointment of its members. The Advisory Committee shall complete its work and issue a final report by December 31, 2006. Any reports of the Advisory Committee shall be provided to the Legislature and shall be made available to the public.

9. The Advisory Committee is authorized to call upon any department, office, division or agency of this State to supply it with data and any other information, personnel or other assistance available to such agency as the Advisory Committee deems necessary to discharge its duties under this Order. Each department, office, division or agency of this State is hereby required, to the extent not inconsistent with law, to cooperate fully with the Advisory Committee and to furnish the Advisory Committee with such assistance on as timely a basis as is necessary to accomplish the purposes of this Order. The Advisory Committee may consult with experts or other knowledgeable individuals in the public or private sector on any aspect of its mission.

10. Pending receipt by the Governor of the final report required to be submitted by the Advisory Committee pursuant to section 8 of this Order, the State of New Jersey shall not join in a motion to terminate the consent decree between the United States of America and the State of New Jersey regarding the New Jersey State Police.

11. Unless otherwise directed by Order of the Governor, the New Jersey State Police shall continue to collect data and operate the Management Awareness Personnel Performance System as it presently exists, and no changes shall be made to data collection procedures or to the Management Awareness Personnel Performance System except as may be expressly authorized by the Governor based upon the recommendations of the Attorney General. In addition, unless otherwise directed by Order of the Governor, the Office of State Police Affairs in the Office of the Attorney General shall remain in operation and shall monitor all matters relating to the policies and procedures presently set forth in the consent decree.

12. This Order shall take effect immediately.

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ATTACHMENT 10



Seattle Police Department
Investigation Section
Office of Professional Accountability

Title: I

Chapter: Complaints of Biased Policing

I. PHILOSOPHY

Law enforcement action motivated by race is against the law and contrary to the mission of the Seattle Police Department. Biased policing is unacceptable and will not be tolerated. Citizens from ethnic minorities are often reluctant to express their belief that a problem they have experienced with the police is rooted in racism. Due to this reluctance, OPA-IS personnel must be sensitive to the complainant's perspective and communicate our commitment to complete a thorough and impartial investigation. The primary assumption of good faith on the part of the complainant will ensure an effective and credible investigation and enhance public trust and confidence.

II. INTAKE PROTOCOL

- A. All complaints of biased policing will be taken seriously, and the Intake Sergeant will assume good faith on the part of the complainant to ensure our commitment to establishing the facts.
- B. The Intake Sergeant will reassure the complainant that biased policing is not tolerated by the Seattle Police Department, and that their complaint is extremely important and will be given priority attention.
- C. The Intake Sergeant will maintain strict neutrality and objectivity.
- D. Since the mere statement that "I was treated differently because of my race" is insufficient to assist in any investigation, the Intake Sergeant must take the time to explore what it was about the officer's behavior that gave rise to the complainant's impression that the officer was conducting biased policing.
- E. The Intake Sergeant must be positive and use open-ended questions in order to allow the complainant to explain his or her concerns and describe, in detail, the officer's behavior.
- F. The Intake Sergeant will thoroughly and accurately record the complainant's initial statement and demonstrate a willingness to record all aspects of the complaint.
- G. The Intake Sergeant will inform the complainant that all allegations of biased policing are recorded, maintained and tracked by the OPA as part of its mission to identify possible problems, and that their complaint will be reviewed by the employee's chain of command.
- H. A thorough, primary investigation will be conducted on all complaints of biased policing.
- I. The Intake Sergeant will immediately notify the OPA-IS Lieutenant and/or Captain whenever they receive a complaint of biased policing.

III. CLASSIFICATION STANDARDS

- A. The OPA-IS Lieutenant will review the preliminary investigation to determine proper classification.
- B. The mere incantation of bias or profiling will not be enough to automatically trigger an investigation. The OPA-IS Lieutenant will carefully examine the facts to determine if the complaint establishes sufficient information on which to base further investigation.
- C. If the complaint meets the following classification standard, it will be assigned as a full, OPA-IS investigation:

*Allegations of misconduct where it is alleged the misconduct was motivated by or because of race, **AND**
There is some positive corroboration or indicators that bias may have motivated the law enforcement action.*

- D. If the complaint does not meet the above standard, the OPA-IS Lieutenant will consult with the OPA-IS Commander to determine whether the complaint will be classified as a PIR, SR or LI.
- E. The OPA-IS Commander will ensure that all PIR's, SR's and LI's are conducted with vigor, sensitivity and thoroughness in order to maintain quality control and citizen satisfaction.
- F. The OPA Director will review classifications decisions and has the authority to change a classification if deemed necessary.

IV. INVESTIGATION PROCEDURES

- A. All investigations of biased policing will receive priority attention.
- B. As with all investigations, OPA-IS will conduct a thorough, fair and objective investigation.
- C. The OPA-IS investigator will be sensitive to the complainant's perspective and use positive and encouraging interview techniques to enable the complainant to describe in detail the behavior and actions of the officer(s) in question.
- D. The OPA-IS investigator must probe for information regarding facts and circumstances that may support or detract from the bias allegation.
- E. The OPA-IS investigator will exhaust all investigative leads and complete the investigation in a timely manner.
- F. The OPA-IS Lieutenant and Captain will review all biased policing investigations for completeness, accuracy and objectivity.
- G. Once completed, the OPA-IS Captain will conduct an analysis of the investigation and recommend a finding accordingly.
- H. The OPA Director will review each file and recommendation and either concur or recommend a different finding or further investigation.

V. QUALITY CONTROL

- A. OPA will separately track complaints of biased policing by creating a separate “biased policing” category in the OPA database.
- B. All complaints of biased policing will be appropriately recorded in the database in order to identify patterns, practices, themes, trends and possible problems.
- C. OPA will conduct regular reviews of the intake process to ensure complainants are not subject to any form of discouragement, intimidation or coercion in filing complaints.
- D. OPA will conduct regular audits of the complaint process to ensure effectiveness, objectivity and efficiency.

INTRADEPARTMENTAL CORRESPONDENCE

August 12, 2008
13.5

TO: The Honorable Board of Police Commissioners
FROM: Chief of Police
SUBJECT: RACIAL PROFILING FACT SHEET DUE TO THE BOARD OF POLICE COMMISSIONERS FOR THE AUGUST 19, 2008, REGULAR MEETING

RECOMMENDED ACTION

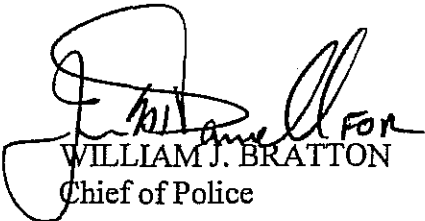
- 1. That the Board of Police Commissioners REVIEW and APPROVE the Internal Affairs Group "Racial Profiling Fact Sheet," dated August 7, 2008.

DISCUSSION

The Commanding Officer of Internal Affairs Group composed the attached fact sheet, and will present it to the BOPC for the August 19, 2008, regular meeting.

If you have any questions, please contact Deputy Chief Mark R. Perez, Commanding Officer, Professional Standards Bureau, at (213) 473-6672.

Respectfully,


WILLIAM J. BRATTON
Chief of Police

Attachment

**RACIAL PROFILING
FACT SHEET
August 7, 2008**

Background

The original purpose of this fact sheet was to provide the BOPC with a comprehensive update about the Department's efforts to investigate allegations of racial profiling. However, during the development of this report, it became apparent that the Department dedicates a significant amount of resources, beyond the investigation of allegations, to ensure that respect for others is not only a stated Core Value of the Department, but a cornerstone of the way we police the City of Los Angeles. Our Core Value of respect for others encompasses our commitment to fair and impartial policing. Those many efforts are outlined in this report.

Internal Affairs Group has taken great efforts to better understand and respond to the issue of racial profiling. Those efforts include the commanding officer attending a 20 hour "Racially Biased Policing" seminar, holding discussions with academicians, holding discussions with leaders within the Department, conducting a data query of the Complaint Management System (CMS) and conducting a national survey on the topic. Additionally, staff at the Commission Investigation Division conducted a survey of law enforcement agencies with civilian entities that have oversight of discipline. It is believed that report will support the findings and recommendations in this report. That report will be provided under a separate cover.

With regard to the Department as a whole it has become clear that LAPD has many leadership and management practices in place across the spectrum of recruitment, hiring, training, policy, and discipline that strongly encourage, and hopefully inculcates, a culture where Department personnel treat all persons with fairness, dignity and respect. The depth and breadth of those practices are often lost when discussing racial profiling investigations. The thought, apparently being, that internal investigations are the best way to address issues of racial bias (profiling). That premise, however, is not in keeping with successful practices put in place by other agencies. Therefore, the scope of this fact sheet has been expanded to provide the reader with a comprehensive overview of the Department's effort with regard to dealing with issues of bias and racial profiling and to make recommendations for future actions. This report has been expanded to include:

- A restatement of the various Consent Decree paragraphs and Department policies put into place to address racial profiling;
- Highlights of the national survey and the CMS data query. Department demographic information is also presented;
- Discussion of the Department's current recruitment, selection, hiring and training efforts;
- A reemphasis of the efforts by IAG to ensure allegations of racial profiling are properly investigated; and
- Recommendations to chart a course for the future on dealing with issues of bias.

Consent Decree and Department Policy

In June 2001, the City of Los Angeles entered into a consent decree with the United States Department of Justice (Consent Decree). The purpose of the settlement was to “promote police integrity and prevent conduct that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.”¹

Paragraph 93 of the Consent Decree required that Internal Affairs Group (IAG) investigate allegations of “invidious discrimination (e.g., on the basis of race, ethnicity, gender, religion, national origin, sexual orientation, or disability), including improper ethnic remarks and gender bias.”²

Paragraph 102 of the Consent Decree states that the “Department shall continue to prohibit discriminatory conduct based on the basis or race, color, ethnicity, national origin, gender, sexual orientation, or disability in the conduct of law enforcement activities.”³

Paragraph 117 requires the Department to provide all LAPD recruits, officers, supervisors and managers with regular and periodic training on police integrity. Such training shall include and address, cultural diversity, which shall include training on interactions with persons of different races, ethnicities, religious groups, sexual orientations, persons of the opposite sex and persons with disabilities, and also community policing.⁴

In addition to the Consent Decree, the Department codified the prohibition of racial profiling into Department Manual Section 1/345. The policy, in part, reads, “The Department shall continue to prohibit discriminatory conduct on the basis of race, color, ethnicity, national origin, gender, sexual orientation, or disability in the conduct of law-enforcement activities. Police-initiated stops or detentions, and activities following stops or detentions, shall be unbiased and based on legitimate, articulable facts, consistent with the standards of reasonable suspicion or probable cause as required by federal and state law.

Department personnel may not use race, color, ethnicity, or national origin (to any extent or degree) in conducting stops or detentions, or activities following stops or detentions, except when engaging in the investigation of appropriate suspect-specific activity to identify a particular person or group. Department personnel seeking one or more specific persons who have been identified or described in part by their race, color, ethnicity, or national origin, may rely in part on race, color, ethnicity, or national origin only in combination with other appropriate identifying factors and may not give race, color, ethnicity or national origin undue weight.”⁵

¹ Consent Decree, page 1, paragraph 1.

² Ibid, page 26, paragraph 93.

³ Ibid, page 42, paragraph 102.

⁴ Ibid, page 54, paragraph 117

⁵ Manual of the Los Angeles Police Department, Section 1/345.

Data: National Survey – CMS Query – LAPD Demographics

National Survey

Internal Affairs Group conducted a telephonic survey of 61 major law enforcement agencies.⁶ Thirty-one of the agencies responded. The agencies were selected based on their membership in the Major Cities Chiefs of Police Organization. The survey was designed to provide an analysis of those departments' racial profiling investigative protocols. In addition, the survey was designed to provide the BOPC with a snap shot of racial profiling investigative processes and findings on a national level.

Note: The survey denotes the practices of law enforcement agencies in Canada as well as the United States.

The respondent agencies were asked the following questions;

- How many complaints has your agency taken over a two-year period?
- How many of those complaints involved racial profiling?
- How many racial profiling complaints were sustained?
- What term does your agency use to describe racial profiling?
- Does your agency have a protocol for investigating racial profiling complaints?
- Does your agency provide training on racial profiling or related issues?
- Does your agency have an intervention system for early detection of employees involved in racial profiling?
- Does your agency have in car videos or other mandatory recording devices?
- How many sworn employees does your agency have?
- Does your agency use conflict resolution? If yes, is it used for racial profiling complaints?
- Is your agency currently under any court order/police commission mandate/citizen review board mandate to report racial profiling? If yes, what are the protocols to track racial profiling incidents?

The responses revealed:

- Thirteen of the 31 responding agencies listed a total of 12,286 complaints taken over a two year period. Of the 12,286 complaints taken by these agencies, 274 met the criteria for racial profiling or biased based policing. Eighteen agencies could not provide information on the total number of complaints they had received, but six of these 18 could report the number of racial profiling complaints. These six agencies reported 97 such complaints. In sum, 19 agencies (13 + 6) reported 371 (274 + 97) racial profiling complaints.

Note: Over a two-year period, the LAPD investigated a total of 13,296 complaints. Five hundred and eighty one of those complaints met the criteria for racial profiling.

⁶ Due to the confidential nature of the information provided by the respondent agencies, the survey containing the responses was not attached.

- Of the 19 agencies that kept records for racial profiling complaints, two agencies sustained biased based or racial profiling complaints. These two agencies sustained a total of four racial profiling/biased based policing complaints during the two year reference period. That is, four of the 371 racial profiling complaints reported by the responding agencies were sustained.
- One of the two agencies used the terminology “biased base policing” to describe a section of their complaint system. The other agency used the terminology “racial profiling” to describe a section of its complaint system. The agency that utilized the category “biased based policing” advised that both complaints arose from an African American police officer using a racial slur to describe an African American citizen. The second agency that adjudicated two sustained complaints was unable to elaborate on its findings.

Note: Under the Department guidelines, the racial slur complaint would have been categorized as an “Ethnic Remark” complaint.

- Among the 31 agencies, one agency sustained two complaints for biased based policing; one agency sustained two complaints for racial profiling; 19 agencies adjudicated racial profiling complaints as not sustained or unfounded; while 10 agencies were unable to provide adjudication information.
- Twenty-four of the 31 responding agencies investigate racial profiling/biased based policing as a complaint investigated by the chain of command. Seven agencies utilize their internal affairs investigative section to handle all racial profiling/biased based policing complaints.

Note: The Department’s Professional Standards Bureau, IAG, investigates all racial profiling complaints.

- All thirty-one responding agencies provide some form of non-discriminatory training.
- Nineteen of the 31 responding agencies have mechanisms in place to alert their department of officers who may be involved in racial profiling practices. These mechanisms may be as simple as reviewing the officer’s recent citation history or as complex as a data tracking system that analyzes the officer’s complaint history.
- Twelve agencies did not have mechanisms in place to alert their department of potential racial profiling practices
- Twenty-two of the 31 responding agencies did not have in car videos or mandatory recording devices. Nine agencies have in car videos in all of their patrol vehicles.
- Thirty-one responding agencies reported a combined total of 58,460 sworn personnel.

Note: The Department currently has 9,733 sworn employees.

- Sixteen of the 31 responding agencies use conflict resolution as a tool to resolve select complaints. Eleven of the 16 agencies use conflict resolution to mediate racial profiling/biased based policing incidents. Fifteen agencies do not use conflict resolution to resolve complaints or to mediate racial profiling/biased based policing.

Note: The Department uses Alternative Complaint Resolution (ACR) to mediate non-disciplinary related complainants. Due to current policy, the ACR is not an available option to address racial profiling.

- Twenty-three of the 31 responding agencies are not required to report racial profiling/biased based policing to a federal, state or local oversight entity. Eight agencies are required to report their racial profiling/biased based policing statistics.

The LAPD initiated and investigated more racial profiling complaints than the other reporting agencies combined. This could be due to LAPD's practices of complaint intake where all complaints are recorded, no matter the source and/or to the fact that there are no informal mediation efforts allowed which would otherwise dispose of the complaint. Additionally, LAPD's standard protocol is to "extract" allegations rather than to combine them.

Additionally, there are some agencies that do not use the term, "racial profiling." In some instances, agencies used the term, "biased based policing", while others did not classify the conduct in terms of bias or profiling. Those agencies only addressed the specific conduct of the officers, such as unlawful search or detention, discourtesy, etc.

Racial Profiling Complaint Data - LAPD

Internal Affairs Group used two methods to obtain data relevant to racial profiling investigations within the Department.

Internal Affairs Group examined the last 73 racial profiling cases that were closed to determine if the accused officers were aware of the race/ethnicity of the complainant prior to the contact. That query revealed that, of the 56 cases where officers were interviewed (remembering that in some instances, complainants were unknown or other factors did not require the officer to be interviewed), 27 (48.2%) were aware of the complainant's race/ethnicity prior to the stop. In 29 (51.8%) of those instances the offices were not aware of the complainant's race/ethnicity prior to the contact.

The second data query was more robust and provided more salient information. Internal Affairs Group, with the technical assistance of the TEAMS II Development Task Force, queried the Complaint Management System (CMS) to obtain a more accurate picture of the nature of racial profiling allegations within the Department. Because of data limitations, the query was limited to cases closed in 2007.

The CMS was queried to obtain demographic and geographic information associated with instances of alleged racial profiling. Additionally, the CMS was queried to develop an

understanding of the circumstances in which complainants and officers come into contact with each other that result in racial profiling allegations.

The data revealed that racial profiling is predominantly a “male versus male” phenomenon. Of the 204 instances of racial profiling that were tallied during this time, males made up nearly 92% of the officers accused of racial profiling while females only made up 8%.⁷ Of the same population of complaints, males made up nearly 75% of the complainants.

Excluding complaints that were listed as unknown, male whites and male Hispanics account for 75% of the officers accused of racial profiling. This is roughly in line with the demographics of the Department. The findings of the query for race and gender of the accused officers are as follows:

Race and Gender of Accused Officers			
Race	Gender	# of Allegations	% of Total
Asian/Pacific Islander	Male	26	13%
Black	Male	9	4%
White	Female	12	6%
	Male	96	47%
Filipino	Male	5	2%
Hispanic	Female	7	3%
	Male	80	39%
Unknown		33	16%
Totals		268	

Note: Percentages were rounded to the nearest whole number. The number of allegations exceeds the number of complaints. This is due to the fact that, in some instances, a complainant alleges racial profiling against more than one officer. This would count as one complaint but multiple allegations.

Of the instances where the race of the complainant could be determined, Blacks made up 73% of the complainants. It is notable that in 42% of the cases, persons made allegations but did not provide any possibility for follow up, limiting the quality of the investigation. Usually, in those circumstances, complainants wrote anonymous letters of complaint or left cryptic messages on the complaint hotline that did not allow for any substantive follow up.

⁷ The “unknown” complaints were not figured into this number because in those circumstances, the gender or race of the involved officer is also unknown.

Race and gender of persons making racial profiling complaints are as follows:

Race and Gender of Complainants			
Race	Gender	# of CFs	% of Total
Asian/Pacific Islander	Male	1	0%
Black	Female	18	9%
	Male	66	32%
	Unknown	2	1%
White	Female	6	3%
	Male	5	2%
Hispanic	Female	4	2%
	Male	16	8%
Other	Female	3	1%
	Male	4	2%
Unknown	Female	21	10%
	Male	63	30%
	Unknown	4	2%

Internal Affairs Group queried the system to examine allegations that were ancillary to complaints involving racial profiling. **The most notable finding was that while 60 of the 204 racial profiling complaints involved allegations of discourtesy, only nine of those complaints involved an ethnic remark.**

The CMS query included the Bureau and Area of assignment of the accused officers. The notable outlier was Operations-West Bureau, which had twice the number of racial profiling complaints as other bureaus.

Excluding those cases where the assignment was not known or the organization has since been deactivated (39 total complaints); racial profiling complaints were geographically distributed as follows:

Involved Bureau	No. of CF Nos.
Central Bureau	23
Consent Decree Bureau	1
Detective Bureau	3
South Bureau	30
Special Operations Bureau	13
Valley Bureau	37
West Bureau	68

The CMS query also examined the assignment of the accused officer, if known. Several significant findings emerged:

- Of the 169 instances where assignment type was known, officers were assigned to patrol in 93 of those cases (55%).
- Of the same population of cases, officers were assigned to a specialized enforcement entity, such as Metropolitan Division, in only 32 of the cases (19%).
- Of the same population, traffic enforcement officers were accused of racial profiling in 26 cases (15%).

The data for assignment of the accused officer is as follows:

Assignment	No. of CF Nos.
Administrative	11
Case Carrying Detective	5
Patrol	93
Specialized Enforcement	32
Technical Service Maintenance	1
Traffic	26
Unassigned	1
Unknown	47
Total	216

Sworn Personnel by Race/Gender

Race	Male		Female		Total	
	Count	Percentage	Count	Percentage	Count	Percentage
White	3017	31%	708	7%	3725	38%
Black	916	9%	266	3%	1182	12%
Hispanic	3215	33%	725	7%	3940	41%
Asian	561	6%	89	1%	650	7%
American Indian	38	0.4%	7	0.07%	45	0.5%
Filipino	164	2%	19	0.2%	183	2%
Other	4	0.04%	0		4	0.04%
Total	7915	81%	1814	18.7%	9729	

Racial make up of the City of Los Angeles:⁸

Race	
White	46.9%
Black	11.2%
Hispanic	46.5%
Asian	10.0%
American Indian	0.8%

LAPD - Institutional Practices

Recruitment

The City's recruitment plan was designed to reach out to all demographic groups with the expressed intent to achieve a population of officers who reflect the diversity of the community. While not directly related to racial profiling, the City's recruitment campaign purposefully targeted a wide range of ethnic demographic groups. The idea being that a culturally diverse candidate pool would push the Department towards being a more tolerant organization that embraces *Respect for People* as a core value.

To achieve this, the City conducted an exhaustive marketing survey to develop recruitment strategies that would achieve the overall hiring goals of the City. The campaign that was developed by marketing experts, using the survey, was specifically crafted to resonate with people who are members of the various targeted demographics. That strategy emphasized using new age recruitment strategies (use of the web, viral advertising, etc.) as well as "boots on the ground" recruitment efforts.

Recruitment and Employment Division (RED), working in conjunction with Personnel Department, has twenty recruiters. Recruiters attend approximately fifty recruitment events (community, commercial and recruitment) per month. Those events are selected not only for their anticipated fruitfulness for recruitment, but also to ensure a broad spectrum of demographics are targeted each month. In addition, the City goes to great expense to sponsor recruitment events that target women, Hispanics, African Americans, etc. The recruitment strategy seems to be working.

⁸ 2000 United States Census Bureau. The numbers exceed 100% because some individuals self-reported more than one race affiliation.

Recruits by Race/Gender

Recruit Officer Hiring – Fiscal Year						
JUNE 2007 - MAY 2008						
Race	Male	% Male	Female *(20%)	% Female	Total	% Race Total
Black *(15%)	50	7%	18	2%	68	9%
Hispanic *(30%)	311	42%	79	11%	390	53%
Asian *(10%)	56	8%	7	1%	63	9%
White	178	24%	19	3%	197	27%
American Indian	1	0%	0	0%	1	0%
Filipino	17	2%	3	0%	20	3%
Other	0	0%	0	0%	0	0%
TOTAL	613	83%	126	17%	739	100%

Note: *Percentages in parentheses reflect Department hiring goals.

Selection & Hiring

A significant amount of effort is expended by the City (Personnel Department and the LAPD) to ensure police candidates not only have the skills to become successful police officers, but are reflective of the diversity of the community and are tolerant of other groups. The Selection and Hiring process is, in part, designed to ensure that candidates who display intolerance are deselected from the process. Specifically:

- There is a racial bias question on the entry level interview which prompts the candidate to discuss his/her experiences about dealing with persons of different ethnic or religious backgrounds;
- The background process deeply probes issues of intolerance. Candidates are asked a series of questions that specifically probe whether they have ever committed acts of harassment or intolerance towards persons based on sexual orientation, gender, race or ethnicity or immigrant status.⁹ Candidates are informed ahead of time that their answers will be subject to verification through the use of the polygraph;
- Background investigators query references (both supplied and developed leads) about the candidates' prior conflicts with others, including potential intolerances and acts of harassment.
- One question on the polygraph specifically deals with an issue of intolerance;

⁹ The Background Investigative process is highly confidential. Specific line of questioning will not be provided in this report.

- The psychological evaluation process probes issues of intolerance.

Training

During the past two years, the Recruit Basic Course (RBC) has undergone a complete redesign. From a review of results of previous studies completed on LAPD training (1991 LAPD Self-Study, Christopher Commission, RAND Report), it was evident that blocks of time on community policing were insufficient to move the Department towards organizational change in this area. To make substantial change, a shift in training philosophy was necessary. In 2003, the RAND Corporation report suggested the implementation and use of the CAPRA (client, acquiring and analyzing, partnerships, response, assessment) problem-solving model.¹⁰ (This model is considered a values-infused problem-solving model and is grounded in the core value of service to our community.) Scenarios are now debriefed and evaluated focusing on three key areas: Mission, Vision, and Values; CAPRA as a problem-solving model; and Tactical Concepts. By debriefing in this manner, recruits are constantly reinforced on the practical application of meeting community needs and expectations. Further, they are expected to consider internal and external partnerships in order to be successful in problem-solving.

Within the redesign of the academy it is limiting to suggest that we only cover our interactions with each other and the community during singular periods of instruction. While some singular classes emphasize dealing with diversity, the concept of the redesigned Academy is to infuse this respect throughout the course of the Academy to make it part of the culture. Here is a list of several sessions in the Police Sciences event (the first month) that convey to the recruits the expectation of what it takes to be an ideal police officer.

- Mission, Vision, and Values
- Respect Based Leadership
- Introduction to CAPRA
- Using CAPRA for Conflict Resolution
- Diversity in the Workplace

Recruits complete their first month by revisiting these topics through an interactive experience at the Museum of Tolerance (8 hours). The goals for “Tools for Tolerance” are to increase the recruits’ awareness of the evolving role of law enforcement and to provide the tools necessary for an effective response.

In the framework of the redesign, these topics are then woven into the skills acquisition of all other elements of recruit academy training. In the second month, there is a specific class on racial profiling during a scenario where they conduct a pedestrian stop. The learning objective of this class is as follows, “Recruits will learn that race alone can not be used as an indicator or predictor for criminality. This class explores the topic of racial profiling as well as its effects on law enforcement and the community.” As mentioned earlier, these critical topics are debriefed throughout recruit training as a part of the values-infused problem-solving.

¹⁰ Training the 21st Century Police Officer, Redefining Police Professionalism for the Los Angeles Police Department, Rand Corporation, 2003.

In addition to recruit training, the Department has infused Consent Decree paragraph 117, which includes issues of tolerance, respect, prohibition of racial profiling, etc., throughout the in-service curriculum. The Department has infused all components of paragraph 117 into 29 POST certified classes. Those classes include field training officer classes, the Internal Affairs Investigations Course, Watch Commanders' School, Supervisory Leadership, and command officer development. Over 100 other Department courses of instruction include one or more components of paragraph 117. Additionally, most Department personnel have attended in-service training at the Museum of Tolerance. Many have participated in several training opportunities there.

Racial Profiling Investigations

On February 15, 2006, Professional Standards Bureau published "guidelines" for the investigation of racial profiling allegations. On May 15, 2007, PSB published more comprehensive investigative "protocols" that dictated how racial profiling cases should be investigated. In July 2008, PSB added a question which probed the duration of the complainant's detention.

Internal Affairs Group considers November 2007 as an important date because all cases reviewed after that time must have been investigated according to the protocols. Since that time, racial profiling cases have not been approved for closeout unless the racial profiling investigative protocols were followed.

In addition, IAG implemented the following strategies since November 2007:

- A copy of the Racial Profiling Protocol has been provided to every investigator within IAG.
- The protocols have been placed on the IAG Intra-net site for ease of access for all Department personnel, including IAG investigators and investigators in other commands.
- The Complaint Investigation Checklist (TEMP FORM 400), which is attached to every complaint completed by IAG, was amended to include fields that ask whether Racial Profiling Protocols were followed and the Racial Profiling Checklist included.
- On March 22, 2007, IAG conducted a training session for IAG investigators that integrated racial profiling investigative practices.
- IAG has conducted four Internal Investigations Courses (IIC). The IIC includes a four-hour block of instruction on investigating racial profiling allegations. The Commanding Officer, IAG, attends and participates in this block of instruction to emphasize the importance of the topic.
- The IIC lesson plan for racial profiling has been refined over time. It is an exhaustive and comprehensive lesson plan.

- Review and Evaluation Section was tasked with ensuring that no racial profiling cases were approved for closeout unless the protocols were followed and the appropriate check sheets attached to the investigations. Cases not in compliance are returned and not accepted until they include the requisite information.
- An auditor within Review and Evaluation Section was designated as the coordinator for reviewing racial profiling cases to ensure consistency in review and adherence to the protocols. That same auditor compiles information in an ad-hoc database to further evaluate racial profiling investigations.
- The Commanding Officer, Criminal Investigation Division, continued to review all racial profiling cases as an additional review.
- On occasion, the Commanding Officer, IAG, has directed that undercover surveillance be conducted to probe specific allegations of racial profiling.

Data Collection

The Department has gone to considerable expense to capture "Stop Data" with the specific intent of dealing with racial profiling. The analysis of that data was conducted by The Analysis Group at a cost of nearly \$700,000. The results were inconclusive.

The Department continues to collect data on "Field Data Reports." There are no plans for additional analysis. The Department is also in the process of automating the Daily Field Activities Report which will have some element of data capture built into the system.

Digital In-Car Video System

The Department has been working steadily on installing Digital In-Car Video Systems (DICVS) into its fleet of patrol vehicles. The cost of the system and installation is estimated to be in excess of \$34 Million. It is anticipated that Operations-South Bureau will be the first bureau to have DICVS. Installation is slated to begin Fall 2008. Department-wide installation will be phased in over the next several years.

As part of management practices, the Department will:

- Conduct periodic audits of the audio and video;
- Bookmark and review the DICVS data from any incident involving vehicle pursuits, uses of force, incidents resulting in personnel complaints or other events of significance;
- Review DICVS data relative to lawsuits or claims for damages;
- Conduct quality service audits;
- Use the DICVS data to identify and/or monitor at-risk officers who are subject to the Risk Management Executive Committee's oversight.
- Afford the OIG unfettered access to the DICVS data.

Findings and Recommendations

The Department's efforts in recruitment, hiring and training are robust in supporting its on-going effort to ensure personnel exhibit and embrace the Core Value of *Respect for People*. When evaluating issues of "racial profiling," reviewers should recognize and remain cognizant that this effort is on-going and substantial.

Management's use of the traditional disciplinary process as the primary accountability mechanism for dealing with racial profiling is not working. Alternative strategies should be pursued. Those strategies include:

Discipline and Community Policing—Enhance the ACR Process

The disciplinary system may be working at cross purposes with community policing. The typical scenario is as follows. A complainant makes an allegation of racial profiling. That complaint is then recorded. Eventually, the complaint is investigated by IAG. Often, many months later, the complainant receives a letter stating that the complaint was not sustained along with a "thank you" for bringing the complaint to the attention of the Department. Meanwhile, the only thing the complainant wanted in the first place was an apology or an explanation as to why he or she was stopped. Officers, facing an allegation of misconduct, are highly unlikely to offer up an explanation without the benefit of counsel, etc. As practiced, the system, designed by the Department and imbedded by the Consent Decree, inflames relationships with the community rather than soothes them.

Currently, the ACR process prohibits handing racial profiling complaints through mediation. The ACR process is only allowed for instances where there are no allegations of misconduct. Yet, the CMS data revealed that allegations of racial profiling were not often combined with ethnically derogatory terms. An informal poll of IAG investigators revealed they believed racial profiling complaints often came about because no explanation was offered to the complainant by the detaining officer.

Other law enforcement agencies, most notably Denver, have had success with mediating some claims of racial profiling. While this goes against the grain of LAPD's historically rigid disciplinary stance, adopting this type of mediation process may provide several benefits. Those include:

- The community member will be given the opportunity to be heard right away.
- The interaction between the involved officer and the complainant may have some lasting benefits. The officers will develop skills to explain his or her actions and the community members will learn that officers have a difficult job to do under exceptionally difficult circumstances.
- Officers may learn to explain their actions in the field rather than doing it in the presence of a supervisor mediating the discussion.
- Supervisors will enhance their mediation skills.

To accomplish this, the Department should revise the ACR process to allow allegations of racial profiling to be mediated so long as other allegations of misconduct are not present (unlawful search, ethnic remark, etc.) Legal protections are already in place to ensure that statements made by a participant officer cannot be used later against the officer should negative discipline be initiated.

Enhance Department Terms

As previously mentioned, some police agencies use the term, “Biased Based Policing” to define what the LAPD calls racial profiling. LAPD should adopt the term of “Biased Policing.” The term “racial profiling” limits the discussion to race, ignoring other minority groups. Those groups may consist of people from religious groups or those who are lesbian, bi-sexual, gay, transgender (LBGT) or disabled.

Currently, the Department has an odd assortment of terms to define various acts of misconduct. The Department uses the term, “Gender bias” should someone utter a gender based profanity at someone within the organization. If someone uses discourtesy towards someone within the organization, it is often termed an “improper remark.” Yet, if the same comment is directed towards a community member, the remark is labeled as “discourtesy.” There are no defined terms should someone use a slur towards a member of a religious group or someone who may be a member of the LBGT community.

Terms of misconduct should be refined to eliminate references of bias and to focus on conduct. It is recommended the following terms be considered:

- Discourtesy – general
- Discourtesy – ethnic
- Discourtesy – religious
- Discourtesy – gender
- Discourtesy – sexual orientation
- Discourtesy - disabled

Under this proposal, the term “discourtesy” is central to all allegations, both internal and external, involving untoward comments directed at others. Further, there is no attribution of bias or intent in the definitions. The redefinition of terms would communicate to Department members that we must not only be courteous to the public, but to each other. Further, changing the term “racial profiling” to “biased policing” is more inclusive and instructive.

Internal Discipline–Refocus Efforts

As previously mentioned, the bulk of discussions about racial profiling have centered on the Department’s efforts to identify and prosecute racial profiling as misconduct. Yet, the LAPD appears to be in line with other agencies from around the Country, including those agencies with civilian bodies with authority over disciplinary matters.

Because *intent* must be proved, racial profiling is exceptionally difficult to prove and easily defended. If and when the LAPD does sustain such an allegation, the defense of that officer will mostly likely be exhaustive.

Internal Affairs Group should continue to apply the protocols and rigorously pursue the racial profiling cases that are not appropriate for the ACR process. Internal Affairs Group continues to strongly recommend that *actions taken* during the contact between an officer and a complainant be evaluated during investigations. Issues such as unlawful search and seizure, unlawful detention, unreasonable length of detention, discourtesy, etc., should be core to these investigations. Using the sustained rate of racial profiling investigations as a measurement of effectiveness is neither productive nor instructive.

Data Capture

The Department is expending valuable resources to capture Stop Data. It should either retain a firm, such as RAND Corporation, who has had success analyzing the data, or discontinue the data capture process. The latter option might be considered in light of the fact that analyses of stop data from other agencies have produced information of questionable value, particularly when considered alongside the agencies' considerable expenditures.

If the data continues to be collected, the Department should use the analyses results thoughtfully. Rather than using it in a quest to sustain a complaint of racial profiling, management should use the results in a constructive way to promote professional behavior (e.g., provide monitoring, training and/or counseling). Again, sustaining a complaint, using stop data is not only extraordinarily difficult, but of questionable validity. Most importantly, if the purpose of the data collection is to cause a more reflective and thoughtful organization, then the data should be used as an early intervention mechanism.

Oversight

Internal Affairs Group welcomes any oversight or auditing that may be done. Traditionally, the OIG has conducted audits of a more formal nature and then reported the results to the BOPC. While that format should continue, a more informal and frequent examination by the OIG of recent cases would assist IAG in managing the investigative quality.

Conclusion

What has become apparent is that the discussion of racial profiling within the LAPD has become one of polarities. On one end of the spectrum, management, buttressed by the Consent Decree, has focused on racial profiling as serious misconduct. On the other end of the spectrum, officers steadfastly affirm that their policing is wholly unbiased.

Because of this polarity, no meaningful dialogue can take place between the community member and the officer who may have offended them. It is apparent there is a serious chasm. In spite of

exhaustive and comprehensive efforts weaved throughout the recruitment, selection, training and investigative processes, the problem persists.

Internal Affairs Group strongly recommends that the ACR process be enhanced to facilitate mediation in some racial profiling cases. In circumstances where there are other substantive allegations, the full resources of IAG should be brought to bear.

The Department has undertaken many efforts to promote a culture of respect for others and to reinforce this value throughout an officer's career. Our commitment to respect encompasses our commitment to fair and impartial policing. The City's recruitment and selection process is specifically designed to attract a wide demographic while deselecting those who are intolerant. The training program, both recruit and in-service, underwent extensive revision to include Consent Decree Paragraph 117 issues. The very core of the debrief system used by Training Division emphasizes meeting community expectations, which includes constitutional policing. Substantial investigative resources have been expended to investigate racial profiling allegations. These investigative resources include significant amounts of training for investigators and attention by upper IAG management. The City will be spending in excess of \$34 Million to outfit police vehicles with DICVS and has a comprehensive plan to use the DICVS as a management tool.

Professional Standards Bureau is enhancing the Department's disciplinary philosophy by asking its leaders to "think strategy before penalty." Using the ACR process is yet another example of strategic thinking. Used properly, the ACR process will enhance community policing, increase positive interaction between the community and officers and enhance officer performance and discipline.

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