

RACIAL PROFILING WITHIN LAW ENFORCEMENT AGENCIES

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION,
FEDERALISM, AND PROPERTY RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

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RACIAL PROFILING WITHIN LAW ENFORCEMENT AGENCIES

THURSDAY, MARCH 30, 2000

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

The subcommittee met, pursuant to notice, at 2:05 p.m., in room SD-226, Dirksen Senate Office Building, Hon. John Ashcroft (chairman of the subcommittee) presiding.

Also present: Senators Feingold, Kennedy, and Torricelli [ex officio].

OPENING STATEMENT OF HON. JOHN ASHCROFT, A U.S. SENATOR FROM THE STATE OF MISSOURI

Senator ASHCROFT. Good afternoon. Let me thank all of you for coming. It is a pleasure to call this meeting of the Constitution Subcommittee of the Senate Judiciary Committee to order. I want to thank every one of you for attending this hearing on the subject of racial profiling by law enforcement.

Racial profiling is the use of race either as the sole predictor or one element in a group of predictors of potential illegal or criminal activity that justify traffic stops or border searches or airport detentions. It is a subject of growing public debate, particularly in recent months.

It is appropriate for this subcommittee to hold a hearing on this subject because it has clear constitutional implications. Our Constitution's 14th Amendment guarantees all persons the equal protection of the law, and the Supreme Court has made clear that any consideration of race by government officials, except in the narrowest of circumstances, is inconsistent with the 14th Amendment's guarantee of equal protection.

As applied to today's inquiry, while it is undoubtedly permissible to use a particular criminal suspect's race as an identifier, using race broadly as a profiler in lieu of individualized suspicion is, I believe, an unconstitutional practice. In other words, if I am mugged by a caucasian male 6 foot 7 and 230 pounds, the police consider that, and they are entitled to and should consider that suspect's race in looking for the man who mugged me. What they cannot constitutionally do, in my judgment, is to start pulling over all caucasians in the future because they believe that they commit a disproportionate number of muggings.

Today, we will hear testimony about various serious allegations that traffic stops and other detentions happen on the basis of race, though there are differing points of view about the prevalence of the practice. Some will provide evidence that the practice is very prevalent and others that it is the result of random misdeeds in the law enforcement community.

We will also hear about the proposed legislation, the Traffic Stops Statistics Study Act, which is designed to try and find out exactly the extent or how large the problem is. That legislation is sponsored in the Senate by the ranking member of this subcommittee, my friend Senator Feingold, and Senator Lautenberg, who I am pleased is on our first panel today, and by Congressman Conyers in the House.

We do need to find out how big the issue is, and I think the concepts included in the Traffic Stops Statistics Study Act represent a good start. I have some suggestions on how I think it could be improved. In particular, I would respectfully suggest that the statute make clear that the Attorney General's study of State and local law enforcement traffic stop data would be made from data collected voluntarily by those departments. It is my understanding that it is the intent of the bill, but I think the legislation would be well served to make that explicit by way of clarification.

Second, there are a few areas where I think that the data collected by the Attorney General should be expanded in order to get as full a picture as possible of what is happening on our highways and streets. In addition to the current provision that the Attorney General collect data about the traffic infraction alleged to have been committed that led to the stop, the Attorney General should consider any other factors supporting the officer's decision to make a traffic stop.

In addition, I think that it would be useful for the Attorney General to consider factors such as the race of the officer making the stop, the racial composition of the area in which the stop was made, and any other factors that will give us as full a picture as possible as to how officers are conducting traffic stops.

Finally, I think it would be beneficial to explain that nothing in this bill changes any burdens of proof for parties in litigation. It is my hope that Senator Feingold and the other Senate cosponsors will consider these suggestions because I think that with these changes, I could have the opportunity to completely support the measure.

In any event, regardless of the prevalence of racial profiling, the mere fact that these allegations exist troubles me greatly. It troubles me not only for the constitutional implications that it raises, but also for the extraordinarily destructive effect that such allegations would have on the confidence of people in Government.

A necessary component of our system of Government is public trust. No system of government, of the people, by the people, and for the people can long endure if some of the people have no confidence in the fairness of that government. So long as whole groups of our citizens believe that there is a two-tiered system of treatment by Government officials arbitrarily divided by race, they won't have confidence in that system. They will understandably conclude that if Government is improperly motivated by race in

some circumstances, it might be improperly motivated by race in all circumstances.

This is particularly true if that perception is held of law enforcement, the very Government agency entrusted with protecting citizens from injustice. Such an erosion of trust would not only undermine the ability of law enforcement officers to do their jobs, it would undermine any efforts that we in Government make to try and improve the lives of all Americans through Government.

With this in mind, the purpose of this hearing today is threefold: first, to raise public awareness of the issue regarding racial profiling; second, to discuss what we might do legislatively to understand more fully the extent of that problem; and, third, and most importantly, to try to restore some of the lost confidence and trust of some Americans by demonstrating that Government can work to correct any abuses that are even its own.

I will now turn the floor over to the ranking member of the subcommittee, Senator Feingold, and thank him for his concern in this respect.

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

Senator FEINGOLD. Thank you, Mr. Chairman, and welcome to all of our witnesses and those in the audience. Mr. Chairman, we always say thanks at these moments and we always mean it, but I especially mean it today because this is a very significant thing that you are willing to hold this hearing.

I know that it is sometimes unusual around here for Democrats and Republicans to work together, but I am grateful for the collegial working relationship we have had over the years and for the constructive efforts of you and your staff to discuss this issue today. This is exceptional, as I have said.

I am pleased and I am not at all surprised to hear that you share my concern that racial profiling is an unacceptable law enforcement tool. In fact, I am told that this is the first time this has ever happened, that there has never been a hearing on this in the Congress before, until you consented to this. And I appreciate the strength of your statement, the passion of it, and also your reference to the constitutional issues.

At first glance, the changes you have outlined to S. 821, the Traffic Stops Statistics Study Act, appear reasonable and helpful. I am confident that we can work out the details quickly, and once that is done I look forward to welcoming you as a cosponsor to the bill. I believe your support is crucial to getting this bill through the Senate and enacted into law this year, and I am very pleased that you have been willing to roll up your sleeves and get this done. So I thank you very, very much.

I also, of course, thank Representative Conyers, who helped initiate this issue in the Congress, and, of course, my good friend Frank Lautenberg, who is the principal author of this legislation. I am the second name on the bill. He has taken a real lead role. A good part of my week has been praising Senator Lautenberg for his work on the Budget Committee, his work on the environment, his work on transportation and many other issues during his ca-

reer. But this is a very important one to add to the list and I thank him for his leadership.

Mr. Chairman, our Nation has faced many difficult struggles involving issues of race, justice and equality. Fortunately, we have made great advances this century in ensuring that all Americans receive equal justice under the law. But we still face significant problems of racial injustice and discrimination. There are serious questions about whether African-American and other minority juveniles receive prison sentences at a disproportionately higher rate than white juveniles.

There are serious questions about whether African-Americans and Hispanic-Americans are subject to the death penalty disproportionately compared to whites. And for the millions of African-Americans, Hispanic-Americans and other Americans of racial or ethnic minority backgrounds who drive on our Nation's streets and highways, there is the fear of being stopped for no apparent reason other than the color of their skin.

This law enforcement tool, known as racial profiling, targets drivers for heightened scrutiny or harassment because of the color of their skin, with an alleged traffic violation used as a pretext. Parroting the well-known acronym for drunk driving, DWI, racial profiling has been called DWB, or driving while black or driving while brown.

I want to emphasize that I don't believe that all or even most law enforcement officers engage in this terrible practice. I believe that the vast majority of our men and women in blue are honorable people who fulfil their duties without engaging in racial profiling. But as we will hear today, the experience of many African-Americans and Hispanic-Americans is very real. There is simply no doubt that some officers unfortunately do engage in this practice.

There are some—and I stress only some—law enforcement agencies or officers in our country who have decided that if you are African-American or Latino, you are more likely to be trafficking drugs or engaged in other illegal activities than a white person, despite statistical evidence to the contrary.

In a May 1999 report, the American Civil Liberties Union described a study that found that along I-95 in Maryland, while only roughly 17 percent of the total drivers and traffic violators are African-American, an astonishing 73 percent of the drivers searched are African-American. We are going to hear more today about the scope of this problem, including from the principal author of the ACLU report. Of course, the legislation that Senator Lautenberg and I have sponsored will allow us to get a clearer picture of what is happening.

Mr. Chairman, whether in Maryland, Wisconsin, or Missouri, all Americans must have the right to travel from place to place free of harassment, especially from harassment by their own Government. No one in America should be considered suspicious and have to live in fear of being pulled over, detained and searched because of the color of his or her skin.

As we will hear today, victims of racial profiling are forced to endure an incredibly humiliating experience, sometimes even a physically threatening one, on roadsides or in the back seat of police cruisers. Why? Because of the color of their skin. Not just African-

Americans and Latinos, but all Americans should feel threatened when any one of us is denied our personal liberty in such an insidious and humiliating way. In 21st century America, racial profiling is not only indefensible, it is an affront to our Nation's fundamental principles of justice, liberty and equality.

Mr. Chairman, this practice has another significant negative impact that I would like to just touch on here, and that is the damage it does—and you have focused on this already—to the trust between law enforcement and the community and to our criminal justice system. Racial profiling leaves a scar not only on those Americans who are harassed, but on relations between law enforcement and the community that police officers have pledged to protect and serve.

Where can African-Americans and Latinos turn for help when they believe that the men and women in uniform cannot be trusted? As an Hispanic American testified recently in Glencoe, IL, on his family's experience with being profiled repeatedly, "who is there left to protect us? The police just violated us."

This is profoundly disturbing to me and I hope to all Americans. Racial profiling chips away at the important trust that law enforcement agencies take great pains to develop with the community, and we have seen when that trust is broken that it can lead to an escalation of tensions between the police and the community, as well as detrimental effects on our criminal justice system, like jury nullification and the failure to convict criminals because the community no longer believes the police officer on the witness stand.

Racial profiling is clearly bad policing, and it has a ripple effect whose consequences we are only beginning to feel. In just the last year since the traffic stops statistics study bill was introduced, we have already seen increased awareness of this problem in the law enforcement community and an increased willingness to address it. As we will hear today, there are a growing number of police departments that have already begun collecting traffic stops data voluntarily. In fact, over 100 State and local police departments have now committed to compiling data. In addition, a number of States have passed or are considering legislation requiring their police departments to collect this data.

These are very positive developments. These State and local efforts underscore the need for a Federal role in collecting and analyzing traffic stops data to give Congress and the public a national picture of the extent of the racial profiling problem and lay the groundwork for national solutions to end this horrendous practice.

I am pleased to have joined my distinguish colleague, Senator Lautenberg, in introducing this legislation. The bill would require the Attorney General to conduct an initial analysis of existing data on racial profiling and then design a study to gather data from a nationwide sampling of jurisdictions.

This is a straightforward bill. It only requires the Attorney General to conduct a study, plain and simple. It doesn't tell police officers how to do their jobs and it doesn't mandate data collection by police departments. The Attorney General's sampling study would be based on data collected from police departments that voluntarily agree to participate in the Justice Department study.

President Clinton has endorsed S. 821, and last June he directed Federal law enforcement agencies to begin collecting and reporting data on the race, ethnicity and gender of the people they stop and search at our Nation's borders and airports. A coalition of civil rights groups and law enforcement organizations also support this legislation, and I am pleased that Senator Torricelli and Senator Kennedy, who is here, have joined as cosponsors. I am hopeful that more of our colleagues on the full committee will agree to be cosponsors of this important initiative. The House of Representatives passed a similar bill in the 105th Congress, and just a few weeks ago the House Judiciary Committee passed a bill without amendment.

So I hope that with your great help, Mr. Chairman, we can move the bill through the committee promptly. Thank you for your being patient with my long statement. I do care about this issue deeply, and I again thank you and I think the Senate and public will benefit from the light that we are shining on this problem today.

Thank you, Mr. Chairman.

Senator ASHCROFT. Thank you very much.

The Senator from Massachusetts is recognized.

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

Senator KENNEDY. Well, thank you, Mr. Chairman. I will put my statement in the record and just commend you for having the hearings, and my colleagues, Senators Lautenberg and Feingold, and John Conyers, for going ahead.

It appears to me—and I would be interested when Senator Lautenberg makes his comments—that this is an extremely modest proposal. What we are basically talking about is the collection of information and statistics. It seems to me that given the kind or reality of this situation and the modesty but the importance of this kind of program, unlike so many of the other things that we have before us in the Congress, we ought to be able to take action on this.

I was interested in Senator Feingold, who is a real expert on the particular legislation, commenting upon your own observations and suggestions, at how reasonable those were and that there would be a real opportunity to move forward in this area.

Just finally, I would hope that maybe Senator Lautenberg would also give us his own best judgment—and this will come out in the questions—about what steps he thinks are going to be necessary to follow on if we were able to implement this. We have got a number of the States that are collecting some information, but what he really thinks can be done after we get this information. I know that is not directly the subject of it, but I think it is important that we hear it.

I would just say finally, Mr. Chairman, I was mindful of that excellent statement that was made by, I think, Anna Quindlen on March 13. She said, "Police officers are just us wearing uniforms. The assumptions they make and the prejudices they carry with them are the assumptions and prejudices of their roots, their neighborhoods and their society." She went on to write that, "This

is the way in which race changes everything, often in a subtle or unconscious fashion.”

So this is enormously important, even though it is a modest program, and an enormously important hearing, a very important initiative. I am delighted that we are having the hearing and hopefully it will result in action.

I thank the Chair.

[The prepared statement of Senator Kennedy follows:]

PREPARED STATEMENT OF SENATOR KENNEDY

Thank you, Mr. Chairman, I commend you and Senator Feingold for working together to schedule this hearing. Racial profiling by law enforcement officers is a disgraceful practice, and it is high time that the Senate addresses this issue.

I pay particular tribute to our distinguished colleague from the House, Representative John Conyers, the Ranking Member of the House Judiciary Committee. For several years, Representative Conyers has led the fight for legislation on racial profiling, and it was successfully passed by the House in the last Congress. Thank you for being here today, and I look forward to your testimony.

Traffic and vehicle codes are highly detailed and complex and almost everyone is violating some part of them. That means that law enforcement officers can choose to stop almost anyone, and that officers who have biased attitudes and unscrupulous officers have a free hand to discriminate. Some try to justify racial profiling by claiming that it is efficient and necessary to fight drugs and guns. That argument is flatly wrong. It is based on the shameful and bigoted assumption that minorities are likely to be law breakers.

Professor John Lamberth of Temple University conducted a detailed study of the New Jersey Turnpike and the percentage of drivers violating the law. Over 98 percent of the cars were speeding and therefore subject to being stopped by the state police. Obviously, the police have the power to pull over anyone they choose. African-Americans made up 15 percent of the speeders, not statistically different from their proportion of the driving population.

But 35 percent of the drivers pulled over were black. The average black driver was almost four times more likely to be pulled over than a non-black driver.

On Interstate 95 in Maryland, a similar study was conducted. In fact, we have one of our witnesses today to thank for it. Robert Wilkins and his family were the victims of a discriminatory stop by the Maryland State Police. But they picked the wrong family to stop that day. He had the courage, determination and legal skills to defend his constitutional rights and hold the police accountable.

The Maryland study showed that for every 1,000 searches by the Maryland State Police, exactly 28 percent of the drivers the police chose to search were carrying some kind of contraband that warranted an arrest. And there was no difference between black drivers and white drivers—none, at all—28 percent of blacks and 28 percent of whites.

That result is no surprise. National Institute of Drug Abuse statistics show that African-Americans are no more likely to abuse drugs than whites, and the Maryland study shows that they are no more likely to transport drugs than whites. Yet, they are still targeted for a disproportionate number of stops and searches, and are over 12 times more likely to be arrested than white drivers.

The lesson is obvious. If you enforce the law against blacks, you'll find and arrest more black offenders and it will look like blacks are the ones violating the law. If you enforce the law against whites—or against people with blond hair, or against people driving green cars—you'll get the same results. The group you target will look like they're the principal offenders violating the law.

The problem is just as serious for Hispanic drivers. Operation Pipeline is an attempt to use the traffic laws as a tool for drug interdiction, and it is clearly targeting Hispanic drivers. An examination of over 30,000 Operation Pipeline stops in California showed only a 2 percent success rate. That means 29,400 people were pulled over for no valid reason at all—and a disproportionately high percentage of them were Hispanic.

The conclusions are clear. Racial profiling is an abomination. DWB or DWH—Driving While Black or Driving While Hispanic—is not an offense, or America isn't America. It's time we stopped racial profiling—now and for good.

Senator ASHCROFT. Thank you.

Now, it is my pleasure to turn to Senator Lautenberg, who is a cosponsor of this measure, who has introduced the Traffic Stops Statistics Study Act in the Senate.

Congressman Conyers was scheduled to be here with us today, but he had a scheduling conflict arise this morning. I just want to note now before the Senator begins his remarks that we will keep the record open for any statement that Representative Conyers chooses to submit.

[The prepared statement of Mr. Conyers follows:]

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

Race-based traffic stops turn driving, one of our most ordinary and fundamentally American activities, into an experience fraught with danger and risk for people of color. The offense of "D.W.B." or "driving while black and brown" is well-known to African-Americans and Hispanics across the country. There are virtually no African-American males—including Congressmen, actors, athletes and office workers—who have not been stopped for a pretextual traffic violation.

Because traffic stops can happen anywhere and anytime, millions of African-Americans and Latinos alter their driving habits in ways that would never occur to most white Americans. Some intentionally drive bland cars or change the way they dress. Others who drive long distances factor in extra time for the traffic stops that seem inevitable. Some completely avoid places like all-white suburbs, where they fear police harassment for looking "out of place."

This very fear was confirmed by a group of police officers from Highland Park, Illinois. These officers had the courage to confirm a fact that minority drivers across the nation have known for years: police departments routinely employ discriminatory racial profiling tactics designed to ambush innocent minority drivers.

In sworn affidavits, the officers detailed shocking incidents of race related traffic stops and police policies that clearly warrant federal investigation. The allegations of the Highland Park officers are unique in the fact that white law abiding officers have advanced the profiling claim and broken the wall of silence that has hindered other investigations.

The courage shown by these officers in coming forward will send a tremor through the law enforcement community. In the face of tremendous anecdotal and quantitative evidence to the contrary, some national police groups have consistently denied the existence of racial profiling. Because these officers have broken the wall of silence, never again can there be a denial of the stories of the minority community concerning their treatment at the hands of the police.

The traffic stops bill is intended to provide a comprehensive analysis of the scope and magnitude of the racial profiling problem by requiring the Department of Justice to conduct a nationwide study of traffic code violation stops by law enforcement officers.

This legislation is a recognition of the manifest complaints by minority drivers nationwide. The legislation is not punitive, nor does it indict the conduct of individual police officers—most of whom are simply trying to do their jobs.

While the catch phrase "driving while black" captures the perception of the minority community, the definition and legal implications of racial profiling defy such simplification.

The most sound definition of racial profiling embraces the widespread police practice of using race as a factor in deciding whom to target for law enforcement. Properly understood, racial profiling occurs whenever police routinely use race as a negative signal that, along with an accumulation of other signals, causes an officer to react with suspicion.

Some commentators define racial profiling as occurring when a police officer stops, questions or arrests someone solely on the basis of race or ethnicity. This crude definition evokes the completely discredited exercise of power by bigoted law enforcement officers intent on harassment.

To condemn police officers who engage in such tactics, however, requires no real confrontation with the complex intersection between race, crime and law enforcement because few would defend police surveillance triggered solely by race. Such a definition diverts attention from the more complex use of race as trigger for suspicion that captures a disproportionate number of minorities.

Media coverage of the phenomenon of racial profiling has produced an abundance of anecdotal evidence concerning abusive practices. The stories in the press, com-

bined with statistics, lawsuits and recent legislative action, make a powerful argument that "driving while black" is not just an occasional problem.

Statistical evidence gathered in the course of litigation shows a clear pattern of racially discriminatory traffic stops and searches. Although African-Americans make up only 14 percent of the population nationwide, they account for 72 percent of all routine traffic stops.

An ACLU analysis of Maryland State Police data showed that 73 percent of cars stopped and searched on Interstate 95 between Baltimore and Delaware from January 1995 through September 1997 were those of African-Americans, despite the fact that only 14 percent of those driving along that stretch were black. Similarly, in Florida, 70 percent of the persons stopped on I-95 were African-American, even though they made up less than 10 percent of the driving population.

Hispanics are similarly targeted for a disproportionate law enforcement focus. An ACLU analysis of Illinois State Police data found that, while Hispanics comprise less than eight percent of the population and take fewer than three percent of all personal vehicle trips, they comprise approximately 30 percent of the motorists stopped by state police drug interdiction officers for discretionary offenses and comprised 27 percent of all searches.

These dramatic statistics have formed the basis for legal findings against the practice of racial profiling across the nation. Lawsuits challenging racial profiling have been filed all across the country. Most recently, New Jersey settled the first ever racial profiling case brought by the Justice Department under 42 U.S.C.A. 14141. The consent decree in that case appoints an independent monitor, requires the state to collect traffic stop data and to create new citizen complaint, training and early warning procedures for the state police.

While racial profiling practices by law enforcement have been expanding, the Supreme Court's sensitivity to Fourth Amendment rights has been contracting. In *Whren v. United States*, the Supreme Court declared that any traffic offense committed by a driver was a legitimate legal basis for a stop, regardless of the officer's subjective state of mind.

In practice, the *Whren* decision has given the police virtually unlimited authority to stop and search any vehicle. Because state traffic codes identify so many different infractions, every driver probably violates some provision of the vehicle code at some time, during even a short drive. As a result, the controversy around racial profiling will continue to grow.

Widespread racial profiling practices deeply undermine the legitimacy and effectiveness of the criminal justice system, making police work much more difficult and dangerous. As we have seen in Highland Park, police officers themselves recognize the injustice of these practices and are beginning to speak out in favor of change.

While it does not regulate traffic stops, set standards for them, or require implementation of particular policies, the Traffic Stops Bill does require the gathering of solid, comprehensive information, so that discussion of racial profiling might move beyond the question of whether or not the problem exists, to the question of how to find a solution.

Senator ASHCROFT. It is a pleasure to welcome the Senator from New Jersey, Senator Lautenberg.

**STATEMENT OF HON. FRANK LAUTENBERG, A U.S. SENATOR
FROM THE STATE OF NEW JERSEY**

Senator LAUTENBERG. Thank you, Mr. Chairman, and allow me to convey particular thanks to Senator Feingold and Senator Kennedy, both of whom have had an active interest in this issue, and Senator Feingold for urging us forward, and thanking you, Mr. Chairman, for holding this hearing. It has obviously attracted attention because it is such an important issue.

To Senator Kennedy's remarks about this being a relatively modest proposal, it is true that this is a first step, but when the first step is such a departure from existing practice, it is a giant step. We just ask the Attorney General to do the study and then help us prepare a way over the next couple of years to get grants to communities to make sure that we get the data that we need to

have to make intelligent decisions and to cure what I think is an epidemic of injustice.

Senator Feingold and I spent the morning with the budget, and I thank him for his nice comments. This is kind of a swan song period for me. But I will continue to work hard, to demonstrate that lame ducks can fly.

There has been an ugly practice across the country and it has emerged over some time. So many motorists live with the fear that they are going to be pulled over for nothing more than the color of their skin. The problem is that occasionally some law enforcement officers have inappropriately engaged in a practice called racial profiling.

Senator Feingold said it very clearly: the men and women in uniform doing law enforcement work are people that we can generally be very proud of. They do a good job and are an integral part of having a society of laws. But there are some who overstep their bounds, and we have to be very careful about that. These people unfairly assume that drivers of a particular race are more likely to be criminals, and this discrimination is wrong and it has got to stop.

When patrolling our Nation's highways and streets, the only colors that police officers ought to be concerned about are red and green lights and yellow stripes. But they ought to be color-blind when it comes to a driver's race, and any violation, as we all here know, of civil rights is unacceptable.

But it is particularly disturbing when alleged violations involve law enforcement officers. No one is safe when those who are hired to uphold the law treat it with contempt. As we consider this issue, we have to remember that lots of law enforcement officers—and I have heard it personally and seen it—have spoken out against racial profiling. They don't want to be tainted by the errant actions of some of their fellow officers.

Racial profiling has been a serious problem in my home State of New Jersey, and would that it was only New Jersey that had the problem and we could fix it right away. But we learned as we began to examine the problem that this is a serious problem all across our country.

In New Jersey, we had a State judge find that some State troopers engaged in the practice of racial profiling. We have had testimony that some troopers were trained to use profiling, and we have had a shooting at a van with some athletes traveling down the New Jersey Turnpike. Fortunately, nobody was killed. And we have seen other unwarranted physical intimidation of minority motorists on the New Jersey Turnpike and other State roads.

As a result of a Department of Justice investigation, the New Jersey Police admitted that some of their officers had engaged in racial profiling, and agreed to comprehensive reform. But while New Jersey is working to end racial profiling, we need to address the problem on a national basis, and that is why I joined with Representative Conyers in introducing the Traffic Stops Statistics Study Act.

By requiring the Attorney General to complete a study on racial profiling, this legislation will give us a better understanding of the scope of the problem and give us ideas on how to end discrimina-

tion in any communities where it is occurring. Representative Conyers has always been a strong leader on civil rights, and I am pleased to be working with him on this issue. But I again pay special thanks to my initial cosponsor, Senator Feingold, for his important contribution on the effort to end this ugly practice.

We now have 17 Senate cosponsors, and I hope that all of the members of this subcommittee will work to pass this bill and pass it quickly. Again, to go back to Senator Kennedy's remarks, it is a modest proposal. It shouldn't take an awful lot of effort to get this in place, to show people that we are serious about it, that this Government of ours will not accept racial profiling or practices similar to that where people are discriminated against because of their skin color.

So I thank you once again, Mr. Chairman, and I hope that we will be able to expeditiously move this legislation.

Senator ASHCROFT. I thank you, Senator. Your testimony is helpful.

Our next panel is comprised of three individuals to tell about their own experiences in regard to this issue.

And as I thank the Senator, I welcome you to supplement your testimony with written materials, if you choose to. But I would invite the next panel to come forward. Members of the next panel include U.S. Army Master Sergeant Rossano Gerald, from Fort Hood, TX; Mr. Robert Wilkins, an attorney from Washington, DC; and Curtis Rodriguez, also an attorney from San Jose, CA. I thank you for being here today and am grateful for your attendance.

Master Sergeant Gerald, it is a pleasure to have you here. Thank you for being here. It is my understanding that you have asked to supplement your testimony with a very short video at the end of your testimony. Is that the way you would like to handle it?

Sgt. GERALD. Mr. Chairman, you could do it either at the beginning or the end.

Senator ASHCROFT. Well, why don't you give us your testimony first and then if you don't mind, we will watch the video. It is my understanding it is just 2 minutes long, so don't put anybody to sleep with your testimony or they will miss the video.

Please, just speak up. I am having a little trouble hearing you. Just please make yourself heard. It is important that we get the facts as you would bring them to us.

Would you please proceed?

**PANEL CONSISTING OF ROSSANO GERALD, FORT HOOD, TX;
ROBERT L. WILKINS, WASHINGTON, DC; AND CURTIS V.
RODRIGUEZ, SAN JOSE, CA**

STATEMENT OF ROSSANO GERALD

Sergeant GERALD. Good afternoon, Chairman Ashcroft, Senator Feingold, and the members of the committee. My name is Master Sergeant Gerald. I am glad to have an opportunity today to talk to you about an experience I had in Oklahoma.

The issue of racial profiling is a serious problem in this country today. I am glad to see that the Senate is beginning to take a look at it. I am coming forward today to tell my story to prevent this

from happening again. I don't want anything like this to happen again to my son.

In August 1998, I was driving to Oklahoma on a family reunion. At the time, I was a sergeant first class stationed in Fort Ritchie, MD. My 12-year-old son Gregory was with me. As soon as we crossed the border from Arkansas, I noticed patrol cars in the area and began driving even more carefully than usual. Within minutes, an officer pulled me over, saying that I was following the other car too closely. He did not give me a citation.

Soon after that, we stopped to get gas and went to the restroom. After our break, we continued driving. After being stopped once already, I was driving particularly carefully. I was in the right lane, when I saw two patrol cars approaching the ramp. I signaled, pulled over to the left and let them in. I said to my son, watch this, I bet they stop me again. Sure enough, I was pulled over again.

An officer walked to the rear of the car and told me to get into the patrol car. I later learned that his name was Trooper Perry. Once he had me in the car, he started questioning me. I told him that my son was still in the car, and left and got my son, frisked him, and brought him back to the patrol car.

He told me that I had changed lanes without using my turn signal. I told him I used my signals and I asked him how he was able to see from his vantage point on the ramp.

The trooper started writing me a warning ticket and asked me questions. He asked me was I nervous. I told him, no, I was not nervous, but I was upset. I had just been stopped by other troopers. Then he asked me more questions about my destination, my point of origin, and my military assignment.

Trooper Perry informed me that he had just made a drug bust, and asked to search my car. I said no. I asked him to call my company commander, Captain Rhodes, because it is the standard operating procedure for the Army. He refused. He would not let me call my company commander, Captain Rhodes, on my cell phone. I asked him again later to call my company commander. Again, he refused.

Trooper Perry gave me a warning ticket, but told me that I was not free to go. Trooper Perry continued to ask me questions and badgering me about why I wouldn't let him search my car if I had nothing to hide. I said politely, no, and he said if I was carrying any weapons or contraband? I informed him that I was not.

Trooper Perry then stated that it was legal for him to search my car without my consent. Trooper Perry called for the K-9 unit from the second patrol car. I said I wanted to watch the search, so I got out of the car. The dog walked around outside the vehicle. The dog did not alert, did not bark, did not scratch, did not whimper, did not sit, although the trooper kept patting certain areas of the car and would not let the dog walk away.

Even though the dog did not alert, the second trooper patted the right wheel well and claimed that the dog had alerted. He said he would conduct a full-scale search now. I have been training in using dogs and I thought the search was highly improper and unusually leading.

Trooper Perry ordered Gregory and me to get back in the car. At this point, I was really worried that the troopers were going to

plant illegal contraband in my car. Trooper Perry then got the drill and took over the search. He began drilling underneath the carpet at the feet of the passenger side. Trooper Perry came back to the car and stated that he found something. The troopers spoke privately. I was accused of having a secret compartment in my car containing drug residue. The compartment was actually a footrest that was a feature of the car.

I was handcuffed by Trooper Perry, who manhandled me, thrust me into the car and strapped me in. He turned off the on-board camera and took out the tape. The second trooper searched my car. At this point, Trooper Perry and the other trooper left the hood of the patrol cars up. The action had no obvious purpose. I was worried that they were trying to obstruct my view so they could plant contraband in my car.

During the search, we overheard Trooper Perry on the radio talking to his headquarters. He told them that he couldn't find anything; nothing turned up. The other trooper told him to keep searching. He asked if he needed backup. By this point, a third unit showed up at the site. The K-9 trooper moved my son into the car with the dog and asked him questions without my being present. The second trooper asked the same questions. The dog kept barking at Gregory, who was afraid he would get bitten.

The trooper put our luggage on the ground and had the dog sniff it. They found airline tickets, one of which was to Chicago. The trooper asked me about it. I answered that Gregory had flown out of Chicago. And he asked me again about drugs. I informed him that my car had passed inspection and received military clearance, and because of my military assignment, I was subject to random urinalysis tests and would never do drugs. Trooper Perry was angry that I would not give him details about my classified assignment. I suggested that he contact my commander again.

After 2 hours, the troopers let me go with nothing more than a warning ticket. I was told that I was being let go because I was behaving myself. I claimed the car and the baggage were a mess, and Trooper Perry said we ain't good at repacking. Trooper Perry had removed parts of my headliner, floor boards, carpet, and other areas. There was over \$1,000 worth of damage.

As soon as I was released, I called Captain Rhodes, my company commander. He advised me to go to Fort Sill, OK, where the Director of Public Safety searched my vehicle in case drugs were planted in my car. An Army-certified narcotics working dog did not find any drugs or any contraband in my car.

This experience was very traumatic for Gregory. Throughout the interrogation, he was frightened and crying. Even before he was removed from my presence, he was nervous, crying, and he was hyperventilating. I had to watch my son suffer tremendous physical discomfort from the heat. Trooper Perry had turned off the air conditioning when he put us in the car, despite the 95-degree heat.

Before he released us, one of the troopers asked who would come get Gregory if I was arrested. This remark made my son more nervous and upset. He was crying. He was wondering what would happen to him and I tried to calm him down. He was scared for the rest of the trip. My son has since become afraid of dogs. He continues to ask his mother why he was treated this way.

I was very humiliated by this experience. I was embarrassed. I was ashamed that people driving by would think I had committed a crime. It was particularly hard to be treated like a criminal in front of my impressionable young son. I never thought I would find myself in the position of suing police officers. I am an authority figure myself. I served our country in Somalia and in the Gulf War. I don't want my son to think that this kind of behavior of anyone in uniform is acceptable. I hope that coming forward to tell my story might prevent other people of color from being treated this way.

That is it, sir.

Senator ASHCROFT. Thank you, Master Sergeant Gerald.

[Videotape shown.]

Senator ASHCROFT. Thank you, Master Sergeant Gerald. I hope that your son gets an opportunity to see your appearance here because frankly I know it won't repair the problem, but I think he should know that there are people who care and that you are doing something more than just fix a blame, you are trying to fix a problem, and I think that is very important.

I thank you very much for coming.

Sergeant Gerald. Thank you, sir.

[The prepared statement of Sergeant Gerald follows:]

PREPARED STATEMENT OF ROSSANO GERALD

Good afternoon Chairman Ashcroft, Senator Feingold and other members of the Committee. My name is Master Sergeant Rossano Gerald. I am glad to have an opportunity to talk with you today about my experience in Oklahoma. The issue of racial profiling is a serious problem in this country today and I am glad to see that the Senate is beginning to take a look at it. I am coming forward to tell my story to try to prevent this from happening again. I don't want anything like this to happen to my son again.

In August of 1998, I was driving in Oklahoma on my way to a family reunion. At that time I was a Sergeant First class in the Army stationed in Fort Richie. My 12-year-old son Gregory was with me. As soon as we crossed the border from Arkansas, I noticed patrol cars in the area and began driving even more carefully than usual. Within minutes, an officer pulled me over for "following another car too closely." He did not give me a citation. Soon after, we stopped to buy gas and use the restroom.

After our break we continued driving. Having been stopped once already, I was driving particularly carefully. I was in the right hand lane when I saw two patrol cars approach on the ramp. I signaled, then pulled over to let them in. I said to my son, "Watch this, I bet they'll stop me again." Sure enough, I was pulled over again.

An officer walked to the rear of my car and told me to get in the patrol car. I later learned that his name was Trooper Perry. Once he had me in the car and started questioning me, I told him that my son was still in my car. He left and got Gregory and frisked him before putting him in the back of the patrol car. He told me that I had changed lanes without signaling. I told him that I had signaled, and asked how he would have been able to see from his vantage point on the ramp.

Trooper Perry started writing me a warning ticket and asking me questions. He asked me why I was nervous. I told him that I was not nervous, but upset because I had just been stopped by another trooper. He then asked me more questions about my destination, my point of origin and my military assignment.

Trooper Perry informed me that he had just made a drug bust and asked to search my car, and I said no. I asked him to call my Commanding Officer, Captain Rhodes, because it is standard operating procedure for the army. He refused. He would not let me call Captain Rhodes on my cell phone. I asked him again later to call my Commanding Officer and again he refused. Trooper Perry gave me the warning ticket but told me that I was not free to go.

Trooper Perry continued asking me questions. He badgered me about why I would not let him search my car if I had nothing to hide. I was polite but would not let him search my car. He asked me if I was carrying any weapons or contraband and

I informed him that I was not. Trooper Perry then stated that it was legal for him to search my car without my consent.

Trooper Perry called for the K-9 unit from the second patrol car. I said I wanted to watch the search and we got out of the car. The dog walked around the outside of the vehicle. The dog did not "alert." He did not bark, scratch, whimper or sit down, although the trooper kept patting certain areas of the car and would not let the dog walk away. Even though the dog did not alert, the second trooper patted the right wheel well and claimed that the dog had alerted. He said he would conduct a full scale search now. I have been trained in using dogs and thought that the search was highly improper and unusually suggestive.

Trooper Perry ordered Gregory and me to get back into the car. At this point, I became really worried that the Troopers were going to plant illegal contraband in my car. Trooper Perry then got the drill and took over the search. He began drilling under the carpet at the feet of the passenger side. Trooper Perry came back to the car and stated that he had found "something." The two troopers spoke privately. I was then accused of having a secret compartment in my car that had drug residue in it. This compartment was actually a footrest that was a feature of the car.

I was then handcuffed by Trooper Perry who manhandled me, thrust me into his car and then strapped me in. He turned off the on-board camera and took out the tape. The second trooper continued the search of my car. At one point, Trooper Perry and the other officer lifted the hoods of their patrol cars, an action that had no obvious purpose. I was worried that they were trying to obstruct my view so that they could plant contraband in my car.

During the search we overheard Trooper Perry on the radio with another trooper. He told the other trooper that he was turning up nothing. The other trooper told him to keep searching and asked if he needed back up. By this point a third unit had appeared.

This trooper moved Gregory into his car and asked him questions without me being present. The second trooper brought the drug dog to the car that Gregory was in and asked him some of the same questions. The dog kept barking at Gregory, who was afraid it would bite him.

The troopers put our luggage on the ground and had the dogs sniff it. They found airline tickets, one of which was to Chicago. When the trooper asked me about it, I answered that Gregory had flown out of Chicago. Because he had again asked me about drugs, I informed him that my car had passed inspection and received military clearance and that because of my military assignment, I was subject to random urinalysis tests and would never do drugs. Trooper Perry was angry that I would not give him details about my classified assignment. I suggested that he contact my Commanding Officer.

At 3:45 p.m. the Troopers let me go with nothing more than a warning ticket. I was told that I was being let go because I was "behaving myself now." I complained that my car and baggage were a mess and Trooper Perry said, "We ain't good at repacking." Trooper Perry had removed parts of the headliner, floorboards, carpet and other areas. There was over one thousand dollars of damage.

As soon as we were released, I called Captain Rhodes. He advised me to go to Fort Sill where the Director of Public Safety searched my vehicle in case drugs were planted in my car. An Army-certified narcotic working dog did not find any drugs or contraband.

This experience was very traumatic for Gregory. Throughout the interrogation, he was frightened and crying. Even before he was removed from my presence he was nervous, crying and hyperventilating. I had to watch while my son suffered tremendous physical discomfort from the heat. Trooper Perry had turned off the air conditioning when he put us in his car, despite the ninety degree heat.

Before we were finally released, one of the troopers asked who would come get Gregory if they arrested me. This remark made Gregory more nervous and upset. He was crying and wondering what would happen to him and I tried to calm him down. He was scared for the rest of the trip. My son has since become afraid of dogs. He continues to ask his mother why his father was treated this way.

I was very humiliated by this experience. I was embarrassed and ashamed that people driving by would think I had committed a serious crime. It was particularly horrible to be treated like a criminal in front of my impressionable young son.

I never thought I would find myself in the position of suing police officers. I am an authority figure myself. I don't want my son thinking that this kind of behavior by anyone in uniform is acceptable. I hope that by coming forward to tell my story it might prevent other people of color from being treated this way.

Senator ASHCROFT. It is my pleasure now to call upon Mr. Robert Wilkins, who is an attorney from Washington, DC.

Mr. Wilkins, please.

STATEMENT OF ROBERT L. WILKINS

Mr. WILKINS. Thank you, Senator Ashcroft.

Senator ASHCROFT. Please pull that in close. We need to be able to hear you, and for the record we need your voice to be accurately recorded.

Mr. WILKINS. Thank you, Senator Ashcroft, Ranking Member Feingold, and Senator Kennedy. It is a great pleasure and honor for me to be here today and to appear before this distinguished group on this very important issue, the Traffic Stops Statistics Study Act.

I am here to tell you a little bit about my own personal experience and the experience that members of my family and I unfortunately had to go through back in May 1992.

My grandfather died and, of course, I wanted to go to his funeral. My uncle lives here in the Washington area. His son, my first cousin, does as well. And so my uncle, his wife, my cousin and I decided we would drive to Chicago for the funeral, and we rented a car to be comfortable for the trip.

On our way driving back, we were stopped in Cumberland, MD, on Interstate 68. My cousin was driving. Instead of just writing my cousin a ticket, the trooper took my cousin out of the car and was questioning him at the rear of the vehicle for a few minutes. And at some point it became clear to us that there was something going on, and we found out that the trooper was trying to get my cousin to sign a consent to search form.

At that point, my uncle and I got out of the car and began to discuss this matter with the trooper. I identified myself as an attorney from Washington, DC. I explained to the trooper that I was actually a public defender, so I was very familiar with the law of search and seizure and what his rights were and what our rights were, and that we didn't want to sign any form, but that if he was placing my cousin under arrest, then certainly he could do a search of the car incident to that arrest. But it didn't appear that there were any grounds for him to be arresting my cousin, so the trooper at that point said, well, if you have got nothing to hide, then what is your problem?

I thought this was an extremely troubling response because asserting your rights and not wanting to be searched unnecessarily and without reason shouldn't be suspicious. But for some reason, the trooper didn't take that point of view. He persisted. He said this was routine, nobody ever objects. We explained that we couldn't speak for other people and whether they objected or not, but we certainly didn't want to have to undergo this search.

Now, mind you, it was raining. It was just around dawn. We had been driving all night because it had been a very emotional weekend. My grandmother buried her husband of 58 years, and there were family members from all over the country, some of whom I had never met. We tarried much longer than we really intended to, and as a result we had to drive all night to be back to our jobs. All of us were working. In fact, I had a court appearance that morning, and the last thing we wanted was to be delayed or detained or searched unnecessarily.

None of that seemed to matter to the trooper. He said that if we weren't going to consent to a search that we would have to wait for a drug-sniffing dog to be brought to the scene. I explained to the trooper that that was not legal, that wasn't proper, and that, in fact, there was a 1985 Supreme Court decision called *United States v. Sharpe* that said that he needed to have reasonable, articulable suspicion to detain us for this type of a search.

And I asked him what he thought that there could be to justify this. He said that they had a lot of problems with rental cars and drugs. It didn't make sense to me because having a rental car shouldn't be suspicious and I didn't think that they were stopping every rental car coming up and down the highway.

At any rate, we were forced to wait for the drug-sniffing dog and we were forced to stand outside lined up alongside the road in the rain as the handler and his German shepherd went over literally every inch of the exterior of our car. The dog jumped on top of the hood to sniff the area where the windshield recedes underneath the hood. It jumped onto the side of the car so that it could sniff the window areas and where the windows recede down into the door panels, the headlights, the tail lights, the front grill, underneath the car, the tires.

And this whole time it was raining. We were lined up there. There were the police lights flashing from the cars there and people were driving past looking at us, looking at the dogs, looking at the police lights, and concluding that we must be doing something wrong and we must be criminals. Why else would the police be doing this to us?

And I distinctly remember a car driving past with two young white children in the back seat, probably about 6 or 7 years old, with their noses pressed against the window, as kids are apt to do, looking at us and looking at the police as their parents or whomever had slowed down as they were driving past. And I was wondering to myself what kind of miseducation are they getting about me. I mean, I am not a saint. I haven't lived a perfect life, as no one has, but I have never used illegal drugs in my life, in any form, just because I have seen what they have done to people. And it was greatly offensive to me to be treated this way.

When we decided to take legal action against the Maryland State Police after this was over, we learned that they had a profile that had been drafted actually 2 weeks before we were stopped that was in writing, and it is attached to my testimony, that directed their troopers to target young African-American men and women in rental cars from Virginia because they believed that they were bringing crack cocaine into the area.

Well, we fit the profile to a tee. We were in a rental car from Virginia, and at that time Virginia rental cars had "R" as the first letter of their license plate. So the trooper watching our car drive past could immediately know that this was a rental car from Virginia. He saw my cousin and I in the front seat. And when I questioned him, why are we suspicious or why are you doing this, he said, well, because of the problem with rental cars and drugs.

So this was going to be the one time where we had a smoking gun that we could connect to an actual incident, and so we had a lot of leverage. It didn't hurt, too, to have a lead plaintiff who was

a Harvard Law graduate who had cited a Supreme Court case to the trooper during the incident. We used that to negotiate a settlement with the Maryland State Police which required them to start gathering data and to adopt a non-discrimination policy and to train their troopers in that policy. And we would receive that data on a quarterly basis and look at it and monitor it.

Unfortunately, the data showed a disturbing pattern. Along I-95, 70 to 75 percent of the people being searched were African-American, even though when we did studies of who was driving and who was violating the traffic laws on I-95, it was only 17 percent African-American.

What was interesting about the data is that we saw that if you looked at 100 whites being searched and 100 blacks being searched, they found drugs the exact same number of times. But for every 100 whites that were searched, 400 blacks were searched, and so the aggregate numbers were completely disproportionate. The percentage of people being arrested was 70 to 75 percent African-American, based on these searches after traffic stops. But you could, with the data, link it back to the disparity in the law enforcement practices and the targeting.

That is why we think that the data was so important, and that is why I think that this bill is so important and I commend you all for holding this hearing and hopefully supporting this legislation so that it will pass so that we can really get the proper data to get behind this problem.

I was taught in Sunday school, and I believe very seriously, to whom much is given much is required. A lot is given to our law enforcement officers. They have a lot of responsibility, and for the most part they exercise that responsibility very honorably. But it is also required of them, I think, to have some accountability and to have the public be able to look at what they are doing so that we can uncover any problems that need to be uncovered.

Thank you.

Senator ASHCROFT. Thank you very much, Mr. Wilkins.

[The prepared statement of Mr. Wilkins follows:]

PREPARED STATEMENT OF ROBERT L. WILKINS

Chairman Ashcoft, Ranking Member Feingold, Members of the Committee. Thank you for the opportunity to appear before you today to testify regarding S. 821, "The Traffic Stops Statistics Study Act Of 1999." I believe that I speak for many others all over the country in thanking and congratulating this Committee for holding hearings on this very important piece of legislation. Unfortunately, the problem of "racial profiling" is a real one. Furthermore, the perception among many in communities across the nation is that racial profiling results in unfair and discriminatory treatment in some areas of law enforcement, particularly in traffic stops. For those reasons, I strongly believe that these issues deserve further study. Therefore, I urge you to give Bill S. 821 favorable consideration.

I. THE INCIDENT

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

On May 8, 1982 at approximately 5:55 a.m., myself, my cousin Norman Scott Wilkins, my uncle (Scott's father) Nu'man El-Amin, and his wife Aquilah Abdullah were eastbound on I-68 coming through downtown Cumberland, Maryland. We were returning from my grandfather's funeral in Chicago. We had left Chicago the previous afternoon and driven all night, because we were all due back at our jobs; I even had a court appearance in Washington that morning; Scott was driving; I was in the front passenger seat, and my uncle and his wife were in the back. I should also

add that myself and my family are African-American, while all of the police officers involved were white.

Officer V.W. Hughes, from Maryland State Police stopped our car and told my cousin that he has "paced him" doing 60 in a 40 mph zone. Ofc. Hughes took Scott's license and the rental car contract and returned to his marked scout car. (The car, a Cadillac, was rented by my uncle for the trip.) Approximately five minutes later, Hughes returned and asked Scott to step out of the car. After a brief discussion between the two of them, Scott leaned toward the car and said "Daddy, they want to search the car."

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

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

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

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

So there we were. Standing outside the car in the rain, lined up along the road, with police lights flashing, officers standing guard, and a German Shepherd jumping on top of, underneath, and sniffing every inch of our vehicle. We were criminal suspects; yet we were just trying to use the interstate highway to travel from our homes to a funeral. It is hard to describe the frustration and pain you feel when people presume you to be guilty for no good reason and you know that you are innocent. I particularly remember a car driving past with two young white children in the back seat, noses pressed against the window. They were looking at the policemen, the flashing lights, the German Shepherd, and us. In this moment of education that each of us receives through real world experiences, those children were putting

two and two together and getting five. They saw some black people standing along the road who certainly must have been bad people who had done something wrong, for why else would the police have then there? They were getting an untrue, negative picture of me, and there was nothing in the world that I could do about it.

A few minutes later, Hughes returned to the care with the two driver's licenses and a \$105 ticket for Scott. At 6:34 a.m., we finally continued on our way. In addition to the anger, frustration and embarrassment, the detention caused us to hit the peak of rush hour traffic on I-270 and the beltway, and I missed my 9:30 court appearance.

II. THE PROFILE

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

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

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

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

III. THE SETTLEMENT

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

1. Pay a modest financial settlement of \$50,000 in damages to the four of us who were in the car and \$46,000 in attorneys fees for the three years of legal work done by our lawyers.

2. Prohibit the use of race-based drug courier profiles as a law enforcement tool. The new MSP policy would "specifically prohibit consideration of race as a factor for the development of policies for stopping, detaining, or searching motorists."

3. Train all new and previously hired troopers on the contents of the new policy.

4. Maintain computer records of all traffic stops in which a consent to search is given by a motorist or a motorist is searched with a drug-sniffing dog. Information about the date, time, reason for the stop and race of the people stopped would be collected. This information would be collected for several years and be forwarded on a quarterly basis to the federal judge monitoring the lawsuit and us, the plaintiffs.

5. Discipline troopers who violated the non-discrimination policy or failed to maintain proper documentation of stops and searches.

6. Remain subject to the jurisdiction of the federal court if the computer records showed a pattern and practice of discrimination, so that we, if necessary, could seek further equitable relief.

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

IV. THE OUTCOME

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

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

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

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

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

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

We were therefore forced to seek further court action against the MSP, because the data showed a serious violation of the Settlement Agreement. Indeed, we believe that the subsequent events have shown that while the MSP had issued a policy statement on paper, they had done little or nothing to enforce it. In addition, a new class action lawsuit was filed in 1998 on behalf of the Maryland NAACP and minority motorists who have been targeted for discriminatory stops and searches on I–95.

Let me hasten to add that this problem is in no way unique to Maryland. On the contrary, it is a nation-wide problem, and the ACLU and other organizations have begun, or are developing, race-profiling litigation in about a half dozen states in addition to Maryland. Moreover, the Civil Rights Division of the U.S. Department of Justice in December 1999 entered a comprehensive consent decree with the State of New Jersey concerning profiling by the State Police there. (And, in just the last two months, the Justice Department entered a similarly comprehensive agreement with Montgomery County, Maryland.) Unfortunately, the limited statistical evidence and anecdotal information suggest that the problem most likely exists in many States.

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

In conclusion, because this is a national problem, a national study is needed. And while a nationwide study of the issue is not a panacea, it is a good first step. Only through such a study can we obtain better knowledge, better understanding, and perhaps better solutions. I therefore urge you to vote in favor of S. 821.

Thank you.

Senator ASHCROFT. It is now my pleasure to call upon Mr. Curtis Rodriguez, from San Jose, CA.

Mr. Rodriguez, thank you for coming, and you will notice these lights are designed to coach you as to when your time is getting short. The yellow comes on, and when the red comes on, you should think about the next panel.

STATEMENT OF CURTIS V. RODRIGUEZ

Mr. RODRIGUEZ. Good afternoon, Mr. Chairman, Senator Feingold, Senator Kennedy. I would like to thank you for the opportunity to convey to you the reality of racial profiling in the Latino community, and also for conducting these hearings.

The practice of racial profiling is common knowledge in the Latino community. It is unfortunately common experience. My last experience occurred on June 6, 1998. I was traveling with an associate of mine, Arturo Hernandez. Both of us are criminal defense attorneys. We were traveling on highway 152, Pacheco Pass. It is a mountainous, rural area.

As we were driving back into San Jose, we began to observe a number of stops taking place on Pacheco Pass. The first stop was of a dark-skinned Latino driver and it appeared that his vehicle was being searched, which doesn't really surprise us. We are both familiar with drug interdiction operations and it seemed fairly normal for that type of operation.

But it wasn't too long afterwards that we ran across a second traffic stop occurring and it was the same pattern. It was another Latino driver. His vehicle was also being stopped. Shortly thereafter, we observed a third stop, the same pattern of a dark-skinned Latino driver. One of these drivers appeared to be in the process of moving. He had a pickup truck with a mattress, box spring, a chest of drawers in the back, and basically anybody who has ever moved knows that it is a big hassle. And this guy was outside of his vehicle and the driver's side door was open and an officer was searching his vehicle.

Well, at this time Arturo and I basically came to the same conclusion that it appeared that they were targeting Latinos, and Latinos only. As we continued westbound on 152, we encountered a fourth stop in the same pattern, and a fifth stop. By now, it struck us as very, very strange that with the percentage of Latinos in California, basically we had run across five stops, all Latinos, within the space of about 5 to 10 minutes, maybe 15 minutes. And given the length of the stops where an officer interrogates and does whatever else he does, they were basically occurring simultaneously. We counted between 10 and 12 CHP and law enforcement vehicles on Pacheco Pass, which is usually patrolled by maybe one or two at most.

At that point, of course, I was very intent on just getting out of there without being stopped. So I made sure my speedometer was right at the six and five, and made sure that my vehicle was tracking properly because I didn't want to give anybody a reason to stop me. Well, that proved to be a failure; it made no difference. I was pulled over probably a minute after we observed the last stop.

The CHP unit came upon me in a bend in the freeway, in the highway there, and he was coming so fast he almost rear-ended me. Then he kind of pulled back a little bit and followed me for about 20 to 30 seconds and then pulled me over. When I asked him why he had stopped me, he indicated to me that my vehicle had touched the sideline of the lane and that I had turned my lights on.

Now, on this particular section of the highway it is a headlight testing area where you are supposed to turn your headlights on. I believe that is to prevent accidents because it is a single lane in each direction at that point. So I indeed had turned my headlights on, but I at no time touched the sideline of the lane that I was traveling in. So, to me, that was a fabrication; it was a fiat stop. I said you did something, so you are being stopped.

At that point, he asked for license, registration, insurance papers. I produced those for him, and then he proceeded to ask us if we had any weapons in the vehicle, and I responded to him, no, we don't have any weapons. His reply was, well, I am going to search your vehicle for weapons. And at that point, I objected. I said I don't want you to search my vehicle for weapons. I am not giving you permission to do so. And his reply to me was essentially, I don't need your permission, I am in fear for my personal safety.

At that point, we advised him that he was dealing with two criminal defense attorneys who were well-versed in criminal procedure and search and seizure law, to which he basically responded that he was ordering us out of the vehicle and he would be conducting a search. But the scope of the search changed somewhat. Before, he was going to search the vehicle for weapons; after he found out that we were lawyers, he took his two index fingers and delineated an area around my passenger, Arturo Hernandez, and said, I am going to search the area around your passenger, indicating that he had observed Arturo to have made suspicious movements.

I found this unbelievable for a number of reasons, the first being that my vehicle, a 1995 Mazda Millennia, has a tinted rear windshield and I don't think he saw inside the traffic compartment. And if he had truly believed that he feared for his personal safety, I think he would have patted down Arturo to make sure he didn't have weapons. He never did that.

He ordered us out of the vehicle and searched that area around the passenger, after which he ordered us back into the vehicle, where we sat for about 15, 20 minutes while he and his associate, an agent with the Bureau of Narcotics Enforcement, appeared to discuss what was going on. They also had a canine in the back seat of this patrol unit that they were in. They took our papers, my license, Arturo's license, and showed it to the drug-sniffing dog, who did not alert on them in any fashion. So we were handed these back and sat there and watched through the sideview mirror these two officers discuss the matter.

I have watched cops many times, and after an arrest or during a stop it seems police officers are often in a very good mood. But these officers were very, very serious; they weren't laughing, they weren't joking. They were having a very, very serious discussion, and I have always suspected the reason that that was so was due to the fact that they were dealing with two attorneys here and they were trying to figure out the best way to save face. So after a return to the vehicle, they told us we could go and that they were sorry for the delay, but the system was down. I am not sure what exactly that meant, but thereafter we left.

While talking with this officer, we did question him about the pattern that we had observed, and his response was a total non-sequitur. His response was, yesterday I arrested a person who wasn't a Latino, which was the most vague of denials.

When I was given the opportunity to present my testimony about this proposed legislation, I would just encourage to make this legislation as broad as possible and the gathering of information mandatory, because it occurs to me if only information gathered is

gathered voluntarily that those officers out there who are involved in racial profiling will choose not to participate.

I would thank the Senators for their attention, and I would also thank the National Council of La Raza for their efforts in making my presence here possible.

Thank you.

[The prepared statement of Mr. Rodriguez follows:]

PREPARED STATEMENT OF CURTIS V. RODRIGUEZ

Mr. Chairman, Senator Feingold and Members of the Subcommittee, thank you for holding this hearing on this very important issue, and for allowing me to testify.

I am a practicing attorney and member of the California State bar. I am married and the father of two children, ages 3 and 7. I was raised in a middle class neighborhood in south San Jose, Santa Clara County in the San Francisco bay area. I graduated from Santa Clara University with a Bachelor's degree in history in 1980. I graduated from UCLA School of Law in 1983. I have been in private practice since that time, for the majority of that time in solo practice.

I have had the unfortunate experience of having been the victim of racial profiling conducted by law enforcement agencies throughout my life.

The first time I was a victim of racial profiling was when I was 17 years old. I was driving my father's Mercedes Benz when two plainclothes police officers stopped me. They proceeded to interrogate me for about 10 minutes, asking the name of the owner of the vehicle, the address, what I was doing with cash, where I was coming from, where I was going. When I asked them why they stopped me, they said that I didn't go with the car. Not having yet graduated law school, I did not know that this was not a legal cause to stop me. I was not under suspicion of having committed any crime. But because I was not white, those officers exercised their authority to unlawfully detain me and question me.

The second time I was a victim of racial profiling was when a California Highway Patrol (CHP) unit on Highway 152 by the reservoir stopped me as I was driving home from UCLA with my personal belongings. I had just completed my first year of law school. This CHP officer did not cite me for speeding or any other infraction. Neither did he give me any warnings. He merely pulled me over and proceeded to interrogate me. He then let me go.

For me, three strikes and you're out applies to racial profiling. The third time occurred on June 6, 1998. I was driving back from doing some investigation on a criminal case in the San Joaquin Valley. In the car with me was Arturo Hernandez, another criminal defense attorney. I was driving back into Santa Clara valley in the late afternoon.

While on the drive back, we began to notice a large number of law enforcement vehicles, between 10 and 12 units. We also noticed that it appeared that only Latinos were being stopped and searched. We observed 3 separate stops being conducted of eastbound vehicles. Each vehicle had Latino occupants who were being stopped and searched.

We then observed two more stops of westbound traffic. The same pattern asserted itself. Again Latinos were being pulled over and searched.

Not wanting to be one of the unlucky people who were getting pulled over, I made sure that I was not exceeding the speed limit and that my vehicle was tracking properly. However, my efforts failed.

Shortly after observing this fifth stop, I was pulled over by a CHP unit with a CHP officer and a Bureau of Narcotics Enforcement (BNE) officer inside. The CHP officer told me that I had turned on my lights and had touched the line marking the side of the lane. I had turned on my lights but on that stretch of highway 152 it was required. I did not touch or cross over the side line as the officer asserted.

The CHP officer then proceeded to ask if we had any weapons in the vehicle. I responded that we did not. He then told me that he was going to search the vehicle. I objected to this stating that I was not giving him my permission to search. He responded that he did not need any permission as he was in fear for his personal safety. At that point, we advised him that we were lawyers and that he was essentially ordering us from the vehicle. He agreed and ordered us from the vehicle. But he changed the scope of his search saying that he would be searching only the area around my passenger, outlining the area with his two index fingers. He then searched. Afterwards he permitted us to return to the vehicle and had a long discussion with his BNE associate.

While we were stopped, he took my driver's license, my passenger's driver's license, my registration, and other papers and took them back to his patrol vehicle. He then showed them to the occupant of the rear of his unit, a canine. It was clearly a drug-sniffing dog.

We were detained for about 20 minutes and then released with no ticket, no warning, and only a vague apology about the delay, claiming some technical snafu was responsible.

What occurred that day was an outrage and an offense to every person who believes in equal treatment under the law. Every stop I witnessed that afternoon on Pacheco Pass was of Latinos. They appeared to be the only ethnic group that was targeted for stops and searches. I believe that such practices have gone on long enough and that it is time for such practices to stop.

I have since filed an action in federal court to put an end to such racist and illegal practices. As far as I know, no such legal challenge has been raised in the civil context because the only ones raising the issues are criminal defendants. I do support any legislation, such as the "Traffic Stops Statistics Act" sponsored by Senator Feingold, that would assist in the gathering of information concerning racial profiling and would encourage such legislation so that the scope of the problem can be fully measured.

This action is not a case of minorities against the police. This is an action about the equal treatment of all people. This is about law abiding citizens who believe in the Constitution, who believe in equal protection, taking a stand against a small clique within the legal community who believe it is okay to target people on the basis of their skin color.

Please understand that I have no bias against law enforcement. I have close friends and relatives who are deputy sheriffs, San Jose Police Officers and even agents in the DEA. These are people whom I would trust with my life. These are good, honest, hardworking people like the majority of law enforcement officers. Unfortunately, there are others within law enforcement who insist on conducting racially based methods of operation or who insist on making stops on the basis of race and conducting illegal searches on the same basis. These people undermine the confidence that the community has that their law enforcement agencies will match their conduct to the requirements of the law they are supposed to enforce.

Senator ASHCROFT. It is our practice now to have some questions from the members of the subcommittee, and I would turn first to the ranking member.

Senator Feingold. With your permission, Mr. Chairman, Senator Kennedy needs to get to a hearing on the patient's bill of rights. I would love it if we could let him go ahead of me.

Senator ASHCROFT. Without objection.

Senator KENNEDY. Thank you.

Sergeant, I understand you were in the service for 17 years. Is that right?

Sergeant GERALD. Eighteen years now, sir.

Senator KENNEDY. Eighteen years?

Sergeant GERALD. Yes, sir, 18 years now.

Senator KENNEDY. And you have received meritorious citations, have you?

Sergeant GERALD. Yes, sir. The highest award I have is the Bronze Star, sir.

Senator KENNEDY. And as you mentioned, you have served in Somalia?

Sergeant GERALD. Somalia and the Gulf War, sir.

Senator KENNEDY. How long were you in Somalia?

Sergeant GERALD. In Somalia, at least 4 months, sir.

Senator KENNEDY. Four months?

Sergeant GERALD. Four to 5 months, sir.

Senator KENNEDY. And in the Gulf War for how long?

Sergeant GERALD. For the entire 6 months, sir.

Senator KENNEDY. Now, you are in a continuing education program?

Sergeant GERALD. Yes, sir. I graduated from the University of Maryland last semester with a business marketing degree. Right now, I am working on my graduate program through Towson State University on my M.B.A. As a matter of fact, I have got a class tomorrow night and Saturday morning.

Senator KENNEDY. I guess you were trained earlier to perform what function in the military?

Sergeant GERALD. Well, I am a logistician, and like I said before, my company commander—we do health and welfare inspections of our troops, and the MPI, the CID and military police—

Senator KENNEDY. Is that competitive in order to get selected for that responsibility?

Sergeant GERALD. Well, what it is, sir, is a company commander will request for assistance from his logisticians because we are in charge of the billets, and so forth, and the property that belongs to the company commander, sir. And it shows how the dogs react when they are looking for contraband and narcotics, sir.

Senator KENNEDY. As I understand it, just from your own record, you haven't had any problems with the law.

Sergeant GERALD. No, sir. As a matter of fact, when they stopped me, they were kind of confused. They couldn't find any traffic tickets or any outstanding warrants at all for both identifications, sir.

Senator KENNEDY. Well, it shouldn't happen to anyone what happened to you, but here is an example of someone who is in the service of the country and has been someone whose record in the military is exemplary, has been selected for important responsibilities, and certainly by disposition and nature and bearing is someone whom the country has to be proud of.

Sergeant GERALD. Thank you, sir.

Senator KENNEDY. And this kind of humiliation and activity, I think, is just an enormous disservice. And we hope you will extend that to your son.

Sergeant GERALD. Yes, sir.

Senator KENNEDY. Let me just ask our final two witnesses, Mr. Chairman, there will be those who will say, well, you could go out there and find these two witnesses; you know, we are a big country and a lot of things happen. Since you have experienced the incidents that you did, have you found out that this is something that is happening out there in the real world?

I mean, will there be those who will watch these hearings and say, look, you have got three people there and it has happened, but it really isn't a problem in the United States today, and they just happened to get the wrong people and they came forward and have been willing to challenge the system?

How would you respond or react to whether this is something that we as a society ought to be willing to face up to, because basically that is what we are talking about with the legislation? We have got to be able to say that this is something of concern to all Americans. Could you help me out on that, each of you, please?

Mr. WILKINS. Well, Senator Kennedy, I can speak most directly and personally about Maryland because we have been gathering data there since 1995 now. You know, there is really no way that

I see that you can dispute what that data shows that there are scores of people who are stopped. And when you look at the reasons for why they were stopped and searched, you know, nervous, just really no articulable manners or anything that was suspicious at all.

And there is this huge disparity and there is really no way that it can be explained. Unfortunately, because of the continuing problems in Maryland—and think about it, we settled the case in 1995. All the troopers went through new training. They knew that these reports were being done. They knew that they were being sent to a Federal judge, they knew that they were being sent to the ACLU, and we still had all of these disparities in Maryland over the course of the years after the settlement. And so I think that the only thing you could conclude from that is it is a huge problem.

Senator KENNEDY. Mr. Rodriguez.

Mr. RODRIGUEZ. Yes. Senator Kennedy, I do believe that the problem is widespread. While I don't have any particular information, statistical studies, from California, we are in the process of gathering that now. But from my own experience and just speaking with the large extended family that I have—we are talking about 12, 13 sets of aunts and uncles and cousins that I have. I have an uncle who worked at IBM and drove a Porsche, and although I am sure some of those stops were because he might have been driving a little too fast, a number of those stops were very close to his own home, for no particular reason.

I can speak to the experience of some of my younger cousins who will tell me that they were stopped for no reason. They were searched and they were hassled by police officers or highway patrolmen. So this is something, as I said, that is a very common experience in the Latino community and is something that we are very concerned about. And I think the reason that there are not more people available is that the reality at least in law enforcement is that you have two classes of people who get stopped.

The one class of people who are doing nothing and are completely innocent of any infraction are let go or given some minor ticket, and they would just as soon forget the whole matter. The other class of people are the ones that get caught with dope, with narcotics, and they go into court and they say, hey, these guys were targeting Latinos. But it becomes a question of credibility as to whether you believe the law enforcement agent or you believe the narcotics trafficker. Either way, I believe that is what has contributed to permitting this type of practice to go on for so long and to be unchallenged for so long.

Senator KENNEDY. Thank you. I want to thank our witnesses for very powerful, powerful testimony.

Thank you, Mr. Chairman.

Senator ASHCROFT. Thank you.

Senator Feingold.

Senator FEINGOLD. Thank you, Mr. Chairman. I want to also thank all the witnesses on this panel for your extraordinary testimony. It can't be very easy for you to talk about these experiences. If something like this happened to me or a member of my family, I suppose I would want to erase it from my memory.

But you are doing a great service to your community and to the country by speaking about it openly. Only by shining a spotlight on this horrible problem can we build the political consensus necessary to do something about it. And I assure you, I don't think there is anybody who could listen to what you have said who wouldn't be disgusted by the events you describe.

So I would like to focus for a minute on one aspect of what I call the ripple effect of racial profiling that I find particularly saddening, even chilling, and that is the effect on children and young people. There can't be any doubt that this kind of experience can scar a young person permanently. I have also heard many times from parents in minority communities that they feel compelled to educate and warn their youngsters about the possibility that they will be stopped for no reason, and instruct them on how to behave to avoid escalating the situation.

I have had a lot of difficult conversations with my sons and daughter, but I have never had to warn them that there is a good chance they are going to be stopped and harassed by police officers. So as a parent, it makes me enormously sad to hear that this kind of conversation has to take place in many families.

I wonder if each of you could comment briefly on the impact that racial profiling has on young people, either with regard to your own experience or that that you have heard from others. I would start with Mr. Rodriguez.

Mr. RODRIGUEZ. Yes, thank you. For my part, my children are fairly young. They are 3 and 7 years old, and we haven't really gotten to the point where they are in any position where they would experience this kind of encounter. However, I do believe it is necessary that they understand that for the most part people in law enforcement are hard-working, honest people, but there will always be an element, or at least there is presently an element that will conduct their activities on the basis of race.

Fortunately, I have a sister who is a deputy sheriff, I have a cousin who works in the DEA, and so these are positive role models for them. But I do have to make them aware that, yes, you have to be aware that there may come some point where you will be stopped by an officer based upon your race. And your only options out there on the street are to obey the officer, do what he tells you, because failure to do so could lead to your being arrested or even being hurt in some fashion.

And that is, of course, always a danger. If you are dealing with officers who take it upon themselves to deal with you on a racial basis, you have the possibility that it could escalate into something violent. And I believe what has happened in the past is when those incidents do escalate into violence, usually it is violence committed by the law enforcement officer against the victim of the racial profiling.

I don't think I have heard of an incident yet where one of these people has taken to attacking a police officer. And that is fortunate, but that is not something we should really have to worry about or have to deal with in our everyday lives. We are not looking for special treatment. We just wanted to be treated like everybody else, and if I am driving 85 miles an hour down Highway 5, I should be stopped and I should be ticketed. And if I do that and I get

ticketed, I deserve what I get. But I don't expect to be driving down the street and get stopped and interrogated because they tell me I don't look like I go with my car.

Senator FEINGOLD. Thank you, Mr. Rodriguez.

Mr. Wilkins.

Mr. WILKINS. Well, my son is only 17 months old and I hope that I never have to have this conversation with him, but unfortunately I probably will at some point. From the young people that I talk to, I think that this is very corrosive. Just the perception that it exists is very corrosive, and in reality when incidents do happen and people talk about them and the word spreads, it just really feeds on that and causes people unnecessarily to look at all police officers or the whole judicial system or the whole legal system askance, you know, with disrespect or suspicion.

And that is not good, and it is very scary when I look back at the written profile that the State of Maryland had that led to our stop, it really set up a dangerous situation by talking about how these were armed traffickers. There was even a line in there where it was said they are quoted as saying they won't even hesitate to kill a police officer, if necessary. And I was lumped in with these people, my family and I, in the mind of this trooper who dealt with us.

I will have to make sure that my son someday understands that that can happen, that no matter what he does or no matter what is in his mind, if he were to object or to speak out with a police officer and might not intend to follow that up with violence, they may have a whole different perception. So he should be very careful in how he interacts in any situations like that.

Senator FEINGOLD. Master Sergeant Gerald, it was the testimony about your son that sort of led to this question, so I am curious about your response.

Sergeant GERALD. Senator, I spoke to my son about this the day it happened. I was trying to keep a positive about everything, no matter what happened to me, and I spoke to my son about this. He is 14 right now. He was 12 back then when it happened. I explained to him I am an authority figure myself. I took an oath to protect the Constitution and defend this country against foreign and domestic enemies.

And I told my son that I don't want you to stereotype law enforcement agencies because we only have a few bad apples who are doing this in the system. And he knows from my point of view and from his point of view that these officers that did this heinous crime were breaking the law, breaking the rules and regulations. That is why I explained to him that we need to do something about this as parents, as citizens, just to pass some kind of bill or law to monitor this kind of stuff.

He really believes that the incident that happened out there in Oklahoma was an incident that shouldn't have happened for his future and for the other kids' futures. And I am glad that he went on the program a couple of weeks back because he was holding this inside for the longest time, and you just don't know how he feels now about it knowing that people are hearing his story.

I am just glad to be here to express my feelings as a parent. But I just try and teach my son the right thing to do, and I think the

right thing to do for us as citizens is to make sure this doesn't happen again.

Senator FEINGOLD. I hope you tell him that he is only 14 years old, but he has already helped pass a law a lot earlier than I ever did.

Sergeant GERALD. Thank you, sir.

Senator FEINGOLD. Thank you, Mr. Chairman.

Senator ASHCROFT. Let me, first of all, thank each of you for coming. I think this is a story that needs to be told and needs to be understood, and you each bring a unique perspective to this, so thank you very much.

Master Sergeant Gerald, I wasn't clear. Did they alter your car? Did you say they drilled holes in your car?

Sergeant GERALD. Yes, sir. As a matter of fact, the passenger side seat or floor board—he cut open the carpet to get to the floor board. So before he could drill into the floor board, he had to cut the carpet, take it apart, drill into the floor board. And after he drilled into the floor board, what really he did is he came to me, to my son and I—and since I am a logistician and I am in charge of property for the U.S. Army, he came to me and told me that I had military bolts in the floor board, which meant I had a secret compartment.

Well, there is no such thing as military bolts in the Army, and I explained that to the officer. I order property for the Army and there is no such thing as that. But he still insisted that I had a secret compartment. So I explained to him that he needed to call my commander, and he didn't.

Senator ASHCROFT. Was anything ever done to repair or otherwise—

Sergeant GERALD. No, sir. Everything that could not be taken apart with a drill, he tore it apart. My car is a two-seater car, and anything that could not be taken apart, he tore it apart. I mean, he ripped it apart completely. In the back of the hatchback, some of the panel was just dangling there. The carpet was ripped up. Everything in the back under the trunk was ripped apart, and so forth.

He laid everything on the ground. I asked him politely to put the floor board back, and at that point he said I called the officer a boy. And I said, no, I did not call the officer a boy; I asked if you are going to put the floor board back the way you found it. And then he kept saying, did you call Officer Perry a boy, in front of my son? And I said, no, I didn't, sir; I am asking if you are going to put everything back the way you found it.

So the intimidation factor was still there and he made sure that he made an example of me by destroying most of my property. And what I did after that is I just called GEICO. I had to pay the bill myself. I made sure that my vehicle was back up to standards, sir, because I am going to pass that vehicle to my son and he knows that.

Senator ASHCROFT. So there was about \$1,000 of damage, you said?

Sergeant GERALD. Yes, sir; yes, sir. I took it straight to GEICO—

Senator ASHCROFT. Not counting the damage to your son?

Sergeant GERALD. The emotional damage to my son and I is uncountable, sir. There is no measure for that, sir.

Senator ASHCROFT. Now, Mr. Wilkins has followed up and has an opportunity to sort of shape what happens in some respect by gathering data. Are you aware of anything that has happened as a result of your situation to change the operations in the settings where you were stopped, Mr. Rodriguez and Master Sergeant Gerald?

Mr. RODRIGUEZ. Mr. Chairman, I did file an action in Federal court last June and we are presently in the discovery stage of the litigation. We are also, as I said, in the process of gathering statistics, very, very interested, of course, in the records created and kept by the California Highway Patrol for the events of June 6. And basically we are seeking injunctive relief, first and foremost, to prevent the conduct of such operations in the future, but it will be a while still before we have an outcome.

Senator ASHCROFT. Master Sergeant Gerald, are you aware whether the situation and the situation in which you found yourself has occasioned any change in behavior or development of data or the like?

Sergeant GERALD. Yes, I have. I have my lawyer representing me and has information dealing with that, sir, and he has all the facts, sir.

Senator ASHCROFT. Well, we have another panel and I want to personally thank you.

We will take about a 6- or 8-minute break and then we will start with the next panel. I again want to, on behalf of the other Senators who are here today, thank you for coming and sharing your circumstances with us. Thank you.

Mr. RODRIGUEZ. You are very welcome.

Mr. WILKINS. Thank you.

Sergeant GERALD. Thank you, sir.

[The subcommittee was recessed from 3:24 p.m. to 3:31 p.m.]

Senator ASHCROFT. Ladies and gentlemen, if we could reconvene the hearing, we have five more witnesses. We really have until about 4 p.m., and there are other pressing responsibilities, unless something happens with a vote and then we will be in a problem.

I would like to call the remaining witnesses—Professor Harris, Mr. Johnny Hughes, Mr. John Welter, Mr. Rodney Watt, and the Honorable Leroy Jones—to the witness area and see if we can resume the hearing.

Let me say to you that I would hope that you can try and confine your remarks to 5 minutes. I think we are going to have to be a little stricter on that than we have been, and I beg your pardon for running over a little with the first panel.

But with that in mind, I want to also mention that we sought to have a number of folks available for contribution today who were unable to come. The Fraternal Order of Police, the International Association of Chiefs of Police, and other organizations that have expressed their opposition to the legislation were, due to scheduling difficulties, unable to attend. We have invited them to submit written testimony to ensure that all views on the legislation are fully represented, and we will keep the record open in order to accommodate them and any of you. If you are like me, I am driving away

from the place and say, oh, I should have said this or that. We want you to have an opportunity for the next few days in order to submit testimony.

With us today are Professor David Harris, Professor of Law at the University of Toledo College of Law, who has authored a report on this subject; Trooper Johnny Hughes, Director of Governmental Affairs for the National Troopers Coalition; Assistant Chief of Police John Welter from the San Diego Police Department; Officer Rodney Watt from the Highland Park Police Department, in Illinois; and the Honorable Leroy Jones, Jr., a New Jersey State Assemblyman.

With that in mind, I would like to ask you to begin your testimony, Professor Harris.

PANEL CONSISTING OF DAVID HARRIS, BALK PROFESSOR OF LAW AND VALUES, UNIVERSITY OF TOLEDO COLLEGE OF LAW, TOLEDO, OH; JOHNNY L. HUGHES, NATIONAL TROOPERS COALITION, ANNAPOLIS, MD; JOHN WELTER, ASSISTANT CHIEF OF POLICE, SAN DIEGO, CA; RODNEY WATT, PATROL OFFICER, HIGHLAND PARK, IL; AND HON. LEROY T. JONES, JR., STATE ASSEMBLYMAN, STATE OF NEW JERSEY

STATEMENT OF DAVID HARRIS

Mr. HARRIS. Thank you, Mr. Chairman, Senator Feingold, distinguished ladies and gentlemen. I thank you very, very much for holding this hearing and for inviting me to participate. I found your remarks at the beginning of the hearing strong and I applaud them greatly. I think that the changes that you look for in the bill are things that can strengthen it and make it a good piece of legislation, and I look forward to working with anybody on the committee to advance an important bill like this, S. 821.

I want to spend my few minutes with you going to what I believe is the core of the issue here. You heard in the last panel from three gentlemen who had experienced racial profiling on a very personal level. We know that it is angering, we know that it is humiliating, we know that it can even be physically dangerous. And on the individual level, it causes a cynicism that eats into the fabric of our institutions and that has us all in its power because we all depend on the legitimacy of our police and our courts in order that our civil society be the great country that it is.

But it goes beyond the individual level, too. This practice of racial profiling is important because it is a window, if you will, a manifestation of all of the most difficult and intractable issues that we face now as a country where race and criminal justice come together.

If we can begin the process today of coming to grips with racial profiling and beginning to understand it, we can also begin to understand some of the other very difficult problems of race and criminal justice that we have, such as the fact that our prison populations are disproportionately minority, such as the fact that stereotypes pervade not just our civil life but law enforcement, too. All of those can begin with this bill today.

This bill—I agree with Senator Kennedy—is a modest bill indeed. But every long journey begins with a first step, and this can be the

first step along the path to understanding this practice and to making progress on these critical issues altogether.

Let me make one point. The rest of my points I will leave for my written remarks which I ask be incorporated into the record. The one point I want to make here today is to echo Senator Feingold's comment earlier. Racial profiling is not good law enforcement. It is bad law enforcement, for a host of reasons, but let me give you a few.

When I speak to groups, as I do, police groups, groups of all kinds of people, what I often hear is that racial profiling is a rational response to arrest statistics, that it is simply an unintended consequence of rational law enforcement policy because arrest statistics show that blacks and Latinos are disproportionately arrested and disproportionately involved with drugs. These arrest statistics are what is used to justify this practice.

Well, I want to tell you today that that is wrong on the facts. The inferences drawn from it are wrong. It exposes this reasoning as the creature of stereotypes, and I believe it is nothing in the end but a self-fulfilling prophecy. Let me explain.

Is it true that arrest statistics are higher for blacks and Latinos for drug crimes? Yes, it is true, but we have to think carefully about what that means. Arrest statistics for drugs are not like statistics for arrests for other crimes. Arrest statistics for drugs don't measure the incidence of those crimes; they measure law enforcement activity itself.

There may be very good reasons why we decide to make drug arrests here rather than there, why we decide to deploy officers here rather than there. But what those arrest statistics measure are those policy decisions, those decisions on who we go after. Arrest statistics do not measure who is involved with drugs as users or who is involved with drugs as traffickers, and we do have some good information about those two things.

There are 30 years of statistics on who is using drugs, at what rate, in what age groups, and so forth. And overall, over time, those statistics show very clearly that blacks do not use drugs in numbers that are out of proportion to their presence in the population. They are roughly 12 percent of the population and roughly 13 percent of the drug users.

We also have numbers on drug trafficking. We get some of that from Mr. Wilkins' Maryland statistics where, as he has told you, the hit rates, the rates at which contraband is found in the cars of those who are searched, are the same for blacks and whites, statistically indistinguishable, belying the stereotypes.

We also have data for the Customs Service. The Customs Service is the agency that searches people when they come into airports who might be suspected of carrying drugs. They use intrusive search techniques of one type or another ranging from pat-downs to body searches, and what those statistics show us is really stark: the hit rates for whites, 6.8 percent; hit rates for blacks, 6.2 percent; the hit rates for Latinos, 2.8 percent—in other words, exactly the reverse of what the stereotypes would tell us.

Well, what is the upshot here? The upshot is this: 12 percent of the population, 13 percent of the drug users, yet blacks are 38 percent of all those arrested for drug crimes. That is why I say the

arrest statistics measure law enforcement. Blacks are more likely to go to prison for drug crimes and they go for longer sentences. So the effect of racial profiling may be on the front end of the system, but it reverberates all the way through into the prisons.

Now, why is this really bad law enforcement beyond what I have already told you? Because at the same time that we are paying too much attention to blacks and Latinos, white people are getting a free pass. The white traffickers and users are getting less attention than their numbers in the population would suggest. That is why I say it is a self-fulfilling prophecy.

What this committee can do as a first step is to bring this legislation forward to begin the process of addressing this problem through collecting solid data that will tell us about the scope of the problem, the depth of the problem, and then we will have the information we need to make the correct policy decisions.

Thank you very much.

Senator ASHCROFT. Thank you, Professor Harris.

[The prepared statement of Mr. Harris follows:]

PREPARED STATEMENT OF DAVID A. HARRIS

Good morning, distinguished ladies and gentleman. My subject this morning could not be more timely or—unfortunately—more familiar. I am here today to talk about racial profiling: the use of traffic offenses as an excuse—a pretext—to stop, question and search African-American and other minority drivers in numbers far out of proportion to their presence on the road. Police use this practice because there are officers who believe that having black or brown skin is an indication of a greater risk of criminality, and they therefore view all minorities as potential criminals. Skin color becomes evidence; the upshot is that all African-Americans and Hispanics become suspects every time they engage in the most common and prototypically American act: driving. Law enforcement officials try to explain profiling away as a rational response to crime, or as an efficient approach to policing. But the down and dirty of profiling is this: skin color used as evidence against thousands of innocent people every day.

African-Americans, Hispanics, and other minorities have complained about this police practice for years. Yet some still deny that it happens, in the face of strong statistical evidence to the contrary. In New Jersey, a rigorous statistical study showed that race was the only variable that could explain which drivers were stopped by the New Jersey State Police. The statistician who performed the analysis described these numbers as “literally off the charts” in terms of their statistical significance. In April of 1999, after five years of bitter struggle, New Jersey officials from Governor Whitman on down finally admitted what had long been obvious to people of color: troopers were engaged in profiling on the Turnpike. In Maryland, statistics turned over to a federal court by the Maryland State Police after the settlement of a major public civil rights lawsuit challenging profiling showed that on Interstate 95, where 17 percent of the drivers were black, more than 75 percent of those stopped and searched were black. In my own study of four cities in Ohio, completed just last year, police were roughly twice as likely to ticket black drivers as they were to ticket nonblack drivers. When lower vehicle ownership by blacks was factored in, the ratio rose to two and a half to three times as likely. The Ohio results dovetail with the results of ticketing studies in Texas, North Carolina, and other states.

The Traffic Stops Statistics Act, S.B. 821, can be the beginning of a serious discussion, and perhaps a resolution, of these issues. That bill, the first of its kind, proposes a study that would include the collection of statistics on all routine traffic stops in a national sample of jurisdictions. It would give us the first chance to get a firm and comprehensive grip on the scope and scale of the problem known to many as “driving while black.” The idea behind the bill is to take a first step on the road toward addressing these practices by gathering the necessary evidence to lay the denials to rest once and for all. With data collection of all kinds becoming a standard practice in many aspects of law enforcement (New York’s “COMPSTAT” program for mapping crime comes to mind), it seems odd that as of the beginning of last year, no state or major city had any mechanism in place for systematic collection of data on all traffic stops, a key law enforcement tactic that had been used

for years. There were no numbers collected anywhere that would allow one to see the patterns of which drivers were stopped, how often, and for what. I argued in an article I published in 1997 that I had the privilege of presenting to the Congressional Black Caucus that legislation should require the collection of such statistics. S.B. 821, the bill we are here to discuss today, does just that. S.B. 821 requires participating police departments to collect comprehensive statistics for each and every routine traffic stop. Police would collect crucial data for analysis—age, race, and ethnicity of the driver, the reason for the stop, whether or not a search was conducted, the legal rationale for the search, whether any contraband was found, and what it was. The Justice Department would perform an initial analysis on currently available data within 120 days of the bill's passage; after two years of data collection, the Department would issue a comprehensive report containing a study of all the information collected.

STATE AND LOCAL DATA COLLECTION LEGISLATIVE PROPOSALS AND INITIATIVES

The Traffic Stops Statistics Study Act has already had an important, perhaps unforeseen impact, beyond the Congress. The bill has inspired a host of similar measures at the state level. It has also become the catalyst and the template for data collection by local law enforcement agencies all across the country. These include police departments in Houston, San Diego, San Jose, Salt Lake City, San Francisco, and more than a hundred other municipalities, as well as state police departments in Florida, Washington State, Michigan, and other states. This past April, North Carolina became the first state to pass a bill requiring data collection. The head of the North Carolina Highway Patrol, Colonel Richard Holden, has said that he was glad to support this effort because, quite simply, "it was the right thing to do." In June, Connecticut became the second state to pass such a law. It is even more comprehensive than North Carolina's, since it covers every police agency in the state. (North Carolina's legislation applies only to stops by the Highway Patrol.) In just the last twelve months, the number of state legislative proposals to begin data collection on traffic stops grew from just a few to twenty, with new efforts sprouting all the time. There are now or have been bills pending in, among other states, California, Pennsylvania, Washington State, Utah, Missouri, Massachusetts, South Carolina, Illinois, Florida, Ohio, Maryland, New Jersey, Virginia, Rhode Island, and Oklahoma. Almost all of these bills are variations on the theme of comprehensive data collection first put forth in the Conyers bill. Most are customized, in some sense, to their individual states.

These actions and initiative manifest a real desire to begin correcting what people of color everywhere know to be a long-standing problem in their relationship with police and the entire criminal justice system. Bills requiring data collection (and, in the case of Connecticut, requiring anti-profiling policies) have become the way to focus this energy and begin the long journey toward addressing this civil rights issue on the state level.

SIX REASONS THAT COMING TO GRIPS WITH RACIAL PROFILING IS IN THE INTEREST OF LAW ENFORCEMENT

It is easy to understand why those immediately affected by profiling would want the country to confront the problem and root it out. It is an experience that produces fear, anger, humiliation, and can at times be physically dangerous. Perhaps less well understood is the fact that law enforcement itself has a huge stake in coming to grips with the problem. Simply put, police officers and law enforcement agencies have a tremendous amount to lose if profiling continues. Conversely, they have much to gain by addressing the problem forthrightly and directly.

1. Profiling as Poor Policing: The Rational Discrimination Argument

When one hears the most common justification offered for the making of disproportionate numbers of traffic stops of African-Americans, it usually takes the form not of racism, but of rationality. Blacks commit a disproportionate share of certain crimes, the argument goes. Therefore, it only makes sense for police to focus their efforts on African-Americans. As a spokesman for the Maryland State Police said, this isn't racism—it is "the unfortunate byproduct of sound police policies." It only makes sense to focus law enforcement efforts and resources where they will make the most difference. In other words, targeting blacks is the rational, sound policy choice; it is the efficient approach as well.

This argument may sound appealing, but it ultimately fails. First, its underlying premise is wrong. Government statistics on arrests for drug crime (and drug crimes, not other offenses, are what the great majority of pretext traffic stops are about) tell us virtually nothing about the racial breakdown of those involved in drug crime.

Think for a moment about arrest data in general. These statistics show that blacks are indeed over represented among those arrested for homicide, rape, robbery, aggravated assault, larceny/theft, and simple assault crimes. Note that all of these crimes are at least somewhat likely (much more likely in the case of homicide, less likely in the case of rape) to be reported to police and may then result in arrest; these crimes have victims, people directly affected by the crimes, who may do the reporting. By contrast, drug offenses are much less likely to be reported, since possessors, buyers, and sellers of narcotics are all willing participants in these crimes. This makes arrest data for drug crimes highly suspect. These data do not measure the extent of drug crimes. Rather, they measure law enforcement activity and the policy choices of many of the institutions and actors involved in the criminal justice system. Similarly, looking at the racial composition of prison and jail populations or the racial breakdown of sentences for these crimes only measures the actions of those who run our penal institutions and the officials who put together our criminal law and sentencing systems.

In point of fact, statistics on both drug use and drug crime belie the usual stereotypes: blacks may not, in fact, be more likely than whites to be involved with drugs. John Lamberth's study of traffic stops and searches in Maryland showed that among vehicles stopped and searched, the "hit rates"—the percentage of vehicles searched in which drugs were found—were statistically indistinguishable for blacks and whites. In a related situation, the U.S. Customs Service, which is engaged in drug interdiction efforts at the nation's airports, has used various types of invasive searches from pat downs to body cavity searches against travelers suspected of drug smuggling. The Custom Service's own nationwide figures show that while over forty-three percent of those subjected to these searches were either black or Hispanic, "hit rates" for these searches were actually lower for both blacks and Hispanics than for whites—6.7 percent for whites, 6.3 percent for blacks, and 2.8 percent for Hispanics. Similarly, it has long been established that most drug users are white, and that most users buy their drugs from people of their own race. This throws even more doubt on the usual stereotype of the drug dealer as a black or Latino.

We find the same counter stereotypical information when we look at data on drug use. The percentage of drug users among blacks and whites is roughly the same as the presence of those groups in the population as a whole. For example, blacks are roughly twelve percent of the population of the country; in 1997, the most recent year for which statistics are available, thirteen percent of all drug users were black. In fact, among black youths—a demographic group often portrayed as most likely to be involved with drugs—there is evidence that use of all illicit substances has actually been consistently lower than among white youths for twenty years running.

Nevertheless, many continue to believe that African-Americans and members of other minority groups are responsible for most drug use and drug trafficking. Carl Williams, the head of the New Jersey State Police dismissed by the Governor in March of 1999, stated that "mostly minorities" trafficked in marijuana and cocaine, and pointed out that when senior American officials went overseas to discuss the drug problem, they went to Mexico, not Ireland. Even if he is wrong, if Williams and the many troopers who worked for him share these opinions, they will likely act accordingly. And they will do so by looking for drug criminals among black drivers. Blackness will become an indicator of suspicion of drug crime involvement. This, in turn, means that the belief that blacks are disproportionately involved in drug crimes will become a self-fulfilling prophecy. Because police will look for drug crime among black drivers, they will find it disproportionately among black drivers. This will mean more blacks arrested, prosecuted, convicted, and jailed, which of course will reinforce the idea that blacks are disproportionately involved in drug crimes, resulting in a continuing motive and justification for stopping more black drivers as a rational way of using resources to catch the most criminals. At the same time, of course—and this may be the worst part of rational discrimination from a pure law enforcement point of view—because police focus on black drivers, white drivers will receive less attention than they otherwise might, and the drug dealers and possessors among them will be apprehended in proportionately smaller numbers than their presence in the population would predict. In other words, rational discrimination will result in white drug dealers and possessors escaping prosecution in huge numbers, even as disproportionately high numbers of blacks are stopped and searched.

The upshot of this thinking is visible in the stark numbers that show what our criminal justice system does when it uses law enforcement practices like the racially-biased traffic stops to enforce drug laws. African-Americans are just twelve percent of the population and thirteen percent of the drug users, but they are about thirty-eight percent of all those arrested for drug offenses, fifty-nine percent of all those convicted of drug offenses, and sixty-three percent of all those convicted for

drug trafficking. Only thirty-three percent of whites but fifty percent of blacks convicted of drug crimes have been sent to prison, and incarcerated blacks get longer sentences than white for the same crimes: for state drug defendants, the average maximum sentence length was fifty-one months for whites and sixty months for blacks.

2. The Creation of Corrosive Cynicism

Without doubt, racially-targeted traffic stops cause deep cynicism among blacks about the fairness and legitimacy of law enforcement and courts. Thus it is no wonder that blacks view the criminal justice system in totally different terms than whites do; they have completely different experiences within the system than whites have, so they do not hold the same beliefs about it. Since traffic stops are among the most common encounters regular citizens have with police, it is hardly surprising that pretextual traffic stops might lead blacks to view the whole system differently. One need only think of the split screen television images that followed the acquittal in the O.J. Simpson case—stunned, disbelieving whites, juxtaposed with jubilant blacks literally jumping for joy—to understand how deep these divisions are.

But this cynicism is now beginning to creep into the general population's perception of the system. Polling data have long shown that blacks believe that the justice system is biased against them. For example, in a Justice Department survey released in 1999, blacks were more than twice as likely as whites to say they are dissatisfied with their police. More recent data show that a majority of whites believe that police racism toward blacks is common; specifically, a majority of both blacks and whites believe that racial profiling is a widespread problem that must be rooted out. Thus the damage done to the legitimacy of the system has spread across racial groups, from those most immediately affected to others.

Perhaps the most direct result of this cynicism is that there is considerably more skepticism about the testimony of police officers than there used to be. Predictably, this is especially true in minority communities, and pretextual traffic stops hammer this point home for these citizens. When a black driver asks a police officer why he has been stopped, the officer will probably explain that the driver committed a traffic violation. This may be literally true—a traffic offense probably has been committed, since virtually no driver can avoid committing one. But when the officer asks the driver whether he or she is carrying drugs or guns, and for consent to search the car, it becomes more than obvious that the traffic offense is not, in fact, the real reason that the officer stopped the driver. If the stop was really about enforcement of the traffic laws, there would be no need for these questions or any search. Of course, both the officer and the driver know this. It should surprise no one, then, that those subjected to this treatment regard the testimony and statements of police with suspicion. The result will likely be increasing difficulty for prosecutors when they go into court to try to convict the guilty in any case that depends upon police testimony, as so many cases do. The result may be more cases that end in acquittals or hung juries, even factually and legally strong ones.

3. Plunging Crime Rates: There's More Than One Way to Skin a Cat

Over the last seven years, many cities in the United States have experienced steep and sustained drops in their crime rates, including homicide and other violent offenses. This is a national trend; it has happened in cities from one corner of the country to the other. Though experts are divided over what accounts for the drop—many say, candidly, that no one really knows what has caused it—one oft-mentioned possibility is the role that policing and crime-fighting tactics may have played in bringing this about.

No city has been more at the forefront of this debate than New York. Often thought of in the 1980's and early 1990's as a cesspool of crime, vice, and decay, New York has enjoyed rapid declines in all major categories of crimes. And New York's mayor, Rudolph Giuliani, has not been shy about taking credit for these developments and attributing them to his tough approach to policing: aggressive enforcement of laws against quality of life offenses like turnstile jumping, zero tolerance policies on offenses like putting graffiti on structures, and the use of hyper-aggressive squads like the Street Crimes Unit focused on stopping and frisking large numbers of people to look for guns and drugs. These measures may have been tough, but sometimes toughness is necessary, the mayor and his allies have argued. Judge us by our results. And by any measure, the results are impressive. Between 1991 and 1998, the number of homicides in New York City went from 29.31 to 8.60 per 100,000 citizens, a drop of 70.6 percent. In the same period, robberies dropped from 1,340 to 535 per 100,000 citizens, a 60 percent decline.

But this progress has come at a steep price. Even as crime has come down, the perception has grown that the New York City Police Department is especially hard on minorities, especially blacks and Latinos, and that these groups are being sacrificed—in the form of frequent stops, frisks, traffic stops, arrests, and general rough treatment accorded suspects—for the greater good. Indeed, crime rates are down, but minorities in New York—precisely those people most in need of the help of the police, since they are disproportionately the victims of crime—are more than twice as likely to express distrust of police than whites. Many express fear of the police. William J. Bratton, the Commissioner of Police during the first two years of the Giuliani administration, says that while the tough policing strategies may have been necessary at first, the next phase should have included reaching out and working with the black community and its leaders to build a solid foundation of cooperation. Failure to do so, he said, represents a lost chance to make progress not only on law and order in the city, but on race relations. And now, in the wake of the trial and acquittal of the four Street Crimes Unit officers who shot Amadou Diallo, the hidden costs of Giuliani's aggressive strategy have become apparent: ever greater distrust and poisoned relations between police and minority citizens that will take years to overcome. New York City will be living with the consequences of these policies for a long time after its current leadership has left the scene.

But, as the old saying goes, there is more than one way to skin a cat. Contrast what has been happening in New York to events in the same time frame in two other cities: San Diego and Boston. Both have seen their crime rates plummet, but these cities have used very different approaches to policing from New York's. And in neither city will there be five, ten, or twenty years of poor relationships between police and citizens that will linger in the air like a noxious mist, as is likely to be the case in New York.

San Diego took an almost polar opposite position to New York. In the early 1990's having already taken steps to improve training and statistical analysis of crime trends, San Diego looked for other promising approaches that might lead to further reductions in crime. Jerome Sanders, San Diego's police chief at the time, said that staffing realities—while New York has 5 officers per thousand citizens, San Diego had only 1.7 per thousand—dictated a different tack. New York's aggressive approach was simply out of the question. "Our basic premise was, we didn't have enough police officers to do it all, so we needed participation by the community," Sanders said. So San Diego's police force wholeheartedly adopted community policing, under which police and citizens become partners in the effort to make cities safer. The police divided the city into 99 neighborhoods, and assigned teams of officers to each. This allowed citizens to get to know their "own" officers; eventually, they began to give them information, cooperate with them, and help them solve problems in the neighborhood. San Diego also recruited and trained a force of 1,200 volunteer citizens to patrol neighborhoods, serving as the Department's eyes and ears.

Boston's approach has been different those used in both San Diego and New York. But like San Diego's initiative, Boston did not rely on New York-style hardball tactics. It began with careful study, in an effort to figure out what the key sources of crime, especially violent crime, were, and how to reduce it with the least possible racial consequences. The racial impact of any effort was an important ingredient in the plan, since Boston had seen a number of high-profile crimes grow into community confrontations with significant racial overtones in recent years. The results of this examination pointed toward a focus not on drugs or gangs, but on gun violence, and on a small cluster of ringleaders who were responsible for the presence of guns on the street. Then, instead of taking it upon themselves to handle the enforcement effort alone, the police appealed to a coalition of black ministers and leaders for help and cooperation in going after the real bad guys. They then held "call-ins"—meetings between the ministers, the police and the individuals targeted for enforcement. These individuals were warned that if violence and the use of guns on the streets did not stop, they would be arrested and prosecuted in federal court, where they would face long sentences. Most heeded these warnings; those that did not were dealt with as promised. The focused nature of the program—both as to what problem to attack (guns and associated violence) and which people to target (the truly bad folks who refused to change their ways) alleviated the need to make widespread use of targeted traffic or pedestrian stops as New York did, with the racial antagonism that this brings. In the bargain, the Boston police built long-term cooperative relationships with the community that will allow them to approach other problems in the same way in the future, and at the very least to lessen the damaging "us vs. them" mentality so common in New York.

The result in San Diego and Boston has been progress against serious crime as good or even better than police in New York City have achieved with their zero tol-

erance, sweep-the-streets tactics. While homicide in New York fell 70.6 percent between 1991 and 1998, it declined almost as much—69.3 percent—in Boston. And San Diego’s results were even more impressive than New York’s: a fall of 76.4 percent, the best in the country. The pattern was the same for robbery: a 62.6 percent decline in San Diego (again, the nation’s best), followed by New York at 60.1 percent. Boston’s robbery rate declined 50.2 percent. The lesson is obvious. There is no hard and fast tradeoff required between making headway on crime and the relationship between police and the communities they serve. Making the streets safer does not require the sacrifice of the civil liberties of those in areas with crime problems, generating a significant backlash against the police. Simply put, there are other ways.

4. *The Undermining of Community Policing*

Another reason that it is in the interest of the police to come to grips with racial profiling follows directly from the discussion above of the successful efforts of the police in San Diego. Until recently, police departments have concentrated on answering distress calls. The idea was to have police respond to reports of crime relayed to them from a central dispatcher. In essence, these practices were reactive; the idea was to receive reports of crimes committed and respond to them.

But over the past few years, modern policing has moved away from the response model, which was thought to be too slow and too likely to isolate officers from the places in which they worked and the people there. In community policing, used so successfully in San Diego, the idea is for the police to serve the community and become part of it, not to dominate it or occupy it. This is done by becoming known to and involved with residents, understanding their problems, and attacking crime in ways that help address those difficulties. The reasoning is that if the police become part of the community, members of the public will feel comfortable enough to talk freely to officers and tell them what the troubled spots—and who the trouble makers—are. This will make for better, more proactive policing, aimed at problems residents really care about, and will make for a greater degree of appreciation of police efforts by residents and more concern for neighborhood problems and concerns by the police.

In many minority communities, the history of police community relations has been characterized not by trust, but by mutual distrust. In *Terry v. Ohio*, the 1968 case that is the fountainhead of modern street-level law enforcement, the Supreme Court candidly acknowledged this, saying that police had often used stop and frisk tactics to control and harass black communities. As one veteran African-American police officer put it, “Black people used to call the police ‘the law.’ They were the law . . . The Fourth Amendment didn’t apply to black folks; it only applied to white folks.” For blacks, trusting the police is difficult; it goes against the grain of years of accumulated distrust and wariness, and countless experiences in which blacks have learned that police aren’t necessarily there to protect and serve them.

Yet it is obvious that all of community policing—both its methods and its goals—depends on mutual trust. As difficult as it will be to build, given the many years of disrespect blacks have suffered at the hands of the police, the community must feel that it can trust the police to treat them as law-abiding citizens if community policing is to succeed. Using traffic stops in racially disproportionate ways works directly at cross purposes with this effort. Why should residents of these communities trust the police if, every time they go out for a drive, they are treated like criminals, even if this is done in an effort to catch wrongdoers? If the “driving while black” problem is not addressed, community policing will be made much more difficult or even fail. Thus, aside from the damage profiling inflicts on African-Americans, there is another powerful reason to change this police behavior: It is in the interest of police departments themselves to correct it.

5. *Keeping the Feds out*

Several months ago, I testified at a legislative hearing in Pennsylvania concerning a bill aimed at tackling racial profiling. Among the witnesses was John Timoney, the Commissioner of the Philadelphia Police Department. Commissioner Timoney is a former New York City police officer and administrator, and by all accounts a cop’s cop. In his approximately two years at the helm of Philadelphia’s department, he has made substantial changes and improvement, and enjoys widespread support among both the public and his own officers. I found him a personally engaging and well-informed man—tough, no nonsense, but knowledgeable and ready with a joke, too. He advocated very effectively that day for law enforcement interests.

Two things Commissioner Timoney said that day have stayed with me. Asked at one point about the issues of race and policing generally, Timoney gave an answer startling for its candor. “You’d have to be brain dead,” he said, to fail to recognize

that police departments were going to have to deal with issues of race and law enforcement. Attempting to ignore the issue represented ostrich-like thinking, and it was clearly in the interest of law enforcement to meet these challenges head on, on its own terms. He also said something that pointed very strongly to the current headlines on racial profiling. He had, he said, a selfish reason of his own for wanting to deal with racial profiling and associated issues in his department: he wanted to keep the federal government away. Timoney reiterated this thought the next month in an interview with the New York Times. With an eye to federal consent decrees in New Jersey, Pittsburgh, Maryland, and elsewhere, as well as on a number of federal court orders governing the Philadelphia department when he began his stint as Commissioner, Timoney said “right now, my selfish ancillary goal is to keep the feds out of Philadelphia.”

I certainly intend no disrespect here toward the federal government’s efforts to rein in troubled police departments. Indeed, the use of “pattern and practice” jurisdiction by the U.S. Department’s Civil Rights Division represents one of the most promising developments in the battle to force change upon law enforcement agencies with records of violating the civil rights of their citizens and failing to address these problems. Cases brought by the department of Justice under these statutes have resulted in substantial reforms in a number of police departments at both the state and local level; the threat of litigation in these situations has acted as a stick to prod troubled police departments toward changes where in situations in which a carrot alone would have been ineffective. In the first six years after the statute was passed, there have been four consent decrees entered, and there is one active contested piece of litigation going on now in Columbus, Ohio. Timoney’s comment shows just how effective a tool these actions and the possibility of federal court intervention can be. Timoney is right to want to avoid having federal officials or judges dictate the terms under which he runs his department. Presumably, he is the person responsible to Philadelphians and their elected officials for the quality of the police force and its work. And accountability requires authority. It is almost inconceivable that anyone would want such a demanding job—leader of a large police agency—without the ultimate authority to run the operation. Additionally, rules and directives imposed from the outside of a police department are less likely to be complied with by the rank and file than policies and orders generated from within. Timoney calls his desire to avoid federal intervention “selfish,” but one could just as easily view it as a desire to lead his department himself, without unaccountable outsiders who are less knowledgeable than he is telling him what to do. If he is influenced in making his choices by the possibility that the federal government will intervene, so be it. The central concern is what Timoney does, not his reasons for doing it. For example, Timoney has moved some modest actions on racial profiling. These actions include focusing officers who stop cars on arrests of criminals, not just the making of traffic stops for their own sake. “When I came here cops were getting credit for the number of people they simply stopped every month. Can you believe that nonsense? We’ve reduced our stops by 50 percent. You get credit when you lock them up.” Reducing abusive practices such as these is good policing—even if the reason for them is simply avoiding federal intervention.

6. The Experience of Great Britain: Better Policing

Some of you may know the name of Stephen Lawrence. Mr. Lawrence was a black citizen of Great Britain, living in the London area. Several years ago, he was murdered, a victim of racially motivated killing. By all accounts, London police, a force that has usually been seen as among the most professional and well trained in the world, not only bungled the investigation but did things that showed a truly startling degree of racial prejudice and insensitivity during the investigation. In the aftermath of the case, an official inquiry exposed this incompetence and outright racism, and this led to an examination of the relations between London police and racial minorities and to come concrete reforms. Among those reform were stricter regulations on when and how police could perform “stops and searches” including—in a parallel to our own current debate—collection of data and statistical analysis of the data to see any racial patterns. Police decried the data collection requirement almost uniformly, saying it would waste their time and divert them from the real task of crime fighting.

Now, several years later, preliminary results are in, and they are striking. According to police officials, data collection and other reforms have had the effect of decreasing the number of pedestrian and traffic stops made by police. This was especially true initially; the effect is less dramatic now, but it still persists. But the upshot has been a much more effective use of these tactics than was previously the case. Police are using stops more judiciously and cautiously, focusing on those most worthy of police attention instead of using stops in a wholesale, dragnet fashion.

The result has been better policing—more focused, better crime fighting, better use of resources, and interactions with the public that are much less likely to produce cynicism and long-term damage to police community relations.

CONCLUSION

There is still some denial that racial profiling exists. But, S.B. 821, the Traffic Stops Study Statistics Act, has begun a transformation in both the public's thinking and the public discourse about this problem. That change has now percolated down to the state and local level, as evidenced by the many state legislative proposals and local initiatives that have now begun. There is movement on this problem; there is momentum. And what we must realize is that while S.B. 821 shows us the right direction, it is up to every one of us to begin to do the heavy lifting that is ahead. Data collection on all traffic stops is surely the first step on this long road.

Senator ASHCROFT. Mr. Hughes, please proceed with your testimony.

STATEMENT OF JOHNNY L. HUGHES

Mr. HUGHES. Mr. Chairman, the Missouri troopers send their warm regards and thank you for the great work and support.

Mr. Chairman and honorable members of this distinguished committee, I would like to thank you for giving me the opportunity to speak on this matter of great interest.

I am a 29-year veteran of the Maryland State Police, a retired major. I commanded five barracks there and ended up commanding the Maryland State Police Aviation Division. I have been doing legislative and congressional affairs work since 1982. I have two sons that were Maryland troopers that worked drug interdiction on the I-95 corridor since 1996. One was shot, disabled by drug traffickers. There was a \$45,000 contract put out on both of them. The other one has since resigned from the State police. He is with DEA up in Philadelphia.

The National Troopers Coalition is composed of State police and highway patrol agencies throughout our great United States and has a membership of approximately 45,000 troopers of all ranks, trooper through colonel. We would be opposed to S. 821 or any legislation of this nature.

I would like to comment that criminal profiling—and, again, criminal profiling, not racial profiling—criminal profiling is an effective tool for law enforcement. Local, State and Federal law enforcement agencies have been utilizing criminal profiling as a proven and valuable technique to identify criminals for decades. An example: criminal profiling is used by the Federal Bureau of Investigation's Behavioral Science Unit. This developed the criminal profile of serial murderers as predominately white male loners.

It is no secret that the arrest of specific ethnic groups is dependent upon demographics. The Interstate I-95 corridor from New York to Washington, DC, connects inner-city to inner-city. Primarily, minorities populate these inner cities. The majority of arrests involving smuggling in crack cocaine, powder cocaine and heroin along the I-95 New York to Washington, DC, corridor usually involves African-Americans, whereas on Interstate 81, passing through the States of Pennsylvania, Maryland, West Virginia, Virginia, Tennessee, most of these arrests are caucasians trafficking in marijuana. Further, along the southwest border, the States of California, Texas, New Mexico, Arizona, the majority of drug traffickers are Hispanics. Out west, in Kansas City and Missouri, we

are showing that caucasians are dealing in designed drugs, mainly meth, PCP, LSD.

Drugs are trafficked and used by people indigenous to an area. They employ people known as "mules" to transport these drugs. They are usually from the lower wrung of the socio-economic ladder and they are often the same ethnicity as the traffickers because that is who they trust.

Those who are angry that specific ethnic groups are arrested more than they are represented in the general population for drug smuggling activities are not grasping reality. In criminal drug interdiction, you will find it is not a secret that arrests will not reflect the same percentage of ethnic groups as they are represented in the general population of the United States. It is also not a secret that certain ethnic groups are arrested for a disproportionate amount of crime as compared to the general population.

Recently, the term "racial profiling" has been at the forefront of some news broadcasts and a hot topic for some government leaders. Some politicians and government leaders have wrongly used this term. Racial profiling is a street term, and only a street term. It is not a textbook or law enforcement concept. No law enforcement agency teaches or condones racial profiling.

On the other hand, criminal drug interdiction profiling and criminal profiling is a good law enforcement practice. This method of identifying drug traffickers is an essential component of an officer's training. Police officers are, in fact, taught to observe the individual for characteristics or indicators of drug-carrier activity. It is reason, not race, that directs the attention of police officers to drug smugglers. Criminal drug interdiction profiling is rooted in statistical reality.

Thomas Constantine, a personal friend and former Superintendent of the New York State Police, a very proud department, and former Administrator of the U.S. Drug Enforcement Administration, created the DEA Global Enforcement Teams to assist local police with the arrest of violent drug offenders.

Within the Rampart area of L.A., the Mobile Enforcement Teams and LAPD were extremely effective in their operations. Eighty-five percent of the suspects arrested were minorities. Policing drugs in an area where 99 percent of crack cocaine is controlled by minorities will lead to the arrest of primarily minorities. Again, this is statistical reality, not racial profiling.

If some misguided governors, politicians and police chiefs continue to attack the issue of legitimate criminal profiling and call it racial profiling, legitimate policing of this Nation's drug carriers will be dramatically reduced. Good police officers will be afraid to stop anyone for fear of being labeled a racist and facing retaliation by their police department and political rivals. Some police commissioners, superintendents and chiefs have already yielded and are not supporting their troopers and police officers on this particular issue.

Overreaction to race rather than crime is a travesty, as troopers and police officers are in the direct line of fire. Numerous troopers and police officers have been killed or severely injured on drug interdiction traffic stops. The National Troopers Coalition represents 45,000 State police and highway patrol personnel. These

fine troopers and officers of all ranks, trooper through colonel, support and utilize professional policing methods. Race-based traffic stops is not one of them.

And I might add that Carl Williams is a fine man. He was the former Superintendent of the New Jersey State Police. In the circles of IACP State and provincial police and the National Troopers, he was known as Carl "the truth" Williams. He was sacrificed by Governor Whitman for telling the truth.

I would be glad to answer questions on this issue when the time comes.

Senator ASHCROFT. Thank you very much, Mr. Hughes.
[The prepared statement of Mr. Hughes follows:]

PREPARED STATEMENT OF JOHNNY L. HUGHES

Johnny Hughes is a twenty-nine year veteran retired Major of the Maryland State Police. He is the director of government relations for the National Troopers Coalition. The National Troopers Coalition is composed of state police and highway patrol agencies throughout the United States and has a membership of approximately 45,000 troopers of all ranks, trooper through colonel.

Mr. Chairman, honorable members of this distinguished committee, I would like to thank the committee for giving me this opportunity to speak on this matter of great public interest.

Criminal profiling is an effective tool for law enforcement. Local, State, and Federal law enforcement agencies have been utilizing criminal profiling as a proven and valuable technique to identify criminals for decades. For example, criminal profiling is used by the Federal Bureau of Investigation's Behavioral-Science Unit, which developed the criminal profile of serial murderers as predominately White Male Loners.

It is no secret that the arrest of specific ethnic groups is dependent upon demographics. The Interstate 95 (I-95) corridor from New York City to Washington, D.C., connects inner city to inner city. Primarily minorities populate these inner cities. The majority of arrests involving smuggling of crack cocaine, powder cocaine and heroin along the I-95 New York City to Washington, D.C. corridor usually involves African-Americans. Whereas on Interstate 81 (I-81) passing through the states of Pennsylvania, Maryland, West Virginia, Virginia and Tennessee, most of the arrestees are Caucasians trafficking in marijuana. Further, along the Southwest Border States of California, Texas, New Mexico and Arizona, the majority of drug traffickers are Hispanics.

Drugs are trafficked and used by people indigenous to an area. They employ people known as "Mules" to transport drugs who are usually from the lower rung of the socio-economic ladder and who are often the same ethnicity as the traffickers or users.

Those who are angry that specific ethnic groups are arrested more than they are represented in the general population for drug smuggling activities are not grasping reality. In criminal drug interdiction, you will find it is not a secret that arrests will not reflect the same percentage of ethnic groups as they are represented in the general population of the United States. It is also not a secret that certain ethnic groups are arrested for a disproportionate amount of crime as compared to the general population.

Recently, the term "Racial Profiling" has been at the forefront of some news broadcasts and a hot topic for some government leaders. Some politicians and government leaders have wrongly used this term. Racial profiling is a street term and only a street term; it is not a textbook or law enforcement concept. No law enforcement agency teaches or condones racial profiling. On the other hand "Criminal Drug Interdiction Profiling" is a good law enforcement practice. This method of identifying drug traffickers is an essential component of an officer's training. Police officers are, in fact, taught to observe the individual for characteristics or indicators of drug courier activity. It is "Reason not Race" that directs the attention of police officers to drug smugglers. "Criminal Drug Interdiction Profiling" is rooted in statistical reality, not racism.

Thomas Constantine, the former Administrator for the United States Drug Enforcement Administration, created the D.E.A. Mobile Enforcement Teams to assist local police with the arrest of violent drug offenders. Within the Rampart area of Los Angeles, California, the Mobile Enforcement Teams and L.A.P.D. were ex-

tremely effective. In their operations, 85 percent of the suspects arrested were minorities. Policing drugs in an area where 99 percent of the crack cocaine is controlled by minorities will lead to the arrest of primarily minorities. Again, that is statistical reality not racial profiling.

If some misguided governors, politicians, and police chiefs continue to attack the issue of legitimate criminal profiling and call it racial profiling, legitimate policing of this nation's drug couriers will be dramatically reduced. Good police officers will be afraid to stop anyone for fear of being labeled a racist and facing retaliation by their police department and political rivals. Some police commissioners, superintendents and chiefs have already yielded and are not supporting their troopers and police officers on this particular issue. Overreaction to race rather than crime is a travesty as troopers and police officers are in the direct line of fire. Numerous troopers and police officers have been killed or severely injured on drug interdiction traffic stops. The National Troopers Coalition represents 45,000 sworn State Police and Highway Patrol personnel. These fine troopers and officers of all ranks, Trooper through Colonel, support and utilize professional policing methods. Race based traffic stops is not one of them.

Thank you.

Senator ASHCROFT. Mr. Welter.

STATEMENT OF JOHN WELTER

Mr. WELTER. Thank you, Mr. Chairman and Senators, for inviting me to come and speak. It is very powerful testimony I heard in the first panel and I want to echo the fact that I wish that all police officers could have heard that testimony, particularly the police officers with the San Diego P.D.

Racial profiling, if practiced, does more damage to police-community relations than almost any other form of police misconduct. Targeting law-abiding citizens for vehicle stops and searches based solely on race is a practice that must be stopped. I am going to discuss the San Diego Police Department's efforts to address this area of concern, and we are one of the few that took the lead early on, about a year-and-a-half ago, to address this issue.

For the past several years, police departments have been moving toward community policing and problem-oriented policing as a means of preventing crime, not just responding to the aftermath, and community policing practices have contributed to this dramatic drop in crime we have seen across the country.

However, I think that the community policing movement is based upon the trust developed between the police and the community, trust that the police are going to work together to address social disorder, trust that the police and the community are going to respect each other, and trust in treating each other in a fair and unbiased way.

I want to thank the Senators for recognizing that many police officers across this country do a great job at policing. And, in fact, racial profiling undermines all of the excellent work that hundreds of thousands of them are doing. Unfortunately, there are the few police officers who tarnish all of our badges by their individual behavior.

For the past 12 years, the San Diego Police Department philosophy has encouraged and actively supported community empowerment and collaborative problem-solving, and this is no different. Taking this issue on voluntarily is the way to address it in the appropriate manner. The department has initiated numerous proactive efforts to improve our relations and interactions with the community we serve.

Our voluntary study of vehicle stops and examination of potential racial profiling is an example of our community policing efforts, and in early 1999 the P.D. made the decision to begin collecting data on vehicle stops. We were responding to requests from community members, from the local ACLU, the Urban League, and the NAACP to examine the issue of racial profiling. And it had nothing to do with whether we agreed that it occurred or didn't occur. It had to do with the fact that the perception in the community was that it was there.

There were several reasons the police department agreed to collect the data. First, the department wanted to address any community perception of racial profiling by San Diego police officers in the community. Second, the department is a national leader in community policing and we felt that data collection was viewed as a means of strengthening our police and community relationship.

Third, the department command staff believed that the department personnel were not condoning or practicing racial profiling and were confident in the results of our evaluation. Finally, the department worked tirelessly over the past several years to build trust and credibility with community members and we felt that this effort seemed to be a logical move to retain that trust. In addition, the department had automated systems in place to assist in data collection and we consider ourselves a leader in automation and use of technology.

Vehicle stop collection began in January 2000. We are going to continue it through this year. Approximately 150,000 vehicle stops are expected, based on the annual number of stops that we do every year. The city council will receive a mid-term preliminary report in July and complete results on the analysis will be provided in 2001.

I am not going to spend a lot of time on the methodology. I did submit a report and that can be reviewed, but I think we need to talk about the use of technology in regard to this issue. It is initially hoped that our officers would capture data using laptop computers, transmit that data over a wireless system, capture the data, store it in a database, and then come to a point where we could start doing some analysis.

Since a wireless solution is not yet possible, and we are right in the middle of developing our fully automated system, we began by having officers collect data on a 4-by-6 card. The ease of completing the form ensured that the officers were going to be fully cooperative with the project. In addition, we had the chief of police command staff personally work with each lineup, with each briefing, to talk about the reasons why we were doing what we were doing.

Soon, we are going to begin the analysis stage. We are not aware of any published reports or research or any existing models for methodical control or comprehensive studies on this material. This will be the very difficult stage. As was mentioned earlier, this is a first step, and I think that it is the first step in a process that requires that we do some very thorough analysis and develop responses that both the community and the police can be a part of, not just the police.

Therefore, the department plans to use the data it is collecting during the 1-year study to develop comprehensive, meaningful con-

clusions and do something about the issue in San Diego. The department has engaged prominent researchers and is seeking grants and other sources of funding in order to help us with the analysis phase.

And I just want to point out in closing that San Diego P.D. supports the collection of data for the purpose of examining this issue. This is a very important issue as it relates to the relationship of the community and the police. If we are truly to get to what community policing is all about, then we have to have the trust of all of the community.

We feel we owe it to our officers, our community, and the policing profession to take the lead in addressing this issue. Whether it is perceived or real, it stands in the way of true community policing practices. We have come too far in developing trusting relationships to see much of that thrown away or lost in the possible misconduct of a few officers.

We also believe in the philosophy that the police need to work closer with the community to prevent crime and to find real solutions to social disorder. Police officers, in my opinion, and in the opinion of the San Diego P.D., must accept the challenge to prove their integrity, but they also must look for every opportunity to improve their performance.

Thank you.

Senator ASHCROFT. Thank you very much.

[The prepared statement of Mr. Welter follows:]

PREPARED STATEMENT OF JOHN WELTER

INTRODUCTION

Racial profiling, if practiced, does more damage to police/community relations than almost any other form of police misconduct. Targeting law-abiding citizens for vehicle stops and searches based solely on race is a practice that must be stopped. I am going to discuss the San Diego Police Department's efforts to address this area of concern.

For the past several years police departments have been moving toward community policing and problem oriented policing as a means of preventing crime, not just responding to the aftermath. Community policing practices have contributed to a dramatic drop in crime throughout the United States. The community policing movement is based upon the trust developed between the police and resident community. Police and community members must trust that they truly respect each other; they must trust in working together to address the social disorder that contributes to crime; and they must trust in treating each other in a fair and unbiased way.

Racial profiling undermines all of the excellent work done by hundreds of thousands of police officers everyday. The vast majority of police officers respect the individual rights of community members they serve. Many police officers I speak to are offended someone would even allege they are violating people's constitutional rights, the very rights they are sworn to uphold.

Unfortunately, there are those police officers who tarnish all of our badges by their behavior. Racial profiling does exist. However, through the efforts of community policing, the San Diego Police Department, under the direction of Chief David Bejarano, is positioning itself to better analyze and prevent any possible misconduct.

THE ROLE OF COMMUNITY POLICING

For more than twelve years the San Diego Police Department philosophy has encouraged and actively supported community empowerment and collaborative problem solving. The Department initiated numerous, proactive efforts to improve police/community interaction, thus ensuring on-going, open dialogue which supports mutual respect and trust with all members of our communities.

In the early 1990's, the Department completely restructured the organization to facilitate a transition to Neighborhood Policing, our version of a community policing

philosophy coupled with problem oriented policing strategies. Based on community and town hall meetings, employee recommendations and intensive operational analysis, the following changes were made:

The roles of Department staff were redefined to make problem solving and neighborhood policing an expectation at all levels and functions of the Department.

The census-tract based beat system was completely converted to a system based on residents' definitions of their actual neighborhoods.

A team policing structure was developed for all patrol officers, eliminating specialized neighborhood policing teams.

Problem solving principles were incorporated into all investigative and family protection units, as well as patrol practices.

A neighborhood policing and problem solving trainer/mentor program was developed to support line officers and first level supervisors.

Supervisory responsibilities, shift and assignment structures were revised to support neighborhood policing and problem solving practices and expectations.

Civilian, volunteer and reserve officer duties were expanded, giving the police department one of the largest community volunteer programs in the nation.

Neighborhood Watch was redefined and redesigned to incorporate problem solving by community members.

Crime Analysis resources and procedures were revised to increase their usefulness to both officers and residents in analyzing and solving community problems.

Training curriculum and personnel performance evaluation processes were modified to incorporate neighborhood policing and problem solving into day to day activities.

Dispatch and communications procedures were revised to free up patrol time for problem solving activities in partnership with community members.

Department liaisons between area commands, volunteers and community groups were appointed, and community forums were put into place for direct community input into policing priorities and practices.

Throughout the process, particular attention was devoted to communities that traditionally have not seen law enforcement as allies. The Department's success is reflected in high citizen satisfaction ratings among all ethnic and racial groups. In the 1999 victimization study conducted by the Bureau of Justice Statistics, survey questions included citizen satisfaction with local police. Of the twelve major cities included in the study, San Diego scored second highest in citizen satisfaction, with a 93% satisfaction rating.

This study of vehicle stops and examination of potential racial profiling is an example of our community policing efforts. We are demonstrating the Department's commitment to gather data, analyze the results and share them with the community in an effort to mutually solve perceived or real problems that inhibit a true working partnership.

PROJECT HISTORY

In early 1999 the San Diego Police Department made the decision to begin collecting data relating to vehicle stops. The Department was responding to requests from the community, including the local ACLU, Urban League and NAACP, to examine the issue of potential racial profiling by police officers making vehicle stops. This issue was receiving Statewide and National attention.

There were several reasons the Police Department agreed to collect vehicle stop information. First, the Department wanted to address any community perception of racial profiling by San Diego Police officers. Second, the Department is a national leader in community policing and this data collection effort was viewed as a means of strengthening the police/community relationship. Third, Department command staff believed that Department personnel were not condoning or practicing racial profiling and were confident in the results of this evaluation process. Finally, the Department worked tirelessly over the past several years to build trust and credibility with community members citizens and this effort seemed to be a logical move to retain that trust.

In addition, the Department had automated systems in place to assist in the data collection and analysis phases of the project. These systems allowed the Department to implement the project at a reasonable cost, without the need for extensive system development and implementation, which other agencies might require. However, the Department's complete vision for automation is still in development. Once completed, it will permit collection and analysis of this, or any other type, of data in the future to be faster, easier and even less costly.

Vehicle stop data collection began in January 2000 and will continue throughout the year. Approximately 150 thousand vehicle stops are expected this year, based upon the annual number of traffic stops the past few years. The San Diego City Council will receive mid term preliminary results of this data collection in a presentation in July 2000. Complete results and analysis of data will be provided in early 2001.

Following is detailed information on project methodology, future plans, costs, and transferability of the process to other police agencies.

METHODOLOGY

To begin the process of collecting vehicle stop information, a series of community meetings were held and an internal Implementation Committee was formed. Preliminary decisions were made regarding the data to be gathered and the format that should be used. An outside consultant was engaged to review the process, related issues and make recommendations.

Data Collection

As a result of many community and departmental meetings, analysis and review of ongoing efforts, the Department decided to collect as much data as was feasible, without being burdensome to officers. The following data is collected for every vehicle stop:

- Date and time of the stop;
- Division where stop occurred;
- Primary reason for the stop (moving violation; equipment violation; radio call, citizen contact; officer observation/knowledge; Investigative Supplement information on suspect, Department Bulletin or Log);
- Driver's sex and age;
- Driver's race (DOJ categories);
- Action taken (citation, written warning, verbal warning, field interrogation, other);
- Whether the driver was arrested;
- Whether the driver was searched, and if so:
 - Type of search (vehicle, driver, passengers);
 - Basis for search (visible contraband, contraband odor, canine alert, consent search, 4th amendment waiver, search incident to arrest, inventory search prior to impound, observed evidence related to criminal activity, other);
 - Whether a "Consent Search" was obtained;
 - Whether contraband was found;
 - Whether property was seized.

Collection Methodology

Another area of concern was the method of collecting data. It was initially hoped that officers would collect data in a "wireless" mode using the developing laptop computer system. That is, officers would be able to enter the data into laptops mounted in their patrol vehicles, electronically transmit the information into a database in the Department's computer system, and then begin the process of separating data for the analysis process. However, the development of the Department automation is not at the stage where this is yet possible.

When the Department's automation is completed, patrol officers will be able to use laptop computers to: write crime and arrest reports; transmit and receive criminal history, photographs, maps and other data; transmit reports; communicate with dispatchers and others; and access information from any Department computer. Much of this information will be used to work with community members in their homes or at community meetings. Taking advantage of emerging technologies will allow police and the community to develop stronger trust and more effective partnerships.

Since a "wireless" solution was not yet possible when we began the data collection process we decided to collect data on paper forms. Officers in the field can easily carry the forms, 4" by 6" cards. Completing the form for each stop takes less than 20 seconds.

The ease of completing the form helped to ensure that officers fully cooperated with the project. In addition, Chief of Police David Bejarano prepared a video explaining the project and executive staff made personal presentations at patrol and traffic briefing. Results so far have been widespread acceptance of the process. Each day, officers turn in the forms, which are forwarded to Records Division for manual data entry.

Part of the development of the data collection process was the design and implementation of a database structure. The Department's existing staff and already-developed automated systems ensured the success of database development.

Data Analysis

Although there has been media coverage of the racial profiling issue, the Department is not aware of any published academic research, nor any existing models for methodical, controlled or comprehensive studies of this material. Therefore, the Department plans to use the vast data it will be collecting during the one-year period to complete comprehensive studies and produce meaningful conclusions for the Department's and community's benefit.

Vehicle stop data collection provides a unique opportunity to obtain answers to meaningful questions and break new ground in the applicability of problem solving and community policing, although numerous questions remain. For example, the data will tell us who is stopped, why they were stopped, and the results of each stop. What is the best way to interpret and make use of that information? What other data can be used in comparison?

Since the Department of Motor Vehicles does not maintain race designations, there is no way of knowing the demographics of the driving population. Census populations are not an accurate reflection of the driving population, because certain segments (e.g., young adults) are more likely to drive, and to drive more often and further, than others (e.g., the elderly). Some minority groups, most notably Southeast Asians and Hispanics, are notoriously undercounted in any census. With two of the busiest international border crossing in the world, hundreds of thousands of vehicles cross back and forth between San Diego and Mexico on a regular basis. Even if motor vehicle records could give us valuable information for analysis, an unknown proportion of San Diego drivers may not even have a California drivers' license.

If we do develop comparative driving population estimates, are there certain variances that are acceptable? If 12% of the driving population is of a particular ethnicity, and 15% of stops are of that group, what does this tell us? What if the proportion of vehicle stops is lower than the driving population? From a community policing perspective, how does the community see the role of the police department in traffic stops? What do they expect from the police? What statistics and information are important to them? What possible operational changes or training practices will address their concerns without resulting in unacceptable levels of danger to officers, drivers and the general public?

The Department has engaged prominent researchers, and is seeking grants or other sources of funding, in order to answer these questions and others, using the comprehensive database that is being developed.

Data Dissemination and Conclusions

The Department plan is to disseminate the preliminary results of the studies in a report and presentation to the City Council approximately July 2000. A final report and presentation should be disseminated in early 2001. The Department also expects to disseminate the information widely to community members through the media and by making the information available on its Web site.

FUTURE PLANS

As stated, the Department expects to widely disseminate the results of the study. If there are areas that demonstrate a need for improvement, the Department will evaluate appropriate operational or training changes. A decision about the need to continue collecting vehicle stop data into 2001 will be made by Chief Bejarano at the conclusion of the first year's study.

COSTS

The Department estimates that its costs for the collection and analysis of vehicle stop data for a one-year study are as follows:

Data Entry	\$40,000
Professional Consultation	75,000
Department Technical and Analytical Staff Support	30,000
Focus Groups, Miscellaneous Supplies/Services	10,000
	155,000
Total	

TRANSFERABILITY

The San Diego Police Department was positioned to begin its data collection efforts as early as January 2000 by virtue of having begun the implementation of a fully automated system. Other law enforcement agencies and organizations that are not yet automated may find it more costly or difficult to collect, manually tabulate, complete analysis and share relevant data. It is important the Federal Government continue to support all efforts in enhancing or expanding the use of technology in policing.

SUMMARY

The San Diego Police Department supports the collection of data for the purpose of examining racial profiling. We feel we owe it to our officers, our community, and the policing profession to take the lead in addressing any issues, perceived or real, that stand in the way of true community policing practices. We have come too far in developing trusting relationships to see much of it lost in the possible misconduct of a few officers. We also believe in the philosophy that the police need to work closer with the community to prevent crime and find real solutions to social disorder that contributes to crime. Police officers must accept the challenge to prove their integrity and look for every opportunity to improve their performance.

Senator ASHCROFT. Mr. Rodney Watt, please.

STATEMENT OF RODNEY WATT

Mr. WATT. Thank you. My name is Rodney Watt. At the outset, I wish to thank the members of this subcommittee for giving me the opportunity to be of assistance in its work toward finding a solution to our national problem of racial profiling.

I am currently a police patrol officer for the city of Highland Park, IL, which is located on the shore of Lake Michigan about 25 miles north of Chicago. I was born in Highland Park. I graduated from New Trier High School. I obtained a bachelor of science degree and later received a master of science degree.

During training, a rookie police officer in Highland Park is assigned one or more field training officers, FTO's, to guide him. My curiosity was aroused almost immediately when my chief of police told one of my FTO's in my presence, "Make sure that he is enforcing the NUT ordinance." The NUT ordinance was an unofficial practice that stood for "barring"—excuse me for saying this—"niggers uptown." We were to keep African-Americans away from the central business district's parks and beaches so that the community would not become nervous. One public park where many Hispanics lived was even referred to as, "south of the border."

These were my first indications that something was amiss in the Highland Park Police Department's method of dealing with racial and ethnic minorities. One of my FTO's taught me to park perpendicular to U.S. 41, a main highway from Chicago to Milwaukee that splits Highland Park into eastern and western halves. Once parked in this manner, a police officer shines his bright lights into cars passing in front of him during the night, where he sees the race, sex, and even hair color instantly able to be seen.

If the driver belongs to the wrong minority, the officer pulls out, stops, and arrests him. Because the driver has done nothing wrong at this point, my FTO taught me that, "The Illinois Vehicle Code is an officer's best friend." A broken tail light, an unlighted license plate light, or alleged weaving even in one's own lane is sufficient for a stop. Once a motorist is stopped, the officer can hope to make a drunk driving, drug, or weapons arrest.

Accusing a motorist of weaving is a standard favorite, enabling an officer to create probable cause and reasonable suspicion for a stop. Almost all of my supervisors taught or tolerated this improper behavior. One supervisor was known to have given Nazi salutes around the police station. The supervisor also had an album of Nazi camp songs at his home that he used to humiliate a Jewish officer when it was played at a party. Another supervisor made derogatory comments about many ethnic groups and frequently used the words "kikes," "niggers," "spics," "gooks," "melonheads," "tacos," "beaners," and "wetbacks." This type of language dehumanizes and insults the citizens, and sends a signal that harassment of minorities is justified.

It greatly troubled me when I soon noticed that those engaged in such conduct were the ones who received extra training and promotion. I have felt the brunt of the administration's anger over my refusal to go along. For instance, I have been subject to constant frivolous disciplinary proceedings. The worst form of retaliatory conduct against me was a death threat made upon me by one of my own FTO's. In addition, I received another threat from a hate monger. I have been fearful for many months about physical harm to myself and my family.

There are many other types of abuse going on at my police department, such as downgrading of crime to make the city look safer than it is, sexism, giving out test answers by the administration to favored officers, anti-union activity, missing weapons, missing drugs with which police dogs are trained. All of these matters are related to racial profiling, in that a police department that is divided into "us" and "them" invariability engages in many types of wrongful conduct to keep up the wall of separation between those on the inside and those on the outside.

These and other abuses are detailed in the affidavits of 16 current and former police department officers and dispatchers who are supporting five additional officers who have sued the city and disclosed these practices in litigation. All of those affidavits have been submitted by me to this subcommittee. Most of those affidavits also speak of the fear of retaliation inherent in those officers and dispatchers coming forward to speak the truth about the abuses.

The police department also uses code words to identify minority motorists who can be stopped. For instance, in the material I have submitted today there is a transcript of radio transmissions concerning the arrest of one Mexican-American who was identified as a "sombbrero."

I would like to caution the subcommittee that one part of its proposed bill may not work, specifically the part calling for the keeping of statistics regarding the race and ethnicity of those who are stopped. Officers often work alone in their squad cars and they can get around such requirements merely by not calling in the stops to the dispatchers, so that no one will even know they are stopping a suspect on the road. Without knowledge of the stop, the officer may avoid any report at all.

Finally, Highland Park was founded in 1869. In the past 131 years, Highland Park has never had an African-American officer or employee. This makes the chief's recent statement that he has been interested in racial diversity for years ring hollow, just as hollow

as his denials of racial profiling, which has and does exist on the force. My other 20 fellow police department employees and those others who are afraid to come forward would like these practices ended and would like this subcommittee to do what it can to help reach that goal.

Thank you.

Senator ASHCROFT. Thank you.

[The prepared statement of Mr. Watt follows:]

PREPARED STATEMENT OF RODNEY WATT

My name is Rodney Watt. At the outset, I wish to thank the members of this Subcommittee for giving me the opportunity to be of assistance in its work toward finding a solution to our National problem of racial profiling.

I am currently a police Patrol Officer for the City of Highland Park, Illinois, which is located on the shore of Lake Michigan about 25 miles North of Chicago. I was born in Highland Park, and lived there a short time while very young. My family moved to another suburb a few miles closer to Chicago, and I graduated from New Trier High School, which is often recognized as one of the country's premier high schools. I then attended Northern Michigan University, where I obtained a B.S. degree, and later received an M.S. degree from Lewis University.

I attended the Chicago Police Academy, where I was a Class Commander in my 14 week course because of my high academic achievement. After graduation from the Academy in early 1992, I considered myself lucky when I was hired as a Patrol Officer by Highland Park, which has close to 60 officers, including those on the supervisory level. Probably because of my strong credentials, my supervisors told me that I was a "fair haired boy" and on the right track. I, in turn, took to my training period with great enthusiasm.

During training, a rookie police officer in Highland Park is assigned one or more Field Training Officers ("FTO") to guide him or her. My curiosity was aroused almost immediately, when my Chief told one of my FTO's in my presence, "Make sure that he is enforcing that NUT Ordinance." Priding myself on having studied Highland Park's ordinances, I picked up a book containing the ordinances, and began to look for the NUT ordinance. The Chief was highly amused by this, and told that FTO that college students think they know so much, but really don't, because they were not trained in the school of hard knocks. I soon found out that what the Chief was laughing at was my naivete in looking up the NUT ordinance at all, because it was not "official." Instead, the NUT ordinance was an unofficial one that stood for barring (excuse me for saying) "Niggers Up Town." We were to keep African-Americans away from the central business district, not to mention the parks and beaches, so that the community would not become "nervous." One public park, near where many Hispanics lived, was even referred to as "South of the Border."

These were my first indications that something was amiss in the Highland Park Police Department's method of dealing with racial and ethnic minorities, but they were hardly my last. One of my FTO's taught me to park perpendicularly to U.S. 41, a main highway from Chicago to Milwaukee, that splits Highland Park into its Eastern and Western halves. Once parked in this manner, a police officer shines his bright lights into cars passing in front of him during the night. Once our squads were equipped with "take down" lights on top, the same thing could be done with those very powerful lights on the top of the cars. This causes sort of a movie camera or strobe effect, where the driver's race, sex, and even hair color is instantly able to be seen. If the driver belongs to an unapproved group of citizens, the officer can pull out and stop or arrest him or her.

You are probably wondering how the officer can make an arrest at this point, since the driver has done nothing wrong. Well, that is another thing my FTO taught me, by telling me that "the Illinois Vehicle Code is an Officer's best friend." A broken tail light, an unlighted license plate, or alleged "weaving"—even in one's own lane, is sufficient for a stop. Once a motorist is stopped, the officer can hope to make a drunk driving, drug, or weapons arrest. Accusing a motorist of weaving is a standard favorite enabling an officer to create "probable cause" and "reasonable suspicion" for a stop or an arrest at the typewriter, or so my FTO taught me. In short, Highland Park Patrol Officers were taught to look not for probable cause, but to target minority groups.

Almost all of my supervisors taught or tolerated this improper behavior. One of my supervisors was known to give the Nazi salute around the station, even to a Jewish married couple of officers. This supervisor also had an album of Nazi "camp

songs" at his home that he used to humiliate one of those Jewish officers when it was played at a party. Another supervisor made derogatory comments about many ethnic groups, and frequently used the words, "kike" and "nigger" and "spic." Another supervisor once told me to do my own work, because he would not be my "nigger." One other supervisor frequently used the "N" word, and referred to Asians as "gooks." Yet another supervisor referred to African-Americans as "melonheads." I also remember a supervisor frequently calling Mexican-Americans "beaners" and "wetbacks." This type of language dehumanizes the insulted citizens, and sends the signal that harassment of minorities is justified. However, I was a bit dumbfounded by what I was being taught. I refused to participate in this sort of conduct, because it went against the my family's teachings of tolerance that were an important part of my upbringing. It greatly troubled me when I soon noticed that those who were not as educated as I was, but who engaged in such conduct, were the ones who received extra training and promotions. Of course, the Highland Park supervisors are too sophisticated to directly order racial profiling. So, they train the recruits they think might "go along" in this (and other wrongful conduct), and then rewarded those who do go along, while punishing those who do not.

I have felt the brunt of the administration's anger over my refusal to go along. For instance, I have been subject to constant frivolous disciplinary proceedings. I was suspended for 30 days for refusing to make a police report stating that two juveniles had caused an "explosion" in a cab when they set off a foul smelling gag toy. I am under investigation for not properly calling in my morning meal break, even though I followed the same procedure as every other day in my 9 year career. Just two weeks ago, the Reverend Jesse L. Jackson, Sr., accompanied me to yet another disciplinary hearing concerning whether I disobeyed an order not to keep a key to the evidence locker in my possession overnight. When the Reverend and I tried to submit to the supervisor a lie detector test that I had passed the day before concerning the matter, it was flung back in our faces with the comment to the Reverend that he should not try to tell the supervisor how to run an investigation. Other disciplinary matters are also being pursued against me. In addition, I have been denied advancement. I have been a certified scuba diver since about 1986, but I have been unable to find a place on the Police Department's Dive Team. About a week ago, I asked my supervisor for a recommendation for advancement, and he told me "I don't like your lawsuit, and I don't like the people around you," so he would not give me a recommendation. I was given an interview despite my lack of a recommendation, however it was conducted by the same supervisor who flung the lie detector test back at the Reverend Jackson and myself.

Of course, the worst form of retaliatory conduct against me was the death threat made upon me by one of my former FTO's. In addition, I received an anonymous page, which when I called it back, was another threat from what appeared to be a white hate monger. I have been fearful for many months now about physical harm to myself and my family.

There are many other types of abuses going on at my Police Department, such as the downgrading of crime to make the City look safer than it is, sexism, the giving out of test answers by the administration to favored officers, anti-union activity, missing weapons, and missing drugs with which our police dogs are to be trained. All of these matters are related to the racial profiling in that a Police Department that is divided into "us and them" invariably engages in many types of wrongful conduct to keep up the wall of separate between those on the inside and those on the outside. These and other abuses are detailed in the affidavits of 16 current and former Police Department officers and dispatchers who are supporting 5 additional officers who have sued the City and disclosed these practices in the litigation. All of those affidavits have been submitted by me to this Sub-Committee. Most of those affidavits also speak of the fear of retaliation inherent in those officers and dispatchers coming forward to speak the truth about all the abuses.

Some citizens and even some City Counsel members in Highland Park have expressed doubt that racial profiling can exist in such an affluent suburb. That doubt is not well founded, however. In the materials I have submitted today, there is a transcript of the radio transmissions concerning the arrest of one suspect. If I were to tell you that the suspect who was arrested was "a hat," you likely would have no idea what I was talking about. However, when the suspect was identified as "a hat" on the transcript, all the other officers listening understood the code. The "hat" was then more closely identified as a "big sombrero," which meant, according to the transcript, that it was "probably filled with beer bottles." Maybe the word, "sombrero" gave you a hint of what was meant by the code words. A full translation of "a hat filled with beer bottles" is that there is a Mexican on the highway, so he is fair game to arrest, because among Highland Park Police Officers, it is understood that the words, "a hat" or "a sombrero" means there is a Mexican-American on the

road who may be stopped without probable cause, just to see if he is drunk, in which case he may be arrested.

I would like to caution this Sub-Committee, however, that one part of its proposed bill may not work, specifically, that part calling for the keeping of statistics regarding the race and ethnicity of those who are stopped. Highland Park Police Officers work alone in their squad cars, and are taught that if they put aside their concerns for safety, they can get around such requirements merely by not calling in their stops to the dispatchers, so that no one will even know that they are stopping a suspect on the roads. Without knowledge of the stop, the officer may avoid any report at all.

Finally, Highland Park was founded in 1869. In the past 131 years since its founding, Highland Park has never had an African-American officer, and as the Reverend Jackson observed, it does not even have an African-American janitor. This makes the Chief's recent public statement that he has been interested in racial diversity on the force "for years" ring hollow—just as hollow as his denials of racial profiling—which has, and does exist on the force. My other 20 fellow police department employees—and there are others who are afraid to come forward—would like these evil practices ended, and would like this Sub-Committee to do what it can to help reach that goal.

Senator ASHCROFT. Senator Torricelli is a member of the Judiciary Committee and represents the State of New Jersey and has asked to introduce the Honorable Leroy Jones.

**STATEMENT OF HON. ROBERT G. TORRICELLI, A U.S. SENATOR
FROM THE STATE OF NEW JERSEY**

Senator TORRICELLI. Thank you, Mr. Chairman, very much, and thank you very much for holding this hearing. Mr. Chairman, the State of New Jersey has the unfortunate distinction of having had a problem of racial profiling which was played out before the Nation. It also has the distinction, I think, of dealing with it first, honestly, and I hope successfully.

Yesterday, the Attorney General of the United States appointed a monitor for the State police in New Jersey to assure that the reform of the State police to a new level of racial and ethnic sensitivity is accomplished. Assemblyman Jones, who appears before you, is one of those who has led this effort. A leader of the Black and Latino Caucus in the State legislature, he participated in a meeting that I helped arrange with Deputy Attorney General Holder a year ago which has led to this monitor.

We are enormously proud in New Jersey that we had a serious problem, it persisted, but we have faced it honestly and I believe ultimately thoroughly. We are proud of good people in the State police. We have many good people who serve with the State police and they deserved better than the reputation they were getting because of problems of leadership and very misguided policies.

I also, if you will forgive me, Mr. Chairman, in introducing Assemblyman Jones simply want to say something about the governor of my State, who is not of my party but of whom I am very proud that against enormous opposition she faced the problem of racial profiling after it had persisted for many years and did dismiss the Superintendent of the State Police of New Jersey, who deserved to be dismissed.

Racial profiling cannot be defended. As I believe Professor Harris demonstrated, statistically it cannot bear evidence to those who suggest, as our former superintendent of the State police suggested, that certain ethnic or racial groups disproportionately commit crimes. They do not. This has not been a proud time for my

State before we dealt with this issue. Perhaps it is helpful that the State that dealt with it first, and I believe most honestly, was a northern State that prided itself on racial sensitivity and social enlightenment. It provides real evidence that nowhere in the country is there an exception to old prejudices and bigotry. We have dealt with it.

I simply, Mr. Chairman, asked for this moment to introduce Assemblyman Jones because he has played such an important role in my State in bringing this hopefully to an end.

Senator ASHCROFT. Assemblyman Jones.

STATEMENT OF HON. LEROY J. JONES, JR.

Mr. JONES. Thank you very much, Mr. Chairman. Thank you very much, Senator Torricelli, and certainly to Senator Feingold.

On behalf of the New Jersey Legislative Black and Latino Caucus and the entire family of minority residents in my State, let me thank you all for this privilege to provide testimony regarding the Traffic Stops Statistics Study Act of 1999.

Racial profiling has been a silent scourge in New Jersey for many minority motorists for a long time. While never, ever officially sanctioned, it was the standard operating procedure for State troopers to pull over cars containing black and Latino occupants.

As the Nation began to step up its war on drugs over the past 20 years, State police developed stealth justification for stopping vehicles containing blacks and Latinos because they simply fit the profile of likely drug couriers. In our State, supervisory officers routinely displayed indifference toward complaints registered by law-abiding minority motorists who were pulled over by overly aggressive and confrontational highway troopers.

This opened the door to further abuse by ill-intentioned troopers who saw an opportunity to intimidate, to abuse, and even terrorize minority motorists, and you have heard a little bit of that today. It was a travesty on many levels. In our community, the ongoing incidence of racial profiling simply fosters resentment and anger. In the police profession, there was a breakdown in the ethics of upholding the law. There were cases of illegal searches, falsified reports of police personnel.

Even court intervention had little impact on the situation. In March 1996—and Senator Lautenberg talked about this a little bit—a lower court State judge declared that troopers patrolling the southern stretches of the New Jersey Turnpike, I-95, engaged in racial profiling to stop and arrest minority motorists from 1988 to 1991. That case was decided largely on the basis of statistical analysis offered by Dr. John Lamberth, Chairman of the Psychology Department at Temple University.

He documented that blacks accounted for between 35 percent and 46 percent of motorists stopped, and 73 percent of those arrested along the southern end of the turnpike. Now, let me just put those numbers in context for you. African-Americans constitute 13 percent of the State's population. The percentage of black motorists is perhaps even smaller.

Senators, so deep was the perpetual state of denial about racial profiling in my State that the State attorney general's office worked for 3 years to overturn that landmark lower court decision.

Instead of recognizing the need of statistical reporting, the State sought to bury the issue.

Racial profiling, in fact, did not reach a critical mass until April 1998, when two State troopers fired 11 shots into a van carrying four unarmed young black and Latino men, wounding three of them. It became a nationally publicized case. Legislators like myself, clergy, and community activists stepped forward taking efforts to put an end to the hostile environment that existed along our highways.

We were, however, constantly frustrated by one huge impediment, the lack of reporting about the racial characteristics of motorists subjected to highway stops. It took an enterprising newspaper, gentlemen, with a good lawyer to finally shed some light on this problem. On February 10, 1999, the Star-Ledger of Newark gained access to police records showing that minorities made up 75 percent of the people arrested along the turnpike during the first 2 months of 1997. The figure was inescapably disproportionate and truly alarming.

The State attorney general's office hastily announced a comprehensive investigation of the 2,600-member State trooper force. Days later, the U.S. Justice Department revealed that it had been investigating racial profiling in New Jersey for over 1 year.

Citing the continued lack of statistical information and the State's repeated denials, my colleagues and I from the Black and Latino Caucus took testimony from racial profiling victims like you have done here today. We listened to over 30 hours of testimony. The human toll was dramatically captured by one Dorothy Cobbs, a 52-year-old homemaker from New York. Senators, she wept like the young man in the video as she recounted her ordeal with State troopers during a stop along the Garden State Parkway in 1996. Troopers cursed, spat upon her, maced and brutalized her before charging her with multiple offenses. Ms. Cobbs later won a \$225,000 settlement in a Federal civil rights case.

After the hearings, the Caucus issued a report which I have here today and I will respectfully submit to the record.

[The report referred to is retained in the committee files.]

Mr. JONES. We produced a 32-bill legislative package to combat racial profiling and job discrimination. No less than five of those bills pertained to issues of reporting and compiling information about motor vehicle stops and corresponding arrests by troopers who patrol New Jersey's highways. We believe, Senators, that reporting and statistical analysis are intrinsic in preventing recurrences of institutionalized racial profiling. It fosters accountability at all levels of law enforcement.

Clearly, the New Jersey experience is illustrative of why the Traffic Stops Statistics Study Act is so critically necessary. Racially-motivated traffic stops are liable to flourish when there is no adequate scrutiny of what drivers police choose to pull over along our highways. In empowering the Justice Department to compile and analyze data on traffic stops, there may be new light shed on the insidious practice of racial profiling, its pervasiveness and its causes.

The approach you consider here today will help everyone. It will discourage unscrupulous police officers from indiscriminately en-

gaging in reprehensible conduct, conduct that tarnishes the image of their fine profession and drives that wedge between them and the people that they have sworn to protect and serve.

Mr. Chairman, members of the committee, that concludes my comments and I am certainly prepared to answer any questions that you might have with respect to the New Jersey experience.

[The prepared statement of Mr. Jones follows:]

PREPARED STATEMENT OF LEROY J. JONES, JR.

Thank you, Senator Torricelli. On behalf of the New Jersey Legislative Black and Latino Caucus and the entire family of minority residents in my state, let me thank you for this privilege to provide testimony regarding the Traffic Stops Statistics Act of 1999.

Racial profiling has been a silent scourge for as long as New Jersey's minority motorists can remember. While never officially sanctioned, it was standard operating procedure for state troopers to pull over cars containing black occupants.

As the nation stepped up its war on drugs over the past 20 years, State Police developed stealth justification for stopping vehicles containing blacks because they fit the profile of likely drug couriers.

Supervisory officers routinely displayed indifference toward complaints registered by law-abiding minority motorists who were pulled over by overly aggressive and confrontational highway troopers.

This opened the door for further abuse by ill-intentioned troopers who saw an opportunity to intimidate, abuse, even terrorize minority motorists. It was a travesty on many levels. In the minority community, the ongoing incidents of racial profiling fostered resentment and anger. In the police profession, there was a breakdown in the ethic of upholding the law. There were cases of illegal searches and falsified reports by police personnel. Even court intervention had little impact on the situation.

In March 1996, a lower-court state judge declared that troopers patrolling the southern stretches of the New Jersey Turnpike engaged in racial profiling to stop and arrest minority motorists from 1988 to 1991. That case was decided largely on the basis of statistical analysis offered by Dr. John Lamberth, chairman of the Psychology Department at Temple University. He documented that blacks accounted for between 35 percent and 46 percent of the motorists stopped and 73 percent of those arrested along the southern end of the Turnpike.

Let me put those numbers in context for you: African-Americans constitute 13 percent of the New Jersey population; the percentage of black motorists is probably even smaller.

So deep was the perpetual state of denial about racial profiling in my state that the state's Attorney General Office worked for three years to overturn that landmark lower-court ruling. Instead of recognizing the need for more statistical reporting, the state sought to bury the issue.

Racial profiling, in fact, did not reach a critical mass until April 23, 1998, when two state troopers fired 11 shots into a van carrying four unarmed young black and Latino men, wounding three of them. It became a nationally publicized case.

Minority legislators like myself, clergy, and community activists stepped up efforts to put an end to the hostile environment along the highways. We were, however, constantly frustrated by one huge impediment: a lack of reporting about the racial characteristics of motorists subjected to highway stops.

It took an enterprising newspaper with a good lawyer to finally shed some light on the problem. On Feb. 10, 1999, the Star-Ledger of Newark gained access to police records showing that minorities made up 75 percent of the people arrested along the Turnpike during the first two months of 1997. The figure was inescapably disproportionate. Alarming.

The state Attorney General's Office hastily announced a comprehensive investigation of the 2,600 member state trooper force. Days later, the U.S. Justice Department revealed that it had been investigating racial profiling in New Jersey for over a year. Citing the continued lack of statistical information and the state's repeated denials, my colleagues and I in the Black and Latino Caucus took testimony from racial profiling victims.

The human toll was dramatically captured by Dorothy Cobbs, a 52-year-old homemaker from New York. She wept as she recounted her ordeal with state troopers during a stop along the Garden State Parkway in 1996. Troopers cursed, spat upon, maced and brutalized her before charging her with multiple offenses. Mrs. Cobbs later won a \$225,000 settlement in a federal civil rights case.

After the hearings, the Caucus issued a report and produced a 32-bill legislative package to combat racial profiling and job discrimination. No less than five of the bills pertain to issues of reporting and compiling information about motor vehicle stops and corresponding arrests by troopers who patrol New Jersey's highways.

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The approach you are considering here will help everyone involved. It will discourage unscrupulous police officers from indiscriminately engaging in reprehensible conduct—conduct that tarnishes the image of their fine profession and drives a wedge between them and the people they have sworn to protect and serve.

Senator ASHCROFT. The Senator from Wisconsin is recognized.

Senator FEINGOLD. Thank you, Mr. Chairman. First, I ask unanimous consent that the following statements be entered into the record of the hearing: statements from the NAACP, the National Black Police Association, and Progressive Policy Institute, as well as the statements of two Wisconsin constituents, Mr. and Mrs. Trent Jackson, and Ms. Karen Murphy Smith.

Senator ASHCROFT. Without objection.

I would again reiterate our willingness to accept and receive testimony and comment from any of you, additionally, and including those who could not come today. We are very pleased to do that and we will hold the record open for several days so that can be achieved.

[The statements referred to can be found in the appendix.]

Senator ASHCROFT. Go ahead.

Senator FEINGOLD. Thank you, Mr. Chairman.

Let me thank all the witnesses. I want to particularly thank Mr. Watt, who lives on the other side of the great Packer and Bear divide, but on either side of that divide, we would say you have guts. You deserve praise, not threats, and I thank you.

Let me begin by asking Professor Harris, you have heard testimony from all the witnesses. I would like to invite you to respond to what the other witnesses have said. Particularly, I would be interested in any responses you have to the testimony of Mr. Hughes.

Mr. HARRIS. Yes, Senator, I would be glad to respond. My response to Mr. Hughes' testimony is that I believe that when he says that this type of enforcement merely reflects statistical reality, he has fallen victim to the same statistical fallacy that I was pointing at.

The use of arrest statistics does not illuminate drug use. It does not illuminate the prevalence of drug trafficking. It is a reflection of enforcement. So when we use drug statistics, as he did in his testimony, to justify this practice, to call it effective, what we are doing is we are caught in a self-fulfilling prophecy. If we look to those we arrest to determine who we arrest in the future, we will continue to look at those same people.

There is a relationship, in short, between where you look for things and where you are likely to find them. If you look in the cars of African-Americans and Latinos, most often that is where you will find the stuff and that is who you will arrest. Those arrest

statistics will go up, the statistics in the prisons will go up. And you will go out and you will do the same thing all over again the next day because your experience has confirmed what you thought in the first place.

If we thought that 40-year-old white law professors were likely to have more contraband and we could figure out a way to identify them from a distance, I guarantee you that within 3 years the statistics for 40-year-old white law professors would show many more arrested. It is that simple. Relying on arrest statistics does not tell us enough, and that is why we so desperately need the statistics that this bill would provide.

Senator FEINGOLD. Thank you, professor.

Mr. Welter, I applaud the commitment and leadership shown by the San Diego Police Department on this issue, and the tone of your remarks. I mean, you are the example of the law enforcement I know in this country, and particularly in my State, and I think it is an extremely positive message.

I guess specifically I would like to know how much time it does, in fact, take for an officer to collect this data in writing, and how much time do you think it will take for an officer to collect data with the wireless computer system once it is fully operational?

Mr. WELTER. Thank you, Senator, for the compliment. We developed a form that is a pretty simple form to fill out. It is similar in data to what the bill calls for, almost identical, in fact, and we developed that form several months ago. It takes an officer about 20 seconds to fill out the form. We also don't require that the officer sign the form and there is no information about the driver on the form.

The form is attached to any documentation, whether it be a citation or a warning or an arrest report. And then once it is submitted, it is separated at that time so there is no way to track it back to either the officer or the person who is stopped.

Once we get our wireless technology up to speed, which I am hoping we will get support to do that, we anticipate—right now, our officers have laptop computers in their cars. They use those computers to do a myriad of things, including working with the community on problem-solving, and so on and so forth. But the nice part about that technology is we will be able to capture that data in even a quicker fashion. We will be able to send it automatically over the air waves to the station. We won't have to depend on laborious data entry personnel to enter all that data.

In addition, it will be the first step toward our analysis process. So we will be able to take that data and separate it, and that is the true problem here is how do we analyze the data, because I think many times just raw data is not going to tell us a lot of things. What we really need to do is get at, OK, how does this data either support conclusions or not support them, and also how are we going to use this data to do something about looking at policies, procedures, operations, and relationships.

Senator FEINGOLD. Thank you, Mr. Welter.

Back to Professor Harris for just a moment, if you could respond to the concern that I think Mr. Watt raised that officers will not always report stops.

Mr. HARRIS. Yes, and that is a good question, Senator. There is always the chance in any statistical or other reporting system that it can be manipulated or dodged. The key thing is if we are going to have statistical collection to make sure that it is thorough and to make sure that there are auditing systems of one type or another put into place. These can be constructed in many ways. I won't take your time by going into the details of any one because we don't want to have a one-size-fits-all solution because every department is frankly very different.

It can be done, though; it can be done. It has been done for statistics for many other law enforcement purposes. The important point to remember is that unless we measure something, we can't manage it. You cannot manage what you don't measure. We have to take the first steps. I applaud San Diego and San Jose and the other cities that have done that, and it can be done. It is not an easy problem. Officer Watt raises a very good issue. It is something we have to think about in advance, but it can be done.

Senator FEINGOLD. Thank you, professor, and thank you, Mr. Chairman.

Senator ASHCROFT. Senator Torricelli.

Senator TORRICELLI. Thank you, Mr. Chairman. I will only take a minute. Mr. Chairman, like Senator Feingold, I want to note the powerful testimony I have heard today from Mr. Watt. I will feel good when racial profiling is eliminated in our country, but I will feel even better if it is eliminated because white police officers played a role in bringing it to an end.

You are a man of extraordinary courage, and I was very moved and extremely pleased by your testimony, as I was by yours, Chief. I thank you for being here and the role that you have played.

I wanted to just ask a couple of things, and perhaps, Professor Harris, I could start with you on this. Last year, I had an amendment included in the omnibus appropriations bill for \$7 million to install video cameras in police cars. In my conversations with Governor Whitman of New Jersey, one of the things we agreed to do is she will use State money to start putting video cameras in State trooper cars on the turnpike. I agreed to try to get additional Federal money to help ensure that as many police cars in the state get video cameras as possible. It is my belief that this was not only in the interest of the motorists so that there was a record of who was stopped and whether they were treated fairly, because as Assemblyman Jones noted, not only were people being stopped, but they were being abused, but also in the interest of State troopers as it provides them a defense against false accusations. While there is a legitimate problem of profiling, that charge can also then be seized upon by people who are committing crimes and used as an excuse to complain.

Could you comment on the use of these video cameras?

Mr. HARRIS. Senator Torricelli, I think that is an excellent issue you have put your finger on. The use of these cameras, while not a panacea, certainly help advance both our factual knowledge, our ability to monitor and supervise behavior if we are police administrators, and it will protect officers against false claims. As you say, I think that is something that is a real benefit to the police officers involved.

Also, it can serve as evidence of crimes in criminal court. I can still remember the first time as a young prosecutor when I was in criminal court watching a video of a DWI suspect. I mean, no testimony was necessary at all. Just watching the videotape of that man slouching on his car was enough. So these camera systems can do a number of things. They can help us address racial profiling, they can make for better administration. They can even make the statistics gathering easier and they are good for law enforcement all around.

Senator TORRICELLI. Assemblyman Jones, while it took New Jersey a long time to come to terms with the problem of racial profiling and the State government was in denial through several administrations, are you now convinced that we are at a point where there is a general acceptance of the extent of the problem and of the need to address it? Have we reached near consensus in the State of New Jersey at this point?

Mr. JONES. Senator, I believe that recent polls have determined that there has been acceptance of the fact that racial profiling is real and it exists. And the issue that was glaringly obvious was that was not necessarily a reality in the white community. But I believe because of New Jersey's experience that that now has been elevated to a reality in the white community.

Senator TORRICELLI. Well, the process began when the U.S. Justice Department became involved first in monitoring the State police and finally in appointing a federal monitor which culminated yesterday in Mr. Rivas' appointment. I was pleased with Mr. Rivas' appointment and I think he seems well qualified. He seems to have the confidence of law enforcement, and yet I believe he will be sensitive and work closely with the leadership in the minority community.

Do you share confidence in this process?

Mr. JONES. Absolutely, very, very pleased with the Deputy AG's actions to date. Let me just say that I am also encouraged by the appointment of a new Superintendent of the New Jersey State Police. And I do believe that inasmuch as we are very early in the process and we have not been able to measure that progress just because of time—

Senator TORRICELLI. But certainly the State troopers themselves feel better about themselves now and about their relationship with people in the State and their mission. I think this has not only been reassuring to the members of the minority community, but in my own estimation helpful to State troopers.

Mr. JONES. I believe so. I believe that the rank and file will go through a healing period because obviously there were some morale issues as a result of all that was going on. But I am encouraged that as we continue to take steps forward that those things will heal.

Senator TORRICELLI. And my colleagues should know we can feel very good about the role of the Justice Department. If New Jersey is to be the test case where we dealt with this issue first and came to some fair solution, the U.S. Justice Department handled this promptly, thoroughly, and fairly, and I was extremely pleased.

Mr. Chairman, thank you for allowing me to join you today and for holding this hearing.

Senator ASHCROFT. Thank you very much.

I want to thank the members of the panel, all of you, for coming, and I won't reiterate remarks that have already been made. I really feel like I need to ask Mr. Hughes if he has comments that he would like to make because the questioning has focused on the rest of the panelists and I think, in fairness, I want to give him an opportunity to make some statements.

May I just indicate some areas of interest that I have, and this is one of these topics that we could probably ask questions on for a long time. You seem to raise the distinction between—criminal drug interdiction profiling was one phrase you used, and racial profiling. I guess what I would ask is, is there a possibility that law enforcement can continue to use profiling as an enforcement tool, or should or should not, absent race? I think a profile usually is more than one characteristic.

So can you kind of address that? I am not an expert in police work, but it seems to me that there are some profiling things that might be helpful in enforcement, and is it possible that we could use that without infringing the integrity of American citizens who need to be treated equally based on race?

Mr. HUGHES. Yes, sir, definitely so. Criminal profiling is a good thing. Like I stated, it is a multitude of indicators or characteristics. Race is not one of these. First of all, you have to have probable cause for a motor vehicle stop. Second of all, if you look at DEA statistics—and I disagree with Professor Harris. He suggests that we ignore or do away with criminal statistics, criminal profiling. What would he suggest to replace these? How would we develop the profile if all statistics are not considered?

If you talk to African-American police chiefs, two of the country's most notable, Bernie Parks in L.A. and Ruben Greenberg in Charleston, SC, they will echo the same sentiments as I have stated here today. It is reason, not race. You enforce the laws, you stop crime. You can't have race come in and say, well, we are enforcing crime on race. You have to enforce the crime and then you keep statistics on the person that you arrest, or persons that you arrest.

I agree with the professor that you can play with statistics. I have seen it done in the State police. And I am not saying the Maryland State Police did not have problems. They had some problems, also, and they have cleaned them up. And I am not saying we don't have bad cops. We do have bad cops, African-American, Hispanic, caucasian. And you are not going to solve deep-rooted family prejudices with this Traffic Statistics Act. You are always going to have those; you are always going to have isolated cases. I have heard some here today that I have heard before and I was appalled by them also. They are going to continue.

I would find it very difficult for me to stop and go through the litany of questions that are in this Traffic Statistics Act and ask anyone here, with the mixed marriages and all today, are you African-American, or are you caucasian, or are you Latino? Right away, that is going to set off a confrontation for that officer.

And another thing: traffic on Interstate 95, with the statistics that I have seen within the Maryland State Police when I was there, it was ludicrous. I mean, it is an interstate highway. My God, you know, you have individuals from New York to Florida.

You can't base the statistics in Maryland or New Jersey on the population of ethnicity for that ethnic group in that specific State. You just can't do it.

So I think we are overreacting to a problem. And I am not saying not to correct the problem. Please correct the problem, but don't go overboard and don't broad-brush all law enforcement for the actions of a few. Most police departments do keep good records, and I think it is incumbent upon governors and mayors to look at it. You know, if the police chief is not doing his job, fire him, terminate him or her. But I agree with you, Senator, on that comment.

Senator ASHCROFT. Well, I wanted to try and make it clear that there is a broader issue about profiling generally. Racial profiling, it seems to me, is a very much more narrow issue and much more problematic.

Mr. Welter, thank you for coming from San Diego to help us. As a sort of pioneer in this arena, you can help enlighten us. Do you have any way of identifying the neighborhood in which a stop is made, and do you try to correlate the racial composition of the neighborhood vis-a-vis the stop or anything like that in the data that you are keeping?

Mr. WELTER. You know, that is part of the problem with the data collection and the way that it is being collected. And, again, we don't have a way—obviously, one neighborhood has a different ethnic or racial makeup than another, certainly. But then you also throw in the variables of what is the driving age or the number of people that drive in that particular ethnic or racial makeup. So statistics and the raw numbers—this is why we are seeking expert research consultants to help us with our analysis because it is a very difficult process, and I don't have the answer to that question, Senator.

Senator ASHCROFT. Well, I think it is very easy to come to quick conclusions from data, but we wouldn't want to do that, I don't think, recklessly because what we are trying to avoid is a reckless, quick conclusion based on something else that doesn't lead us to the truth.

Mr. WELTER. We are capturing the division where the stop is made. In our city, we have eight divisions that are very broad and very diverse. In fact, in one community there are 30-some different languages spoken. So to try to figure out anything in regard to ethnic or racial breakdown in that community will be very difficult.

Senator ASHCROFT. Well, let me thank all of you for your patience. We have spent a little extra time.

Did you want to make some closing remarks?

Senator FEINGOLD. One sentence, Mr. Chairman. I just want the record to be clear, and I am glad that you gave Mr. Hughes a chance to give his opinion. The legislation does not call for the officer to inquire about a person's race or background. It merely asks the officer to give their perception. So the notion that there would be a confrontation on that point is mistaken. That is not a part of the legislation.

Thank you, Mr. Chairman, and thank you again for your tremendous cooperation and all the time you have been willing to devote to this.

Senator ASHCROFT. I think this has been a very informative, productive hearing. I want to thank all of the witnesses. Every witness has brought something to this table that wouldn't otherwise have been here. I am grateful for that.

This does continue to be an issue of national concern to citizens and officials of all persuasions. We have a situation where we have a Republican governor like John Rowland of Connecticut signing legislation that will require the collection of this kind of data, and a Democratic governor like Gray Davis of California vetoing it because he believes it is too burdensome for officers. So there are broad views.

We have heard some very, very serious stories about individuals and their experiences, and there are some different views on how best to address the issue. But I think in large measure the idea that race becomes the basis upon which someone is arrested—I would hope that we all understand that that is not an appropriate basis for an arrest.

I hope that the members who are here today have found this as useful as I have, and as I mentioned at the beginning of this hearing, I think the Traffic Stops Statistics Study Act is at least a good point of departure for getting a better picture of what the scope and depth of this issue is. I look forward to working with Senator Feingold and other cosponsors of the legislation to see if we can make it legislation which is valuable, meaningful, and worthy of support.

With that, I want to thank you all for being here and commend you for your willingness to provide us with this information.

[Whereupon, at 4:31 p.m., the subcommittee was adjourned.]

APPENDIX

PROPOSED LEGISLATION

II

106TH CONGRESS
1ST SESSION

S. 821

To provide for the collection of data on traffic stops.

IN THE SENATE OF THE UNITED STATES

APRIL 15, 1999

Mr. LAUTENBERG (for himself, Mr. FEINGOLD, Mr. KENNEDY, and Mr. TORRICELLI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for the collection of data on traffic stops.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Traffic Stops Statistics
5 Study Act of 1999".

6 **SEC. 2. ATTORNEY GENERAL TO CONDUCT STUDY.**

7 (a) STUDY.—

8 (1) IN GENERAL.—The Attorney General shall
9 conduct a nationwide study of stops for traffic viola-
10 tions by law enforcement officers.

1 (2) INITIAL ANALYSIS.—The Attorney General
2 shall perform an initial analysis of existing data, in-
3 cluding complaints alleging and other information
4 concerning traffic stops motivated by race and other
5 bias.

6 (3) DATA COLLECTION.—After completion of
7 the initial analysis under paragraph (2), the Attor-
8 ney General shall then gather the following data on
9 traffic stops from a nationwide sample of jurisdic-
10 tions, including jurisdictions identified in the initial
11 analysis:

12 (A) The traffic infraction alleged to have
13 been committed that led to the stop.

14 (B) Identifying characteristics of the driver
15 stopped, including the race, gender, ethnicity,
16 and approximate age of the driver.

17 (C) Whether immigration status was ques-
18 tioned, immigration documents were requested,
19 or an inquiry was made to the Immigration and
20 Naturalization Service with regard to any per-
21 son in the vehicle.

22 (D) The number of individuals in the
23 stopped vehicle.

1 (E) Whether a search was instituted as a
2 result of the stop and whether consent was re-
3 quested for the search.

4 (F) Any alleged criminal behavior by the
5 driver that justified the search.

6 (G) Any items seized, including contraband
7 or money.

8 (H) Whether any warning or citation was
9 issued as a result of the stop.

10 (I) Whether an arrest was made as a re-
11 sult of either the stop or the search and the
12 justification for the arrest.

13 (J) The duration of the stop.

14 (b) REPORTING.—Not later than 120 days after the
15 date of enactment of this Act, the Attorney General shall
16 report the results of its initial analysis to Congress, and
17 make such report available to the public, and identify the
18 jurisdictions for which the study is to be conducted. Not
19 later than 2 years after the date of the enactment of this
20 Act, the Attorney General shall report the results of the
21 data collected under this Act to Congress, a copy of which
22 shall also be published in the Federal Register.

23 **SEC. 3. GRANT PROGRAM.**

24 In order to complete the study described in section
25 2, the Attorney General may provide grants to law en-

1 enforcement agencies to collect and submit the data de-
2 scribed in section 2 to the appropriate agency as des-
3 ignated by the Attorney General.

4 **SEC. 4. LIMITATION ON USE OF DATA.**

5 Information released pursuant to section 2 shall not
6 reveal the identity of any individual who is stopped or any
7 law enforcement officer involved in a traffic stop.

8 **SEC. 5. DEFINITIONS.**

9 For purposes of this Act:

10 (1) **LAW ENFORCEMENT AGENCY.**—The term
11 “law enforcement agency” means an agency of a
12 State or political subdivision of a State, authorized
13 by law or by a Federal, State, or local government
14 agency to engage in or supervise the prevention, de-
15 tection, or investigation of violations of criminal
16 laws, or a federally recognized Indian tribe.

17 (2) **INDIAN TRIBE.**—The term “Indian tribe”
18 means any Indian or Alaska Native tribe, band, na-
19 tion, pueblo, village, or community that the Sec-
20 retary of the Interior acknowledges to exist as an In-
21 dian tribe.

22 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

23 There are authorized to be appropriated such sums
24 as may be necessary to carry out this Act.

○

ADDITIONAL SUBMISSIONS FOR THE RECORD

PREPARED STATEMENT OF MR. HILARY O. SHELTON, DIRECTOR, WASHINGTON BUREAU OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Thank you, Senator Ashcroft, for agreeing to hold this hearing and to you, Senator Feingold, for asking me to submit a statement on behalf of the NAACP for the record.

Racial profiling is an extremely disturbing and alarmingly prevalent practice in America today. The fact of the matter is, if you are a person of color living in the United States, there are law enforcement officials that look at you differently, and with a greater level of suspicion. They always have, and until something is done to raise the level of accountability, they will continue to do so.

The result of this bias is that ethnic minorities are stopped walking on the streets, while driving their cars, while trying to travel through airports, or while trying to enter their homes, at disproportionate rates. Furthermore, because of this increased suspicion, people of color are, as we see time and again, treated much more aggressively and with much more force than their Caucasian counterparts.

It is difficult for Americans of color not to have their faith in the United States Justice system challenged almost daily when we know from experience that we are treated differently because of the color of our skin.

Over the past few years, the practice of racial profiling has received much more attention, in the media and elsewhere, than ever before. This increased attention is, in some ways, a double-edged sword. While it is satisfying to have our concerns and anecdotes validated by state-sponsored studies and nationally recognized newspapers, it is also frustrating that more is not being done to address this insidious problem.

In Maryland, Florida, New Jersey and throughout this nation we have the empirical evidence to validate the fact that racial profiling is a common, even pervasive tool, of law enforcement officials at all levels. Yet what has been done to change the way these law enforcement officials perform their duties? Relatively little. In some ways, admitting there is a problem but not having the political courage to address it is even more frustrating to those of us who are stopped while walking, driving, trying to board an airplane or sitting on a park bench simply because of the color of our skin. It tells us that the powers that be, the politicians and the justice system, still think that people of color are, by nature, less trustful and it is therefore okay to treat them with increased suspicion. It is degrading, demoralizing, and in the end it will make it harder for us as a nation to meet the challenges of the future together.

The legislation before Congress, S. 821 and H.R. 1443, is a small step that nevertheless must be taken. We need a national study to try to determine the depth of the problem. The studies that have been conducted to date, while extremely helpful and illuminating, have all been of sufficiently small scale that some may try to argue that they reflect local biases or training.

I can tell you that in my capacity with the NAACP I have had cause to travel throughout this nation and wherever I go, regardless of the size of the crowd, there is invariably one person in every meeting who has recently been stopped by an officer of the law simply because of the color of his or her skin.

Racial profiling is a national problem, it occurs at all levels of law enforcement in all corners of this nation, and it deserves—in fact, it requires—a federal response.

I therefore urge the esteemed members of this subcommittee, and indeed of this austere body, to act now to ensure that S. 821 becomes law sooner rather than later. Let us begin to address racial profiling in a real and concrete way, not simply with words.

In conclusion, I would like to reiterate a statement I made at the beginning of my comments. It is difficult for Americans of color not to have their faith in the United States Justice system challenged almost daily when we know from experience that we are treated differently because of the color of our skin. If Americans

want our nation to continue to lead the world economically, politically, and morally, we must first make sure that our own moral fabric is not marred. We must make sure that the words “Equal Justice for All” are practice, not just words.

PREPARED STATEMENT OF JOHN COHEN, DIRECTOR, COMMUNITY CRIME FIGHTING PROJECT, PROGRESSIVE POLICY INSTITUTE

Law enforcement agencies around the country are reassessing the controversial tactic of racial profiling, in which police stop and question people primarily due to their race. The Progressive Policy Institute (PPI) believes it is time to end racial profiling and replace it with innovative crime-fighting strategies that marry information technology and community-oriented policing.

The following report, entitled *Eliminating Racial Profiling: A Third Way Approach*, is a product of the new Community Crime Fighting Project, whose mission is to modernize America’s criminal justice system by harnessing new technologies to progressive, community-based strategies for preventing crime and improving public safety.

Eliminating Racial Profiling: A Third Way Approach challenges the assumption that racial profiling is simply a matter of prejudice. But it also demolishes the claim that profiling is an effective tool of law enforcement. On the contrary, profiling is emblematic of an obsolete style of “random” or “reactive” policing in which officers ride around in cars awaiting emergency calls.

Instead of racial profiling, the police must do a better job of criminal profiling—making timely use of information that links suspects to actual crimes, not merely to statistical probabilities. Since the most valuable information comes from people in crime-ridden areas, tactics like racial profiling—which breed mistrust and outright hostility between police and poor communities—are counterproductive. To reduce crime and improve relations between minority communities and the police, the paper proposes four key strategies:

Deploy technology more effectively. Develop and use information technology systems to put accurate and timely information about criminal activity in the hands of the police, facilitating decision based on data instead of race.

Concentrate on “hot spots.” Crime is heavily concentrated in specific geographic areas. Public Safety plans should be coordinated and brought to bear on these “hot spots.”

Focus on high-risk offenders. A relatively small number of people are responsible for a majority of crimes. Crime fighters need to target these dangerous people.

Improve police recruitment and training. Enhance the quality of police forces with stringent hiring standards and train officers to identify true indicators of criminal activity.

INTRODUCTION

Until recently, African-American drivers on the New Jersey Turnpike stood a much greater chance than white drivers of being stopped by the State Police for a random drug search. This practice—an example of racial profiling—ended abruptly last year when public outrage forced the removal of the State Police Superintendent.

The outcome in New Jersey was, however, the exception rather than the rule. In fact, law enforcement agencies throughout the nation commonly use tactics that subject members of certain minority groups to closer scrutiny than others. When a police officer detains and investigates a person or group of people primarily because of their race—absent of any information linking them to criminal activity—that officer is engaged in racial profiling.

For example, for several years, police have known that African-American gang members from New York City fly to Florida to buy cocaine. These gang members then use rental cars to transport the cocaine back to various locations in the Northeastern United States. Aware of this pattern, police officers from various agencies have adopted an enforcement approach in which they select primarily cars driven by African-American males traveling northbound on Interstate 95 to stop and search for drugs. While these stops have occasionally led to seizures of illegal drugs, they also resulted in individuals who are not involved in illegal activity being stopped and detained.

Racial profiling is not limited to enforcement activities on the highway. An African-American actor is presently suing the City of New York following his arrest in the lobby of his apartment building. He was arrested, along with five other African-American males, during a police operation intended to arrest suspected drug deal-

ers. The actor was placed into custody for five hours and strip searched, even though he was not in possession of any drugs or involved in any criminal activity.

If racial profiling were a matter of simple bigotry, it would be easy to condemn and ban. But law enforcement officials, including some African-American police chiefs in big cities, defend such tactics as an effective way to target their limited resources on likely lawbreakers. They maintain that profiling is based not on prejudice but probabilities—the statistical reality that young minority men are disproportionately likely to commit (and be the victim of) crimes. Citing these facts, the courts have repeatedly upheld the constitutionality of routinely using race as a criteria for selecting the targets of enforcement action.

Of course, there are situations in which police must take race or ethnicity into account to do their jobs effectively. An obvious example is when skin color is part of a description of specific suspects committing specific crimes. In addition, such descriptions help police narrow the pool of potential suspects and concentrate their enforcement efforts. Let's say that a police department has knowledge that jewelry store salespeople are being robbed. The robberies occur just after the store closes when the sales personnel are leaving work. Witnesses describe the suspects as male, Hispanic adults. Police are also told that prior to past robberies, witnesses have observed several Hispanic males seated in a car that matches the description of what is later to be determined as the suspect vehicle. Based on this scenario, a police officer would be justified in investigating a vehicle containing a group of Hispanic males parked adjacent to a jewelry store at closing time. And even though the criteria used by police to target this vehicle includes that the occupants are Hispanic, the police are not using "racial profiling." However, if police officers from this department—in an effort to stop these robberies—made it a practice to stop any and all vehicles occupied by male Hispanics, anywhere in the city, at any time, they would be engaged in racial profiling.

The well-founded belief that authorities use racial profiles to justify more intensive observation and questioning of people of color has fed escalating tensions between police and minority communities. Racial profiling has triggered widespread complaints among minority men, including many middle-class professionals, of police harassment based solely on their skin color.

Political opposition to racial profiling is mounting. President Clinton recently called the practice "morally indefensible" and order federal law enforcement officials to collect information on the race and sex of people they stop. Vice President Al Gore and his rival for the Democratic nomination, former Sen. Bill Bradley, have promised to ban racial profiling by federal authorities.

Progressives should press for an end to profiling on both civic and practical grounds. First, racial profiling corrodes the presumption of innocence to which all American citizens are entitled. It is always dangerous to stray from the bedrock liberal principle that individuals must be judged on their own merits, not on their class, race, ethnic background, or gender. Second, whatever gains the police may reap from profiling are overwhelmed by its costs: alienating law-abiding citizens and reinforcing the view in poor communities of the police as an occupying force rather than a common instrument for self-defense.

Moreover, police now have an alternative: new, community-based strategies buttressed by real time access to information that can help them target people who have actually committed crimes as opposed to people who happen to be members of racial or ethnic minorities. After all, profiling uses race as a proxy for criminal intent or culpability because police often lack specific information about specific individuals. Modern information systems and strong police community interaction that foster the exchange of information will ensure that police make decisions based on facts and data instead of race.

The problem with racial profiling is not that it targets "dangerous people in dangerous places." It is that it targets inaccurately and in ways that breed resentment and mistrust between the police and poor communities. What we need is the right kind of targeting, based on better information about lawbreakers and closer cooperation between the police and the community. In this paper, we propose a Third Way: replace racial profiling with new tools that will help the police to make better judgments, deploy their resources more strategically, and most important of all, enlist citizens in crime-riddled neighborhoods in their own self-defense.

Specifically, we propose strategies to:

Deploy information technology more effectively. We must develop and deploy information technology systems to put accurate, timely information about the location of criminal activity and the people involved in it in the hands of cops on the street, permitting them to make decisions based on data instead of race. The technology exists to dramatically improve the collection, processing, and spreading of information within the entire criminal justice system, but it has

not been deployed. These same advances can make it easier for citizens to provide police with information about crime-related problems.

Concentrate on "hot spots." Our crime-fighting strategies should recognize and respond to the well-documented fact that crime, and especially violent crime, is heavily concentrated in certain geographic areas. The actions of police, prosecutors, parole officers—indeed, every aspect of the criminal justice system—should be coordinated and brought to bear on these crime "hot spots."

Focus on high-risk offenders. A relatively small number of people are responsible for a majority of crimes. As in "hot spots," we need to target the criminal justice system's full panoply of resources on these dangerous people.

Improve police recruitment and training. We need to enhance the quality of our police forces with more stringent hiring standards and train officers to identify the conditions, trends, and behaviors that are true indicators of criminal activity.

RACE AND LAW ENFORCEMENT

In the early part of this century, racial discrimination was codified in many state laws and the police were expected to enforce what most Americans today regard as unjust laws. Over the past three decades, there have been systematic efforts to eliminate blatant bigotry from the nation's criminal justice system. Outright discrimination is clearly much less prevalent than in the past. Nonetheless, there are still many Americans, particularly racial and ethnic minorities, who are convinced that police unfairly target them.

Undoubtedly, there are still people in our criminal justice system who are influenced by racial or ethnic prejudice. Just as surely, some instances of profiling, or of excessive force, can be attributed to a racist outlook. When racial prejudice prevents anyone in the criminal justice system from treating all citizens in a fair and equal manner, the only solution is to remove such people from positions of public trust.

But the routine use of racial profiling today has more to do with techniques of "modern" policing than old-fashioned bias. In the middle part of this century, police officials instituted a new model of "professional policing" in an effort to deal with corruption. Under this model, police officers were taken off the streets and placed in radio-dispatched patrol cars, controlled and monitored from a centralized location. Officers were responsible for large geographical areas and were evaluated based on such performance measures as number of arrests, number of calls for service handled, and response times. Departments became 911 driven, and officers were discouraged from forming close bonds with the community. The result: police officers became detached from the communities they served.

Today, many police departments (even many of those that promote community-oriented policing) still emphasize random or reactive tactics. Rarely do police officers (or their supervisors) begin their day with a specific problem to solve and a defined, information-driven solution to that problem. Generally, police officers randomly drive around a loosely defined beat area, responding to calls for service, or using a set of nonspecific criteria to decide which people and cars to stop. This culture of random policing has alienated police from the communities they are charged with protecting, fostering an "us vs. them" mentality in which racial profiling and charges of racially-inspired police brutality flourish.

The authors of this paper know from personal experience that most police officers are hard-working, decent people who are struggling to be effective with minimal resources and under difficult conditions. They are held accountable for preventing crime, but they are seldom provided up-to-date information regarding crime trends and conditions influencing crime. This operational environment requires police officers to make discretionary judgments about who to stop and when to detain people. Lacking reliable information and sometimes training in how to establish proper "probable cause," officers often rely on "hunches" or other superficial criteria—such as a minority person traveling in "the wrong neighborhood"—to justify detaining and questioning an individual. They believe that they are making a rational decision based on their experience; that they are simply doing their job.

Some legal and law enforcement experts argue that the use of racial profiling is an effective method of strategically addressing specific crime problems. They believe that the most effective use of their limited resources is to focus on minorities because they are statistically more likely to be involved in crime. They further argue that racial profiling is appropriate when the race of an individual is one of a number of legitimate factors used by police to decide whom to stop and question.

Yet their core premise—that racial profiling is an effective and efficient way to catch criminals—is fatally flawed. When police use race-based profile resources, they

often devote time and attention to individuals who are not involved in illegal activity—leaving actual criminals free to continue committing crimes. Assuming that all members of a race are legitimate targets for police action because they have the same skin color as individuals engaged in criminal activity is not a sound assumption on which to base an enforcement strategy.¹ The vast majority of serial killers are white. Yet no one would argue that because all white people are potentially serial killers, they should be subject to random police stops. From a law enforcement perspective, the use of race is not the most effective method for deciding whether a person may be potentially violating the law.

Tough law enforcement does not require that the police treat some citizens unfairly. Indeed, some of the most effective community-oriented policing initiatives combine the goal of curbing crime with a commitment to treat every person with the utmost respect, regardless of the circumstances. Communities that have embraced this philosophy of policing have not only realized dramatic reductions in crime, they've also seen citizen complaints against the police plummet. San Diego, for example, has achieved a reduction in crime statistically equal to that achieved in New York City through a crime strategy based on problem solving and community mobilization. Rochester, NY, has adopted an aggressive crime reduction strategy with a commitment by the chief of police that every citizen will be treated with maximum respect. Rochester also has witnessed both a substantial reduction in crime and in citizen complaints. Reducing Crime and Ending Racial Profiling—A Third Way To Approach Racial Profiling is inconsistent with the basic freedoms and rights afforded in our democracy. It erodes the foundation of trust between communities and public authorities. Worst of all, it inflames racial and ethnic strife and undermines America's progress toward color-blind justice.

Improving the relationship between minority groups and police is one of the greatest challenges confronting our criminal justice system. According to Washington, D.C., Police Chief Charles Ramsey, "Race relations between the police and the community is one of the fundamental things that we must work through and 'get right' if we are to have any hope of significant and lasting progress on stopping illegal drugs, reducing youth crime, and improving public safety." Acknowledging the gravity of this problem, U.S. Attorney General Janet Reno and police executives from throughout the country have held three recent meetings on the subject of profiling and race relations. But no clear strategy has emerged for resolving this complex issue.

Without community support, tougher law enforcement can only go so far. If we are to make deeper inroads into crime, we must employ enforcement strategies that treat all law-abiding Americans with respect. We also must move beyond police tactics that have officers driving or walking around at random hoping to find crime, or stopping people or cars based solely on "hunches." There is growing evidence that communities can reap significant decreases in crime when police work closely with community members (business leaders, clergy and residents) to identify local conditions that breed disorder and to craft information-driven strategies to prevent crime.

In addition to the overriding imperative of better community support, the progressive alternative to racial profiling is based on the following four key strategies.

Use Technology to Enable the Police and Increase Citizen Participation

Whether in an inner city neighborhood or on an interstate highway, the use of accurate and timely information allows police to identify both the location of criminal activity and the people involved in it. Information plays a key role in the identification of "hot spots" and the repeat offenders that the criminal justice system should target. If state troopers have information about specific people or vehicles involved in the transportation of illegal drugs, they will not have to rely on race or ethnic profiles.

Advances in technology promise to significantly change the way we address crime in our cities, towns, and on our highways. The information technology revolution has improved the ability of people in the criminal justice system to collect, process, and disseminate information. Linked information systems, wireless data technology, and systems that link the community with police will provide police the critical information needed to identify trends and situations that demand law enforcement focus. Police officers can now access information and images of persons who are wanted for crimes via laptop computers in their police cars. Additionally, officers can use these same laptops to file reports and complete other administrative tasks. This allows them to stay in the field longer. Information and communication systems will link regional agencies and enable multi-agency efforts to target the locations where crimes occur and the people who commit them. The same information systems also can monitor the performance of police officers, highlighting patterns of behavior that may signal bad decision-making.

These advances will make it easier for citizens to provide information to police regarding crime-related problems. For example, some police departments are using the Internet to enable people to file police reports and to get information regarding criminal activity in their neighborhoods. Other departments are using advanced telecommunications technology in conjunction with an easy-to-remember, non-emergency number (311) to improve the response to both emergency and non-emergency calls for service, and to create discretionary time for community-oriented policing.

Unfortunately, the criminal justice community has been slow to exploit the full potential of the new technologies. Many agencies can't afford cutting edge technology; others have senior executives who don't grasp how technology can leverage existing criminal justice resources toward more effective policing. The federal government should launch an educational campaign to raise awareness among federal, state, and local criminal justice agencies about what new information tools are available and how they can be a "force multiplier" for police.

Concentrate on Crime "Hot Spots"

Research confirms what Americans instinctively understand: crime is heavily concentrated in certain geographical locations. A small number of addresses tend to generate a large amount of crime, and these addresses tend to be clustered in particular neighborhoods. Some studies have indicated that as much as 50 percent of all crime occurs at about 3 percent of addresses. For violent crime, this concentration is even more pronounced. The pattern holds true for urban, rural, and suburban settings. It is therefore crucial for law enforcement authorities and community leaders to cooperate in targeting resources on those hot spots where most crime takes place. Efforts by police and prosecutors to target hot spots should also be coordinated with other public and community agencies, such as those responsible for after school programs, housing, and drug treatment. Maryland Lt. Governor Kathleen Kennedy Townsend has spearheaded a statewide "HotSpots" program that should be a model for the nation. State grants initially supported 36 multi agency and community-based efforts to reclaim the neighborhoods hardest hit by crime and drugs. The state assists crime-ridden communities in developing a comprehensive strategy that includes community mobilization, community-oriented policing, community probation,² and delinquency prevention.

This information-driven approach has had dramatic results. HotSpot locations recorded significant decreases in serious crime that doubled both national and state averages, leading Maryland to double the number of HotSpots communities that receive state funds.³

Focus on High-Risk Offenders

Research also has shown that a small proportion of high-risk offenders accounts for a large proportion of crime. An exhaustive study of career criminals conducted by the National Academy of Sciences found that while half of all offenders commit more than one crime per year, 10 percent of offenders committed over 100 crimes per year. A study in Baltimore found that almost 60 percent of adults arrested are on some type of criminal justice supervision (probation and parole) at the time of their arrest.

Incredibly, however, many police departments continue to employ crime control strategies that involve the random search for people committing crime when it is clear that the majority of crime is committed by individuals who are not only well known to the law enforcement community, but who are also under criminal justice supervision.

Some jurisdictions have realized impressive reductions in crime by targeting these high-risk individuals. Boston, for example, quelled a severe epidemic of youth violence with a multi-faceted approach involving government and the community. The police identified violence-prone youth, who were then contacted as well by social workers, probation officers, and church leaders. These youths quickly discovered that they were being closely monitored not only by law enforcement officials, but by a caring community. Coupled with this initiative was an expanded gun enforcement effort to track down those who were selling guns to youths. The results were impressive. For two years, there were no gun related homicides committed against or by a person under the age of 18. Additionally, Boston substantially reduced its level of youth violence through these collaborative initiatives.

A success like Boston's shows that it is not only assertive police action that can reduce disorder and violence. Community-backed approaches work better than reliance solely on police action.

Strengthen Police Training and Accountability

Police officers hired to protect our communities must recognize that treating citizens with respect is the highest priority of the profession. Police departments must

redouble efforts to screen applicants for this ability and eliminate those who lack it. While hiring requirements should be set locally based on the specific needs of specific communities, departments across the nation are exploring residency⁴ and mandatory education requirements as ways to enhance the quality of their law enforcement officers.

Many police agencies have begun requiring an associate's degree as a minimum academic credential while others require or offer signing and retention bonuses for people with bachelor's degrees. It is generally agreed that applicants with higher levels of education have better communications skills and show greater versatility in problem-solving. However, such requirements often make it difficult to recruit minority officers, since there is intense competition in the job market for minority candidates with college degrees.

Law enforcement agencies traditionally have tended to recruit college students majoring in criminal justice or criminology. Many police agencies will also provide continuing education benefits to their officers only for criminal justice studies. To widen the pool of potential recruits, law enforcement should look also to students with a broader educational focus.

Everywhere, the quality of police training must be dramatically improved. Law enforcement professionals must be trained to identify conditions, trends, and behaviors that are true indicators of criminal activity. They must also be trained to understand and articulate the cornerstone principles of American justice, such as the doctrine of probable cause. Police training must focus on improving the quality of decisionmaking and use of discretion. We must invest more in innovative training techniques, such as interactive software programs that present trainees with scenarios and evaluate their reactions.

Police executives must be willing to bring minority representatives into full collaboration as they develop policies and programs aimed at lessening racial tension. Police strategies and tactics should be developed with community input, so the community is aware of what objectives are being sought and how the strategies will work. Police must not only tell the community what they are doing, but must learn what true collaboration means. Community oversight boards and federal supervision over local police focus attention on this issue but do not foster collaboration and therefore, in themselves, are not the answer. Most importantly, we must remember that this is not just a problem for police. Federal, state, and local government officials (in the legislative and executive branches) must provide the leadership, the ideas, and the commitment needed to spark a new revolution in criminal justice practices, learning from what has been successful and abandoning strategies that have failed.

Finally, leadership matters. Racial tensions between the police and communities are low where police executives take a strong stand against discriminatory or biased actions and hold their police officers strictly accountable when they violate such strictures. Police officers will not become involved in situations that increase racial tensions if police managers make it clear that inappropriate police behavior will not be tolerated.

CONCLUSION

Today's welcome reduction in crime allow many Americans to feel safer in their communities. Yet some Americans—particularly minorities—live with fear daily, not just of crime but also of abuse at the hands of police.

A progressive anti-crime strategy, therefore, should strive toward two key aims: reducing crime and improving relations between minority communities and the police. Fortunately, these goals are compatible and mutually reinforcing. There is simply no need for Americans to choose between greater public safety and policing methods that fail to treat all citizens with equal respect. It is, therefore, time to end racial profiling and replace it with information-driven strategies—enabled by the new tools of technology and grounded in strong community support—that constitute a Third Way approach to public safety for the 21st century.

AUTHORS

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ENDNOTES

1. A recent report released by the National Institute of Justice found that it is the social and economic status of a neighborhood, not the racial or ethnic makeup, that is a key contributor to a community's subculture of crime and violence.

2. Community prosecution involves having prosecutors focus their activities based on the location of a crime, not the type of crime. Under community prosecution, a prosecutor will have responsibility for working with police and community members to solve problems and prosecute most arrests for crimes in that community.

3. From July through December 1998, Baltimore City, HotSpots reported a 31 percent decrease in serious crime as compared to an 11 percent decrease citywide. Statewide, for the same period, HotSpots reported a 20 percent decrease in crime compared to a 10 percent decrease in non-HotSpots.

4. Calls for police officers to live in the communities they police tend to reflect the desire for police officers to show greater sensitivity to community issues and concerns. However, others believe that the quality of policing is important, not where the officer resides. In addition, residency requirements make police recruitment more difficult, and are subject to various state laws that prohibit this criterion.

PREPARED STATEMENT OF TRENT AND KELLY JACKSON

As I begin to write to all of you who might read this letter, my eyes swell up with tears for I am almost at loss as to where to begin. The problem of racial profiling has always been something my husband and I have wanted to help make the public aware of—for ourselves but most importantly for the people who cannot speak for fear of their lives. We only wish we had more than a couple of hours to write this letter to you but we will do our best to explain briefly the corruption we have experienced within the law enforcement agencies due to racial issues.

My husband, Trent Jackson, is a 33-year-old African-American. From the material we sent, you will see that he is not only a successful black male in society's terms but that he is a man of integrity and a true leader in his community. He is full of charisma and is a favorite for local television and radio interviews as well as public speaking engagements nationally. Some of you should remember him as a basketball player for the University of Wisconsin-Madison from 1985 to 1989.

Trent is fortunate that he has lived the life that he has when it comes to the problems he personally has had with the law enforcement agencies. It has made his experiences a great deal less dramatic than his fellow African-Americans who live in the inner city but Trent is still terrified of the police. I am also scared. I am afraid that one day he could be accused of something he never did, beaten, or even killed. These thoughts will be justified when you read some of Trent's personal experiences.

Also, I would like to inform you that I am a 31-year-old white female and have worked as a model internationally as you will also see from the material that was sent. The reason that this information is pertinent is because we believe some of the incidents have happened because we are a "mixed" couple.

As my husband and I recalled some of the many racial profiling incidents that have happened to him, we can guarantee one thing—that racial profiling is not made of isolated incidents. It happens all over the country and it is no prejudice of the size of the law enforcement agency.

Following is a list of some of the racial profiling incidents:

1. One day Trent had dropped me off for an hour at my modeling agency in downtown Chicago and went around the block to White Hen pantry to buy a newspaper to read. He was stalled by cashiers long enough for two policemen to come through the doors and arrest him. They pushed him into their squad car and handcuffed him to the bar while they checked his license. At the time, I believe we were living in Miami. Apparently, the White Hen pantry has been robbed a few days earlier and what do you know, the police and the cashier

thought their burglar had returned to the store.(?) They eventually let him go but were extremely rude with no apologies—the usual treatment for a black male.

2. Another incident with the Chicago police was when we were living in the Gold Coast district of Chicago which if you don't know, is an expensive part of town. Trent was walking back to our condominium by himself carrying a bag of food when the Chicago police paddy wagon drove up to him and asked him what he was doing in that district. They then begin to provoke him with racial remarks and obscenities.

3. In Madison, Wisconsin, Trent was again waiting in the car for me at a modeling agency late one night. They asked him to get out of his car, questioned him about whose car it was, searched it, and did the usual harassing. (This was about 12 years ago when they didn't know who he was.)

4. When we were living in Miami, we lived on an island called Bay Harbor Island, where once again Trent was harrassed because the police did not believe he lived there. He would be stopped for no apparent reason except for the police to search the car and harrass him. This happened numerous times. One time he was stopped and issued a speeding ticket even though he wasn't speeding. It was an excuse to check the car he was driving. This police officer threatened to plant drugs on him . . .

5. One time in Miami, Trent was waiting in the car while I ran upstairs to an apartment room of a photographer and his assistant to pick up my pictures. I returned to the car with the photographer's assistant (Rich) to find Trent with his hands up on the top of the car with two policemen's gun pointed at him. Our friend Rich, had reported a burglary of his photographic equipment the day before and the police once again acted as if they believed that the "burglars" would return to the place of the crime and actually sit in their car in front of the building. As it is needless to say how Trent felt, Rich was furious because he told them it was two men and Trent was nothing near the description of either one.(?)

6. Two weeks ago in Santa Barbara, California, Trent and I were vacationing and visiting my biological father and his family. One day, Trent drove my father's red Volvo downtown and dropped me off at a store and told me he would wait around the block. A few minutes later, a policeman pulled him over and questioned him about whose car it was, etc. After checking everything out, he then issued Trent a ticket for not wearing his seatbelt while Trent sat there with his seatbelt on. Trent pleaded with him for his reasoning for this ticket and he said that he saw him let a young lady out of the car and that he wasn't wearing a seatbelt at that time which was of course not true. Basically, we believe that this was a case where the police officer saw that I was white, etc. and wanted to harrass him and since he need a reason for pulling him over, he issued him a ticket that was inaccurate.

We could gone on and on but it is late and I am sure that these examples are enough. In the future, Trent would welcome the chance to speak directly to all of you about his experiences.

In summary, we desperately urge everyone to help pass the long overdue bill on racial profiling. This is a huge problem that needs to be addressed immediately to help save the innocent lives of minorities and provide more security for them when they are face-to-face with the law enforcement personnel.

On a personal note, I pray that one day my husband will feel safe when he has to reach into the glove compartment for identification. I pray that he will be treated with the same dignity and respect as other law-abiding citizens regardless of color—that he will not be demeaned in front of his family. I pray that one day the personality of the police force will not be the first determining factor when we choose our place of residence.

POLICE REIGN OF TERROR MUST END

(By Civil Rights Activist—Karen Murphy-Smith)

For one reason or another, citizens here have put up with some bad, coarsened, derelict, Law Enforcement Officers (LEOs) from the Milwaukee Police Department and surrounding Municipal Police Agencies. Instead of safeguarding the lives and property of citizens—these LEOs bring injury to the innocent, violating their liberties and constitutional rights. They stray away from the Law Enforcement Code of Ethics bringing animosity, prejudices, and pre-conceived ethnic notions to their perspective agencies.

We'll have discourteous LEOs, police brutality, Driving While Black or Brown (DWB), racial profiling and other atrocities as long as:

- (1) Good LEOs who witness these atrocities choose not to "blow-the-whistle";
- (2) Citizens take a "see no evil, hear no evil, speak no evil" attitude when asked for help;
- (3) Some Social Justice and Civil Rights Organizations remain slothful to act on citizen's complaints;
- (4) The Citizen Complaint Process is cumbersome, lengthy, and expensive; and

(5) Less than 2% of Milwaukee area Attorney's take-on Police Departments.

The bottom-line they'll continue to reign terror as long as we let them. It's up to us to hold them accountable to a standard of their own choosing the Law Enforcement Code of Ethics. Most citizens are familiar with the Law Enforcement Code of Ethics, which states:

"As a law enforcement officer, my fundamental duty is to serve mankind to safeguard lives and property to protect the innocent against deception, the weak against violence or disorder, and to respect the constitutional rights of all men to liberty, equality and justice.

"I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided in me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

"I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

"I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to my chosen profession—law enforcement."

It's beyond me how a LEO can swear by the Law Enforcement Code of Ethics and commit crimes against humanity like some we have documented.

—A Black Family return home to find three White Burglars. The Family called the Milwaukee Police Department (MPD). When the Police arrived, instead of arresting the three Burglars, the Police pushed and shoved the Daughter around. When the Father went to his Daughter's aid, both the Police and two of the Burglars beat the Father into unconsciousness. Police let the Burglars go free and arrested and charged the Family.

—A Black Woman and her Niece drove down a north-side street when they were pulled over by the Milwaukee Police Department (MPD). The car was surrounded. Two Policeman approached the car shouting obscenities and literally put guns to the women's heads. After about an half hour, the Women were offered no explanation and allowed to drive away.

—A Black Teen and his 8-year old brother drove home one night from an athletic event. The Teen noticed that his headlight was broken and put on his 4-way flashers. A Glendale, WI Policeman stopped the car on north Green Bay Road. The Glendale Policeman ticketed the Teen and made the Brothers walk to the Glendale Police Department in the dark, where the Teen called his Mother.

—A Black Woman was driving home from her job in Mequon, WI and listening to her car radio one morning. As she stopped at a light she noticed that a Mequon Police squad was there too. While laughing out loud at (Ms. Leonard—a character on WKKV-100 FM Radio Doug Banks' Show), she glanced into the Mequon Police squad and saw the Policeman pick his nose. When the light turned green she continued on her way. A half block down the road the Woman was pulled over by that Mequon Policeman who asked her, "What was so funny back there at the light?"

—A Black Man and his Cousin went out to a nightclub in Waukesha, WI. "Calling It A Night" the Cousin went out to start the car as the Man grabbed his coat. Once outside the Man heard a verbal argument between his Cousin and another Patron. The Man was breaking-up the altercation, when he was rushed by several Waukesha Policemen who beat him with night-sticks, arrested him and jailed him after taking him to an area hospital for treatment of injuries he sustained during the beating. The Man was later released but was hospitalized for an additional three days.

An ex-police officer posted the following related to this subject on a newsgroup <http://thebird.org/copwatch/linkcop.html>:

"I am an ex-police officer. I am ex because I tried my best to live up to the standards that the code of ethics tries to spell out. I was shunned by other officers. I was told to arrest 'racial expletives deleted' instead of 'bothering' the townspeople. I loved my job dearly but had to leave due to harassment from other officers. I am sure there are many good officers and good departments out there. But when you are dealing with something as precious as a persons rights and their very lives there should be zero tolerance for anyone who puts on a badge and gun and doesn't want to 'protect and serve'. I am hopeful someday I may return to my chosen profession but have been blackballed so far. I will keep trying since I believe serving the public, regardless of race or sex or religion is worth it. Thanks for letting me put in my two cents worth."

For these reasons, the Angela Davis Cop Watch and Campaign Against Racial Profiling is planning a May 20th Public Speak-Out Hearing. The goal of which is to mobilize citizens to present testimony and evidence of police brutality, racial profiling, Driving While Black or Brown, and other atrocities to national and international organizations like: Amnesty International, the Ad hoc Coalition Against Racism and Police Brutality, the Civil Rights Commission (Midwestern Region), the Black Radical Congress, the United Council of University of Wisconsin Students, the National Association For The Advancement of Colored People, Rep. John Conyers, U.S. Vice President Gore, U.S. Attorney General Reno, the National Institute of Justice, the Bureau of Justice Statistics, the Police Complaint Center, the National Police Accountability Project, and the Rainbow Push Coalition.

NATIONAL BLACK POLICE ASSOCIATION,
Washington, DC, March 29, 2000.

Senator RUSSELL FEINGOLD,
Senate Judiciary Committee, Subcommittee on the Constitution, Federalism and Property Rights, Senate Dirksen Office Bldg., Washington, DC.

DEAR SENATOR FEINGOLD: The National Black Police Association is an advocacy organization that represents over 35,000 African-American men and women in Law Enforcement and other areas of the Criminal Justice System. Also, the National Black Police Association is involved in the examination and analysis of criminal justice policy and practices that have negative impact on African-American law enforcement and the communities they serve.

The National Black Police Association would like to express its support for your Bill S. 821, that will provide for the collection of data on traffic stops. "The Traffic Stops Statistics Study Act of 1999" will provide us with information we need to properly examine the issue of whether or not people of color are victims of racist law enforcement officers or polices.

In closing, the National Black Police Association supports S. 821 without any reservation and is looking forward to working with you for its passage.

Sincerely,

RONALD E. HAMPTON,
Executive Director.

